No. 25-44

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff-Appellant,
WILLIE ELLIS, ROYSWORTH GRANT, NEW YORK STATE DIVISION OF HUMAN RIGHTS, CITY OF NEW YORK, CHARLES NATHANIEL JAMES,
Plaintiffs,
VAMCO SHEET METALS, INC.,
Plaintiff-Counter-Defendant,

v.

LOCAL 25 OF THE SHEET METAL WORKERS INTERNATIONAL UNION, LOCAL 580, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKS, JOINT APPRENTICE JOURNEYMAN EDUCATIONAL FUND, ALLIED BUILDING METAL INDUSTRIES, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 580, AFL-CIO, LOCAL 638, LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,
Defendants.

On Appeal from the United States District Court
for the Southern District of New York

OPENING BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS PLAINTIFF-APPELLANT

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STATEMENT REGARDING ORAL ARGUMENT

Given the more than 40 years of proceedings in this case involving a 1978 consent decree, the record's complexity, and the importance of the legal issues presented, the Equal Employment Opportunity Commission ("EEOC" or "Commission") requests oral argument.

INTRODUCTION

This employment discrimination case is more than a half-century old. Filed in 1971, by the Attorney General, it predates the EEOC's authority to conduct litigation. The complaint alleged that a group of unions and apprenticeship programs (including Local 580 of the International Association of Bridge, Structural and Ornamental Ironworks ("Local 580") and the Joint Apprentice Journeyman Educational Fund ("AJEF")), whose members were virtually all White, were violating Title VII of the Civil Rights Act of 1964 by systematically excluding, disadvantaging, and blocking employment opportunities for non-White ironworkers in New York City and surrounding areas. The district court entered a consent decree in 1978 that kicked off more than 40 years of post-judgment proceedings.

For two decades, the defendants resisted the consent decree's prohibitions on various forms of discrimination, and the EEOC sought to hold them accountable. The Commission sought and obtained multiple contempt orders. The district court assigned a special master, and over many years, the EEOC worked with him diligently to bring the defendants into compliance with Title VII.

These efforts bore fruit. In 2019, after noting that no Local 580 members had raised any concerns to the EEOC for many years, the Commission analyzed compliance levels. After assessing statistical and anecdotal evidence, it found that Black and Hispanic workers comprised nearly half of the membership of Local 580 and one third of its leadership, and there was no evidence of recent discrimination by the defendants. The Commission determined that its limited enforcement resources would be more effectively used to address present-day discrimination by other entities.

Accordingly, in 2020, the EEOC and the defendants jointly moved to vacate the existing consent decree and remedial orders, and to replace them with a new proposed consent decree that would, among other provisions, eliminate the special master appointment, place primary responsibility on Local 580 and the AJEF to address any EEO matters that arise, and enable the EEOC to monitor this transition for a period of three years, as it does with other consent decrees. The special master initially opposed the motion, then opposed again after the parties submitted additional information.

The district court twice denied the motion, effectively consigning the parties to indefinite participation in the special-master regime. Despite recognizing the transformed landscape, the district court refused to grant relief from its previous orders. The court gave no indication of whether, when, or how the parties could attempt again to conclude this decades-old litigation.

The EEOC asks this Court to allow it to use its limited resources differently: by overseeing compliance with a new consent decree of defined duration and by focusing on entities currently violating anti-discrimination laws. This case is a success story, and the EEOC asks only for permission to write its concluding chapter.

STATEMENT OF JURISDICTION

The complaint in this case alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq*. App.143-148.[1] The district court had jurisdiction pursuant to 28 U.S.C. § 1331. This Court has jurisdiction to review the denial of the parties' request under Federal Rule of Civil

[1] "App.__" refers to pages of the Appendix. "Sp.App.__" refers to pages of the Special Appendix. "R.__ at __" refers to the docket entry and page number of documents filed with the district court, using the ECF-assigned pagination.

Procedure 60(b)(5) for relief from the district court's prior judgments under 28 U.S.C. § 1292(a)(1). Because the parties requested that the district court enter the proposed consent decree as a replacement for its prior orders, the Court may appropriately treat this appeal as one from the denial of a motion to modify an injunction, which is appealable on an interlocutory basis. 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUES

1. Did the district court abuse its discretion in refusing to grant relief from its prior orders where the EEOC has uncovered no evidence that the defendants have violated Title VII for over 20 years?

2. Did the district court abuse its discretion in refusing to enter the proposed consent decree without considering procedural fairness factors or giving any weight to the EEOC's policy judgment?

STATEMENT OF THE CASE

A. Factual and Procedural History

1. Complaint and 1978 consent decree

In 1971, the Attorney General filed a complaint against three sets of unions, apprenticeship programs, and contractor associations. App.143-48.[2] Included in the named defendants was Local 580, a labor union whose members perform ornamental ironwork (such as curtain walls, marquees, canopies, stage equipment, and bridge and overpass railings) in New York City and Westchester, Suffolk, and Nassau Counties. App.146. Its membership consists of journeypersons, who are experienced ironworkers; apprentices, who work as ironworkers while also participating in a four-year training program; and pre-apprentices, who, after successfully completing one year of work, become first-year apprentices. R.431 at 6.

The complaint also named AJEF, a joint labor-management organization that operates a four-year apprentice training program, which includes over 800 hours of classroom instruction, safety training, and

[2] The court severed the claims against each union (and their associated apprenticeship programs and contractor associations) from one another in the 1970s, but all claims against all parties remain under the same district court docket number, hence the combined docket in the record.

hands-on skills training. App.146; R.431 at 6. The AJEF also provides ongoing skills training to journeypersons. App.146; R.431 at 6.

Finally, the complaint named Allied Building Metal Industries ("Allied") as a defendant under Federal Rule of Civil Procedure 19(a)(1), for purposes of relief only. App.147. Allied is an association of fabricators and erectors of metal products, who employ Local 580 members on building and construction projects in the New York City metropolitan area. R.431 at 6.

The complaint alleged in relevant part that the unions engaged in a pattern or practice of discrimination against non-White individuals with respect to admission to the unions, employment referrals, recruitment for union membership, recruitment for employment opportunities, failure and refusal to refer out non-White individuals whom government contractors wished to employ, and failure and refusal to take reasonable steps to make employment opportunities known to non-White individuals or otherwise to take action to overcome the effects of past racially discriminatory policies and practices. App.148-49 (citing 42 U.S.C. §§ 2000e-2(c), 2000e-2(d)). The complaint alleged that at that time Local 580 had "approximately 1400 members, all but 2 of whom are white," and that the AJEF had "71

apprentices in the apprenticeship program, of whom 13 [were] non-white." App.146.

The court substituted the EEOC as plaintiff in 1974. *See* R.1 (pre-PACER docket entries). The court entered a consent decree resolving the EEOC's claims against the defendants in 1978. App.154-91. The consent decree permanently enjoined the defendants from discrimination, established an affirmative-action plan, and regulated admission to journeyperson status, admission to the apprentice program, and job referrals. *Id.* It provided, "Defendants, including Allied and its members[,] shall conduct the operation of their affairs so as to insure that they engage in no act or practice which has the purpose or effect of excluding any individual members of or applicants for membership in Local 580, apprentices indentured by or applicants for apprenticeship with AJEF, trainees or permitholders if there be any, from equal work opportunities, including equal treatment in the authorization of overtime, in conditions and privileges of employment, and in all other respects because of race, color, religion, sex or national origin." App.163.

The consent decree also required Local 580 to maintain detailed records, providing in part that "Local 580 shall obtain and keep records of

all Local 580 members, apprentices, trainees or permitmen hired, including the dates when they were hired, the manner in which they were hired (upon referral from the hall, directly at the shop, on the site, or by any other method), the job for which they were hired and the work actually performed, and by date the hours worked including overtime." App.189. The decree added, "From time to time the parties shall together review the procedure for hire at the shop or job site or by specific request through the referral hall to ascertain whether these practices have had the effect of discriminating against any non-whites within the jurisdiction of Local 580. If there has been a disparate discriminatory effect on such non-whites, the parties shall endeavor to remedy such effect. If the parties are unable to agree on a suitable remedy, the EEOC may apply to the Court for appropriate relief." App.190.

2. Defendants' noncompliance, contempt proceedings, and the special master

In 1987, on the EEOC's motion, the court held Local 580 and the AJEF in contempt for failing to comply with consent decree provisions regarding apprentice recruitment, selection, training, recordkeeping, and data production, and imposed a variety of remedial measures. App.192-210,

("*Local 580 I*"). The court appointed a special master, David Raff, to oversee compliance and directed Local 580 and the AJEF to pay the special master's costs. App.205-206. Among the special master's responsibilities, the court said, was "developing a new record-keeping system to enable the court, administrator, and EEOC to monitor defendants' compliance with the court's orders (including the Consent Judgment)." App.206. Specifically, the court said, the special master must "devise, with the parties' input, an information tracking system."App.205.

In 1988, again at the EEOC's urging, the court found Local 580 in contempt and expanded the special master's oversight authority. App.211, ("*Local 580 II*"). The court rejected Local 580's argument that it had not violated the consent decree, stating that "Local 580 seeks to benefit from its own non-compliance with the reporting requirements of the consent judgment." App.219. Going forward, the court said, "Defendants have already been ordered to institute, under the direction of a court-appointed administrator, a new information tracking system which will allow both plaintiff and the court to monitor compliance with the consent judgment." App.216.

In 1991, as part of a settlement with some individual claimants who had experienced discrimination, a stipulation required Local 580-affiliated contractors to hire their entire apprentice workforce and 65% of their journeyman workforce through a revised referral system (the "65/35 Rule"). *See* App.229; *see also* App.240 ("*Local 580 III*") (describing history). The stipulation also required the union to acquire computer software that would make the new referral system compatible with the recordkeeping system "and, to the extent technically and economically feasible," automatically enter data pertaining to referrals into the recordkeeping system. App.226.

In 1998, four of the claimants who had received payments as part of the settlement moved to intervene in EEOC's lawsuit, alleging that Local 580 had been in contempt subsequent to the settlement. App.241. The court allowed the claimants to intervene, and three of them settled with the union. App.241-42. In 2007, the court issued a consent order with respect to these three claimants finding that, between 1992 and August 1997, the union had not been in compliance with court orders. App.241, 245 (describing R.110).

In 2011, a magistrate judge found in connection with the remaining claimant that, again, between 1992 and August 1997, the union had been in contempt of the 1978 consent decree and subsequent orders, but found no clear and convincing evidence of contempt from September 1997 through 2004. App.245, 248-49. The magistrate judge noted that the EEOC's statistical expert reported that the data did not show discrimination after 1997. App.246-47. "[T]he statistical evidence demonstrating that minority union members have achieved a similar, and at times greater, average of employed hours," the magistrate judge concluded, "persuades us that the union is taking reasonable steps to comply with past court orders enjoining racial discrimination." App.249 (citing 2003 expert report stipulation). The district court adopted the magistrate judge's report and recommendation. R.198 ("*Local 580 IV*").

3. The EEOC's efforts to assess ongoing Title VII violations

By the late 2010s, as the EEOC explained in a later filing, "it had been a number of years since any members of Local 580 had contacted the EEOC to report concerns." App.343. As a result, in 2019, "in order to inform its assessment of whether the current commitment of EEOC enforcement resources to the Local 580 litigation is justified by the circumstances of the

case, the EEOC undertook to determine to what extent evidence suggests the existence of any ongoing or recent race discrimination by Local 580 or by the AJEF." App.342. The EEOC conducted an extremely labor-intensive review to identify any anecdotal or statistical evidence that might suggest current violations of the law by the union or the AJEF. *See* App.374 (describing "many hundreds of hours of staff time" the Commission spent).

To obtain anecdotal evidence of any ongoing discrimination, the EEOC conducted extensive outreach to union members. App.343-66. With the union's full cooperation, the agency sent a letter to all 1,018 current and recent Black and Hispanic apprentice and journeyman members of the union. App.343. It invited them to contact the EEOC if they "have experienced instances of race discrimination in the union's membership practices, in the union's referral of members to jobs, in the operation of the apprentice program, or in other aspects of the union's activities." App.344. With the union's consent, the letter stated that "Local 580 encourages its members to contact the EEOC if they have information related to this request." App.344. Twenty-eight individuals (or 2.8 percent of the recipients) responded to this letter. App.344.

Additionally, the EEOC identified three 50-person samples of Black and Hispanic union members who were selected randomly from the overall membership, and from subgroups of the membership that had below average work hours. App.344-46. A team of two EEOC attorneys, three paralegals, and a legal assistant attempted to interview each of those individuals, and also attempted to conduct live interviews of all 162 individuals who were either a letter respondent or part of one of these samples (or both). App.346-47. Over the course of approximately five months in late 2019, the Commission interviewed a total of 41 individuals through this process, in some cases more than once. App.348-66. This outreach effort ultimately identified, out of over 1,000 Black and Hispanic union members, "five individuals who reported concerns about race discrimination by the union … and one who reported such concerns about the apprentice program." App.368. While the concerns appeared to be reported in good faith, the EEOC concluded that they were "generalized in nature and did not provide the sort of factual detail that is likely to lead to proof of employment discrimination." *Id.*; *see also* App.343-66 (detailing outreach to union members and individual responses).

To identify any statistical evidence of unlawful discrimination by the union, the EEOC also "undertook a statistical analysis of a decade of recent employment data to attempt to determine, among other things, at what stages of the employment cycle the remaining racial disparities in hours worked arise." App.366. The EEOC's labor economist, Dr. Erich Cromwell, conducted "a statistical analysis of Local 580 employment data from the preceding decade (2009-2018), to identify any racial disparities in job referrals and hours worked, and to analyze to what extent the data suggests any disparities that are traceable to conduct by the union (as opposed to employment practices by contractors or other factors)." App.343. Dr. Cromwell's expert report did "not find any racial disparity arising from the operation of the referral hall, which is controlled by the union." App.367. His analysis found that racial disparities in hours worked "arise in later stages of the employment cycle, which are within the control of contractors." App.366-67. Dr. Cromwell did "not find evidence that these disparities arise in any process that is controlled by the union." App.367.

Based on the evidence it gathered, the EEOC entered into negotiations with the defendants and eventually reached agreement on the terms of the proposed new consent decree.

4. Joint motion to vacate previous orders and enter new proposed consent decree

In 2020, the parties jointly moved to vacate the existing consent decree and remedial orders, and to replace them with a new proposed consent decree, which "would establish a transitional set of obligations for the Local 580 Defendants for a term of three years, with monitoring by and reporting to the EEOC." App.252-53. The parties explained that the proposed consent decree "contains provisions for monitoring and enforcement by the EEOC that are commonplace in EEOC consent decrees, and the Decree would conclude the appointment of the Rule 53 special master in this case with respect to the Local 580 Defendants." App.253. In the absence of any disputes about compliance, the decree would expire — and the Local 580 branch of this litigation would conclude — after three years. App.270.

As the EEOC's memorandum in support of the joint motion explained, "the factual circumstances of this case are quite different" than

they were in the 1980s and 1990s, when the defendants were found to be in contempt for violations of the existing consent decree. R.431 at 6. The motion pointed to the transformation in the union's membership and leadership. *Id.* It acknowledged that "some disparities in hours worked by minority and nonminority union members remain," but said "there is no evidence that these disparities are due to discrimination in referrals made by the union." *Id.* at 10. Rather, the EEOC suggested, "existing disparities appear to be driven more by differences in the average duration of job assignments and the hours worked per unit of time on the job." *Id.* at 10 n.7. The EEOC explained that the joint motion satisfied the Rule 60(b)(5) standard because it had amply demonstrated changed circumstances and shown that applying the current slate of orders was no longer equitable. *Id.* at 22-24.

The EEOC emphasized that "Local 580 and the AJEF have exhibited a good faith commitment to the goals of equal employment opportunity, and their approach to the EEOC and to this litigation in recent years has been constructive and cooperative." *Id.* at 5. Stating that "[t]he EEOC has no reason to believe that Local 580 or the AJEF has engaged in any recent

violations of Title VII," the EEOC said "the time has come to conclude this litigation…." *Id.*

The special master opposed vacating the existing orders and entering the new, proposed consent decree. His opposition stated that the parties did not "provid[e] evidence of compliance with Defendants' obligations" or "demonstrat[e] that the [proposed consent decree] comprises a durable remedy to substitute for the protections it displaces." App.301-02. In December 2021, the district court issued an order stating that it required more information. App.339. It ordered the EEOC to produce details about its outreach to Black and Hispanic union members, data underlying its determination that Local 580 had not discriminated from 2009-2018, and "a detailed accounting of the Parties' efforts to achieve proportionate working hours for Black and Hispanic members." App.340-41. The court observed, "Defendants remain under an affirmative obligation, pursuant to this Court's remedial orders, to work proactively to ensure proportionate employment opportunities for Black and Hispanic members." App.340 n.2.

The EEOC submitted supplemental information, R.471, 471-1, -2, -3, & -4, but the court deemed it inadequate. App.376. The EEOC had not produced the data underlying its 2009-2018 analysis, the court said.

App.377. Moreover, in the court's view, "The EEOC has failed to address … the Court's question concerning current disparities in hours worked among union members along lines of race and ethnicity," characterizing a declaration from Local 580's business manager about "efforts to achieve proportionate working hours" to be "insufficient and conclusory." App.377. "[T]o answer the Court's question," the court said, "the EEOC must set out the actions Local 580 has taken to address the fact that white members work more hours than Black and Hispanic members, and explain why Defendants have [not] yet succeeded in mitigating the shortfall." App.377. The court denied the motion "without prejudice to renewal on the existing papers together with the further submissions required." App.377.

In June 2023, the parties resubmitted their request to enter the proposed consent decree, with further additional data. App.378. The proposed consent decree stressed that circumstances had changed since the original consent decree, noting that "[t]he last finding of contempt against Local 580 [was] entered nearly a decade ago, concern[ing] the union's conduct in the mid-1990's." App.257. Since that time, the parties said, there has been a significant increase in Black and Hispanic union membership, with "a corresponding increase in equal opportunities for Black and

Hispanic individuals to participate in the ornamental ironwork trade on a non-discriminatory basis." App.257. "The EEOC is satisfied," they asserted, "that these indicators reflect an ongoing commitment by Local 580 and the AJEF to provide equal membership and employment opportunities to Black and Hispanic workers, as well as a good faith commitment to cooperate with the EEOC in furtherance of the goal of equal employment opportunity." App.257. In addition, the union and AJEF stated that they had spent a combined, $11,605,831.73 (between $508,835.97 and $837,701.74 every year) on the Special Master's Office's services from 2009-2022. App.429. The Commission again argued that it met the Rule 60(b)(5) standard by showing changed circumstances. R.507 at 15-16.

Once again, the special master objected to the proposed consent decree. App.435. In his August 2023 report, the special master argued in part that the consent decree and remedial orders did not limit "equal employment opportunities" only to job referrals and said that "Local 580's material recordkeeping and data deficiencies … precluded a meaningful investigation and analysis of Local 580's conduct by the EEOC during most of … 2009-2019, the period during which the EEOC contends it found no evidence of discrimination by Local 580." App.436-37. Specifically, the

special master said, Local 580 did not have information about whether job placements from 2009-2019 adhered to the 65/35 Rule (requiring 65% of placements to come from the Referral Hall), or information of "hours worked of Local 580 members by race." App.442. "Both the EEOC and Local 580 should have known this information needed to be complete and up-to-date," the special master said. App.442.

B. District Court's Decision

In November 2024, the district court denied the joint motion. App.481; Sp.App.2. Stating that it was analyzing the motion under *SEC v. Citigroup Global Markets, Inc.*, 752 F.3d 285 (2d Cir. 2014), the court concluded that the parties had not shown that the proposed decree was fair and reasonable, nor had they shown that terminating the 1978 consent decree and remedial orders "would not disserve the public interest." App.487-88; Sp.App.8-9.

First, the court said, the parties had again failed to provide data respecting employment opportunities for Black and Hispanic union members and a detailed accounting of the defendants' efforts to achieve proportionate working hours. App.488; Sp.App.9. While the court observed that Dr. Cromwell had analyzed the 2009-2019 referral-hall data and

concluded that there was no discrimination, it noted that there was no hiring hall dispatch data prior to June 19, 2018, and data from a previous recordkeeping system was incomplete. App.491; Sp.App.12. The court expressed concerns about the absence of any data on the "65/35 rule" and concluded that it could not extrapolate from data covering June 2018 through 2019 that the union had not discriminated outside this limited window of time. App.492; Sp.App.13. The court also indicated that the recordkeeping requirements themselves were "essential elements" of its prior orders, and the failure to comply with these obligations "proves that it would be neither fair nor reasonable" to enter the proposed consent decree. App.494; Sp. App.15.

Second, the court agreed with the special master that its orders affirmatively require Local 580 to address race-based disparities in hours worked by Local 580 members. App.495; Sp.App.16. The court noted that these hours are governed by contracts, App.497; Sp.App.18, but did not acknowledge that those contracts are controlled by individual contractors, none of whom have ever been parties to this lawsuit, and only a fraction of which are even members of Allied. *See* App.384-85 (describing who has control over contracts). The court described the defendants as "unable or

unwilling to eliminate discrimination" in hours disparities, and in its view, the parties' failure to provide detailed records of its efforts to do so was another reason to deny the motion. App.495, 99; Sp.App.16, 20.

The court further held that the proposed consent decree's "entry would harm the public interest." App.500; Sp.App.21. The court said that the defendants have been unwilling to "eradicate racial disparities among their members," and that entering the proposed consent decree would signal to other defendants that they could prevail if they were "willing to outlast the Court's efforts." App.500; Sp.App.21.

The court gave no weight to the EEOC's assessment of the public interest. App.501-02; Sp.App.22-23. Citing dicta from a prior opinion in this case, written over 20 years before, the court opined that "the agency over the years perhaps 'ha[s] not always been [a] zealous representative[] of … victims of discrimination.'" App.510-02; Sp.App.22-23 (citing *EEOC v. Local 638, Local 28 of Sheet Metal Workers' Int'l Ass'n*, No. 71-cv-2877, 2003 WL 21804837, at *1 n.4 (S.D.N.Y. Aug. 6, 2003)). The court was required to assess the public interest for itself, the court said, "rather than defer outright to an executive agency whose judgments may vary from administration to administration." App.502; Sp.App.23. The court did not

address the fact that the EEOC had been consistent—across administrations—in arguing that it was time to vacate the existing orders and enter the new, proposed consent decree.

Accordingly, although the court noted "the progress made thus far … including success in achieving minority membership and recruitment goals, significant Black and Hispanic representation among leadership, and virtually no anecdotal reports of overt hostility or discrimination," it denied the joint motion. App.502; Sp.App.23.

STANDARD OF REVIEW

The Court reviews both the denial of a motion for relief from judgment under Rule 60(b)(5) and the court's denial of a motion to enter a settlement agreement under an abuse of discretion standard. *See Thai-Lao Lignite (Thai.) Co. v. Gov't of Lao People's Democratic Republic*, 864 F.3d 172, 182 (2d Cir. 2017) (reviewing denial of Rule 60(b)(5) motion); *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991) (reviewing refusal to enter settlement agreement). A district court abuses its discretion if it "(1) based its ruling on an erroneous view of the law, (2) made a clearly erroneous assessment of the evidence, or (3) rendered a decision that cannot be located within the

range of permissible decisions." *Lynch v. City of New York*, 589 F.3d 94, 99 (2d Cir. 2009) (cleaned up).

SUMMARY OF ARGUMENT

The district court abused its discretion in refusing to modify its prior orders and judgments and in refusing to enter the proposed consent decree. Federal Rule of Civil Procedure 60(b)(5) permits a party—in this case, EEOC and the three defendants moving jointly—to obtain relief from an order or judgment if "a significant change either in factual conditions or in law" renders continued enforcement "detrimental to the public interest." *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992). Here, the parties amply demonstrated that the factual circumstances giving rise to the 1971 complaint and subsequent consent decree have changed dramatically: the union and apprenticeship program have achieved racial integration, and there has been no documented evidence that either has violated Title VII for over 20 years. The absence of an ongoing legal violation warrants relief from the courts' prior orders and judgments.

In refusing to grant relief, the district court focused exclusively on factors *other* than ongoing legal violations, such as the union's noncompliance with procedural aspects of its prior orders, the absence of

some data from earlier time periods, and lingering racial disparities in aspects of work controlled by third parties. Under the Supreme Court's decision in *Horne v. Flores*, 557 U.S. 433, 447 (2009), this approach was improper.

In addition, the district court abused its discretion in denying the parties' request to enter the proposed consent decree. Despite reciting the procedural-fairness-focused review set forth in *SEC v. Citigroup Global Markets, Inc.*, 752 F.3d 285 (2d Cir. 2014), the court did not apply the *Citigroup* factors. Instead, it again focused almost exclusively on the union's non-compliance with parts of its prior orders and refused to consider the EEOC's judgment as a law enforcement agency when it concluded that the consent decree would disserve the public interest.

For these reasons, the Court should reverse the district court's decision and remand for entry of the proposed consent decree.

ARGUMENT

I. The district court abused its discretion in denying the parties' request for relief from its prior orders and judgments under Rule 60(b)(5).

Federal Rule of Civil Procedure 60(b)(5) permits vacatur or modification of a judgment or order when (as relevant here) "the judgment

has been satisfied, released, or discharged … or applying it prospectively is no longer equitable." The Supreme Court emphasized in *Horne v. Flores* that these are disjunctive options: a party need not show that it has satisfied a prior judgment to establish that prospective application is no longer equitable. 557 U.S. at 454 ("Use of the disjunctive 'or' makes it clear that each of the provision's three grounds for relief is independently sufficient and therefore that relief may be warranted even if petitioners have not 'satisfied' the original order.").

Prospective application is no longer equitable "if 'a significant change either in factual conditions or in law' renders continued enforcement 'detrimental to the public interest.'" *Id.* at 447 (quoting *Rufo*, 502 U.S. at 384). Such a "significant change" includes the absence of an ongoing statutory violation supporting the order at issue. *Id.* at 454 ("To determine the merits of this claim, the Court . . . needed to ascertain whether ongoing enforcement of the original order was supported by an ongoing violation of federal law."); *cf. Chance v. Bd. of Examiners*, 561 F.2d 1079, 1092 n.25 (2d Cir. 1977) (Perpetual court oversight is to be disfavored—indeed, "even a 'permanent' injunction 'is justified only by the (wrongdoing) that induced it and only so long as it counteracts a continuing (violation)." (alteration in

original) (quoting *Milk Wagon Drivers Union of Chi., Loc. 753 v. Meadowdoor Dairies, Inc.*, 312 U.S. 287, 298 (1941)). Once a party has met its burden to show changed circumstances warranting relief, "a court abuses its discretion 'when it refuses to modify an injunction or consent decree in light of such changes.'" *Horne*, 557 U.S. at 447 (citing *Agostini v. Felton*, 521 U.S. 203, 215 (1997)).

In this case, the parties made a thorough showing of changed circumstances. Nonetheless, the court refused to grant relief because of noncompliance with prior orders. This error warrants reversal.

A. The parties documented dramatically changed circumstances warranting relief from prior orders and judgments

In support of their joint motion, the parties provided ample evidence of changed circumstances. At the outset of this case in 1971, approximately 0.01% of Local 580's members and 18% of AJEF apprentices were non-White. App.145-46. The complaint alleged that Local 580 was engaged in a pattern or practice of violating Title VII because it was impeding "recruitment, selection, training, admission to membership in Local 580 or its apprentice program, referral, advancement, compensation, terms, conditions, or privileges of employment of non-whites in the building

trade" and hindered affirmative action programs of others. App.155 (describing complaint). It also alleged that Local 580 and AJEF were failing to "take reasonable steps to eliminate the effects of their past discriminatory policies and practices[.]" *Id.*

During the 1980s and 1990s, when the union and AJEF proved uncooperative and resistant to the decree, the EEOC diligently took action to address this behavior. The Commission repeatedly sought additional enforcement, including pursuing contempt orders against various entities involved in the case, and the court took steps to ensure its cooperation, including instituting additional recordkeeping requirements, implementing the "65/35" rule governing the referral hall, and appointing the special master. *Local 580 I*, App.195 (describing EEOC contempt motion); *Local 580 II*, App.211, 219-20 (describing EEOC contempt motions and referral system). These efforts bore fruit. As of 2011, a magistrate judge evaluating a plaintiff-intervenor's contempt motion found no clear and convincing evidence of noncompliance beginning in September 1997. *Local 580 III*, App.249 ("the union is taking reasonable steps to comply with past court orders enjoining racial discrimination.").

In 2020, over 20 years after the last documented evidence of discrimination, the parties submitted evidence of a transformed landscape. First and foremost, the union and AJEF membership no longer show signs of racial exclusion and segregation. As of 2020, approximately 45% of Local 580's journeypersons and 60% of its apprentices were Black or Hispanic. App.427. Moreover, Black and Hispanic members made up one third of the elected leadership of Local 580. *Id.* As for apprentices, of the most recent class of individuals admitted into the AJEF—recruited from the direct entry programs that will form the basis for the majority of its apprentice recruitment under the proposed consent decree—75% were Black or Hispanic. *Id.*

Moreover, the EEOC's labor economist, Dr. Cromwell, reported no statistically significant adverse disparities in periods of unemployment for Black and Hispanic members and apprentices (other than one outlier test in one instance), and no statistically significant disparities in referral practices. App.384 He based his report on a decade of data collected from funds offices—union offices that collect data for employee benefits administration based on contractor payments (App.384, 436)—and a year of data from the referral hall. App.384. While, based on fund office data, Dr. Cromwell

found modest but statistically significant disparities in hours worked by Black and Hispanic workers, he found no evidence that this was attributable to the union's or AJEF's practices. App.353. Instead, he found that it was likely attributable to factors within the control of individual contractors, only some of whom are members of Allied (a Rule 19 defendant). App.353. In addition, EEOC's extensive outreach efforts—with which the union readily cooperated, and which the district court found satisfactory (App.484; Sp.App.5)—produced no reports of systematic discrimination, or even any first-hand reports of discrimination by any defendant. App.343-66.

In short, it has been over two decades since there has been any evidence of Title VII violations by any defendant. This satisfies Rule 60(b)(5)'s required showing of changed circumstances. *Cf. Shakman v. Pritzker*, 43 F.4th 723, 728 (7th Cir. 2022) (reversing denial of Rule 60(b)(5) motion to vacate 50-year-old consent decree where "the last significant violations of the decree seem to have occurred nearly a decade ago").

The court acknowledged these strides, saying that "the Parties helpfully describe the progress made thus far under the current slate of Court orders, including success in achieving minority membership and

recruitment goals, significant Black and Hispanic representation among leadership, and virtually no anecdotal reports of overt hostility or discrimination." App.502; Sp.App.23. It nevertheless denied the motion because (1) Local 580 failed to demonstrate compliance with the recordkeeping and procedural requirements of previous orders; (2) the parties failed to provide a statistical analysis covering referrals from 2009 to mid-2018; and (3) Local 580 had not remedied the discrepancy in hours between minority and non-minority members. App.487-502; Sp.App.8-23. These reasons are legally impermissible and, to a significant degree, premised on factual errors.

B. The court impermissibly based its decision on past noncompliance rather than the absence of current violations.

The court's focus on past noncompliance with portions of prior orders is legal error similar to what the Supreme Court forbade in *Horne*. There, the plaintiffs obtained a judgment against Arizona for violating the Equal Educational Opportunities Act of 1974 (EEOA), § 204(f), 20 U.S.C. § 1703(f), which requires a state "to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." *Horne*, 557 U.S. at 438-40. The district court found

that the state was not appropriately funding its English learning programs and, as in this case, it issued a series of orders detailing how the defendants were to alleviate this problem. *Id.* at 441. As in this case, the court at one point held the defendants in contempt for failing to comply with its orders. *Id.* at 442.

After significant changes in federal education law and concededly effective legislative efforts to ameliorate the problems that led to the initial lawsuit, the defendants sought relief under Rule 60(b)(5). *Id.* at 443. The district court denied the motion, and the court of appeals affirmed. *Id.* at 444-45. While acknowledging that the defendants had "made significant strides since 2000," the court of appeals agreed that the progress did not warrant Rule 60(b)(5) relief because the defendants had not shown that they had satisfied the court's previous orders directed towards incremental funding. *Id.* at 444.

The Supreme Court reversed, explaining that "instead of determining whether changed circumstances warranted modification of the original order, the District Court asked only whether petitioners had satisfied the original … order through incremental funding." *Id.* at 455. Both lower courts, it said, had "focused excessively on the narrow question of the

adequacy of the State's incremental funding … instead of fairly considering the broader question whether, as a result of important changes during the intervening years, the State was fulfilling its obligation under the EEOA by other means." *Id.* at 439.

Likewise, here, the court focused too narrowly on whether the defendants had satisfied its prior orders' procedural requirements. *See* App.492-93; Sp.App.13-4 ("Local 580 is required to obtain necessary data from its contractors to comply with the Court's orders."), App.494; Sp.App.15 (stating that "the various recordkeeping requirements" are "essential elements of the Court's orders … independent of the Parties' other commitments to prevent discrimination and … important for their own sake[.]") (internal citations omitted).

To be sure, Local 580 failed to satisfy the prior orders' recordkeeping requirements for many years. But those failures are not current violations of Title VII. *Horne* instructs that the district court instead should have focused on the "broader question whether, as a result of important changes during the intervening years, [defendants were] fulfilling [their] obligation" to refrain from discriminating or perpetuating discrimination. *Horne*, 557 U.S. at 439.

Of course, the district court was right to note that defendants cannot hide evidence of discrimination and then benefit from its absence. App.494; Sp.App.15. Indeed, as the special master pointed out below, this Court once applied a presumption that missing recordkeeping information would have showed discrimination, "in conjunction with" evidence of discrimination the EEOC itself presented. *EEOC v. Local 580, Int'l Ass'n of Bridge, Structural & Ornamental Ironworkers*, 925 F.2d 588, 594-95 (2d Cir. 1991).

Here, by contrast, the EEOC has not found any such evidence. And it looked. The Commission was able to analyze ample evidence of multiple types from multiple sources, including extensive, documented outreach and repositories of data from employee benefits funds going back ten years. App.384, 436. It unearthed no evidence of ongoing legal violations for at least a decade—where one would fully expect to find *some* evidence if Local 580 and AJEF were still engaged in systematic discrimination. For instance, if Local 580 had been discriminating in its referrals before 2018, the EEOC would have expected to find evidence of race-based disparities in employment stints, but it did not.

Nor has the special master identified any evidence of Title VII violations by the union or AJEF in over 25 years, despite having sweeping access to records and investigatory authority. *See Shakman*, 43 F.4th at 728 (vacating decades-old consent decree where "in some two dozen reports by the special master over the past seven years, we see no findings of … practices harming individual employees or applicants."). To the contrary, the district court's comment that "this case is now 53 years old and still producing new evidence of discrimination" cites to no evidence and does not appear to be supported by any. App.492 n.57; Sp.App.13 n.57.

Under these circumstances, the parties have shown that "ongoing enforcement" of the prior orders and judgments is not "supported by an ongoing violation of federal law." *Horne*, 557 U.S. at 454.

C. The court improperly focused on gaps in past referral data rather than current data.

To the extent that the court based its ruling on gaps in referral data from 2009-2017, App.483-93; Sp.App.4-14, that too was error. Again, Rule 60(b)(5) focuses on *current* conditions. *Horne*, 557 U.S. at 469. In addition to current membership data showing transformed demographics and the anecdotal evidence EEOC gathered showing no evidence of discrimination

in referrals, the data Dr. Cromwell reviewed showed no racial disparities in dispatch assignments in the previous year. App.427 (membership data); App.386 (statistical analysis).

The district court's reference to "one year of *partial* data" and its statement that "other data that could have shown non-discrimination in referrals from 2018-2019 is inexplicably missing," App.492 & n.58; Sp.App.13 & n.58 (emphasis added), are inaccurate. While the 2018-2019 hiring hall data do not show whether the union complied with the 65/35 rule, as Dr. Cromwell's report explains, that dataset is complete in documenting workers' races, how often each was dispatched to jobs, and the duration of time each spent on the hiring hall roster. App.404-05. This allowed Dr. Cromwell to determine that no statistically significant evidence of race discrimination occurred during this time. *Id.* Again, the court elevated procedural compliance over substance in assuming that missing data about the 65/35 rule was necessary to assess whether discrimination occurred. *See Shakman*, 43 F.4th at 729 ("everything the district court seemed to be assessing was a step removed, focused more on administrative best practices and much less on whether recurring

constitutional violations warranted the special master's continued oversight under the direction of a federal court.").

In any event, the current referral hall evidence does not exist in a vacuum. On the contrary, it stands against a background of the substantial and increasing presence of previously excluded racial groups in membership and apprenticeship, as well as funds office data going back ten years showing no racial disparities in duration between employment stints, tending to suggest that referrals—the part of the process the union and AJEF control—have not been discriminatory during this time. *See generally* App.380-425. It would defy logic to presume that the earlier data would have proved more recent evidence to be an aberration, rather than an illustration of the new normal.

D. The court improperly refused to grant relief because of hours disparities in aspects of work controlled by parties other than the union and AJEF.

The district court's refusal to grant relief because of ongoing disparities in hours worked by White and non-White members was improper: those disparities do not demonstrate any ongoing violations of law by any defendant. The original 1978 consent decree was concerned with the unions' and AJEF's discriminatory membership and referral

practices, their perpetuation of those practices' discriminatory effects, and their active interference with attempts to ameliorate those effects. App.155. While the unions in this case resisted changing these practices and continued to interfere with members' opportunities in the 1980s and 1990s, no evidence suggests that Local 580 or AJEF have been engaged in any of these unlawful actions for over 20 years. On the contrary, their cooperation has been critical to EEOC's efforts to contact union members and survey them about their experiences, as well as to the Commission's data collection.

Persistent evidence of race-based hours disparities is certainly concerning, but it may or may not be caused by *any* discriminatory actions, let alone by defendants' actions. *See Horne*, 557 U.S. at 467 (noting that intervening variables could explain remaining disparities in student test scores). As Dr. Cromwell's report explains, these disparities are occurring at the individual contractor level—an area outside Local 580's and AJEF's control. App.384-85. Just a few of those contractors are members of Allied, so there is no reason to assume that Allied is the source of the hours disparities, particularly when it was never accused of discrimination in the past, but was only joined under Rule 19 for complete relief.

And even if Allied *were* discriminating, a court may grant only "minor and ancillary relief" against a Rule 19 defendant. *Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 399 (1982). It cannot subject a *non-discriminating* principal defendant (that is, one not joined pursuant to Rule 19) to the existing special-master system—far more than "minor and ancillary provisions of an injunctive order," *id.*—just to grant complete relief to victims of a Rule 19 defendant's potential discrimination. Indeed, it is not at all clear that doing so would have the court's intended effect because the court has not explained how Local 580 or AJEF realistically could influence third parties to a meaningful degree. The court's repeated suggestion that the current regime must remain in place because the defendants are, in its view, "*unable or* unwilling" to "eradicate racial disparities" in all aspects of employment, App.499; Sp.App.20 (emphasis added), shows that it applied the wrong standard to this inquiry.

In sum, the parties met their "burden of establishing that changed circumstances warrant relief," so the district court abused its discretion when it refused to grant relief from its prior orders and judgments "in light of changes." *Horne*, 557 U.S. at 447 (cleaned up).

II. The district court abused its discretion in denying the parties' motion to enter the proposed consent decree.

In addition to refusing to provide relief from its prior orders and judgments, the district court abused its discretion in denying the parties' joint motion to enter the new proposed consent decree. The court failed to perform the procedural-fairness-focused review set forth in *SEC v. Citigroup Global Markets, Inc.*, 752 F.3d 285 (2d Cir. 2014). Instead, the court: (1) inappropriately performed a searching review primarily based on non-compliance with parts of its prior orders; and (2) disregarded the EEOC's judgment as a law enforcement agency when it concluded that the consent decree would disserve the public interest.[3]

[3] The parties and district court treated *Citigroup* as providing the applicable framework for reviewing the terms of the new proposed decree. R.507 at 15; App.486-88; Sp.App.7-9. We do so as well. However, we note that the Court may instead forego the *Citigroup* analysis entirely and treat the parties' joint motion as a motion to modify the district court's prior orders pursuant to Rule 60(b)(5). The parties argued that the motion met the standard for a showing of changed circumstances below. R.507 at 15-16. If the Court takes this approach, it may reverse and remand for entry of the proposed decree as a modification of prior orders and judgments.

A. The court abused its discretion in failing to apply the *Citigroup* factors.

In this Circuit, *Citigroup* sets out "the proper standard for reviewing a proposed consent judgment involving an enforcement agency." 752 F.3d at 294; *See also U.S. Commodity Futures Trading Comm'n v. Deutsche Bank AG*, 2016 WL 6135664, at *2 (S.D.N.Y. Oct. 20, 2016) (applying *Citigroup* to CFTC case); *United States v. IBM Corp.*, 2014 WL 3057960, at *1 (S.D.N.Y. July 7, 2014) (Environmental Protection Agency case). The court must "at a minimum, assess (1) the basic legality of the decree; (2) whether the terms of the decree, including its enforcement mechanism, are clear; (3) whether the consent decree reflects a resolution of the actual claims in the complaint; and (4) whether the consent decree is tainted by improper collusion or corruption of some kind." *Citigroup*, 752 F.3d at 294-95 (citations omitted). Where injunctive relief is at issue, the court must also find that "the public interest would not be disserved." *Id.* at 294 (quoting *eBay, Inc. v. MercExchange*, 547 U.S. 388, 391 (2006)). Importantly, the *Citigroup* Court decided to omit "adequacy" from the standard, explaining that this term arose from the Rule 23 class action context and was inappropriate where, "if there are potential plaintiffs with a private

right of action, those plaintiffs are free to bring their own actions." *Id.* And, while "depending on the decree a district court may need to make additional inquiry," the "primary focus of the inquiry … should be on ensuring the consent decree is procedurally proper, using objective measures similar to the factors set out above, taking care not to infringe on the [agency's] discretionary authority to settle on a particular set of terms." *Id.* at 295. The Court explained that "[a]bsent a substantial basis in the record for concluding that the proposed consent decree *does not* meet these requirements, the district court is *required* to enter the order." *Id.* at 294 (emphases added).

Here, the district court purported to apply *Citigroup* but did not actually do so. The court concluded that the proposed decree was not "fair and reasonable," *see* App.500; Sp.App.21, but it did not apply the correct standard for reaching that conclusion. Beyond reciting *Citigroup*'s prongs, the district court scarcely engaged with them at all. It did not question the proposed decree's basic legality or the definiteness of its terms. App.488; Sp.App.9. Nor did it suggest any hint of collusion among the parties—rightly so, after decades of contentious litigation and extensive negotiations of the proposed decree, including consultation with the special master and

revisions based on his input. *See In re NYC Policing During Summer 2020 Demonstrations*, 2024 WL 476367, at *19 (S.D.N.Y. Feb. 7, 2024) ("not a whiff of collusion" where the parties "considered the views of the three intervening unions and implemented suggestions made by them – not all of the suggestions the unions made, but some" and "[e]very party to the lawsuit … had an opportunity to review the proposed Settlement at every stage and to participate … in the mediation").

The court did state that the proposed decree "would fail to resolve the core claims of the complaint in this matter," referencing *Citigroup*'s third prong. App.494-95; Sp.App.15-16. This portion of the district court's opinion, however, is dedicated entirely to the union's recordkeeping deficiencies and the court's view that this failure reflected an unwillingness to "protect its minority workers." App.494; Sp.App.15. As discussed above, failure to comply with procedural requirements is an insufficient reason to deny a motion for relief from judgment. *See supra* at 33, 35-37. It is even further attenuated from *Citigroup*'s "resolution" prong, which only means that the decree's terms "come[] within the general scope of the case made by the pleadings." *Citigroup*, 752 F.3d at 295 (quoting *Kozlowski v. Coughlin*, 871 F.2d 241, 244 (2d Cir. 1989)); *see also Local No. 93, Int'l Ass'n of*

Firefighters v. City of Cleveland, 478 U.S. 501, 525 (1986). The district court's allusion to this prong in a footnote appended to a statement that reducing supervision would likely not "improve racial disparities among union workers —the entire purpose of this litigation" also misses the mark. App.499 & n.80; Sp.App.20 & n.80. With its focus on procedural propriety rather than substantive adequacy, *Citigroup* requires only that the decree *address* the complaint's allegations, not provide a remedy that the court finds sufficient. *See Citigroup*, 752 F.3d at 295 ("The primary focus of the inquiry . . . should be on ensuring the consent decree is procedurally proper…"); *see also Cruz v. JKS Venture.*, 2024 WL 3209398, at *7 (S.D.N.Y. June 25, 2024) ("The Decree is general, but it does purport to resolve the claims in the Complaint by requiring Defendant to take 'reasonable efforts' to remediate the website within twenty-four months.").

In this case, there can be no serious dispute that the proposed consent decree addresses the complaint's claims: the unions' prior exclusion of non-White workers through discrimination in referrals, recruitment and interference with others' remedial efforts. App.148-49. In addition to enjoining these unlawful practices, the proposed decree requires Local 580 and AJEF to (among other things) adopt and distribute anti-discrimination

policies, engage in specified recruitment, referral, and member assistance practices that prevent backsliding, hire an EEO compliance officer, engage in extensive training, and coordinate with the EEOC about their progress—all for a presumptive period of three years. App.256-98. Regardless of the district court's dissatisfaction with the current remaining hours disparities, the proposed decree addresses the complaint's allegations and therefore meets *Citigroup*'s "resolution" prong. 752 F.3d at 295. Accordingly, none of *Citigroup*'s considerations for whether a decree is fair and reasonable—nor any other similar objective factor—provides a substantial basis for rejecting the proposed decree.

B. The court abused its discretion in refusing to consider the EEOC's judgment about the public interest.

Finally, the district court abused its discretion when it found that the proposed decree would harm the public interest. The court reasoned that substituting the proposed decree for the special master regime would undercut the public interest because it believed the current regime to be a superior way of protecting individuals from discrimination and communicating to the public that defying court orders to outlast the court's efforts was not a viable strategy. App.501-02; Sp.App.22-23. The court

discounted the EEOC's judgment because the Commission is an "executive agency whose judgments may vary from administration to administration."[4] App.501-02; Sp.App.22-23. This reasoning contravenes *Citigroup*.

While *Citigroup* confirmed that courts do not "rubber stamp" consent decrees, it also emphasized that courts must give significant weight to law enforcement agencies' determinations about "whether the proposed … decree serves the public interest." 752 F.3d at 293, 296. Here, the EEOC is that law enforcement agency. Congress conferred authority on the EEOC to litigate in order "to vindicate the public interest in preventing employment discrimination." *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 326 (1980); *see also EEOC v. Waffle House, Inc.*, 534 U.S. 279, 291 (2002) (Title VII "clearly makes the EEOC the master of its own case and confers on the agency the authority to evaluate the strength of the public interest at stake").

[4] The EEOC's judgment has, in fact, been consistent and rooted in the facts throughout this case's long history. The Commission's efforts to secure the union's cooperation and relief for individual members through contempt proceedings and its work in support of this motion have spanned multiple administrations.

The district court's evident concerns about the Commission's zealousness—like the district court's concerns about whether the SEC brought sufficiently serious charges in *Citigroup*—are not a proper basis for withholding approval of a consent decree. 752 F.3d at 297. The Commission has concluded, after half a century of monitoring and compliance resulting in a dramatically transformed landscape, that there is insufficient marginal value in pouring its own limited resources—to say nothing of the union's millions of dollars—into the inefficient special master system in this litigation in the hopes of stumbling on potential discrimination by third parties. The district court may disagree, but it should not substitute its judgment for the Commission on that score.

Likewise, its public-messaging concerns are misplaced. It is hard to credit the notion that a defendant would choose spending many millions of dollars on decades of special master supervision in the hopes of "outlast[ing]" the court rather than complying. Indeed, as the Seventh Circuit emphasized recently, even when a longstanding consent decree is vacated *without* a replacement, "[t]he district court is not closing. To the contrary, it will remain open and receptive to individual claims brought by persons able to allege concrete and particularized injuries as a result of [the

conduct at issue in the consent decree]. And nothing will prevent such plaintiffs from requesting not just money damages, but also appropriate injunctive relief." *Shakman*, 43 F.4th at 732.

Consequently, there is not a "substantial basis" for concluding that entering the proposed consent decree would harm the public interest. *Citigroup*, 752 F.3d at 294.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be vacated and the case remanded for entry of the proposed consent decree.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Local Rule 32.1(a)(4)(A) because it contains 9,275 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I certify that on this 22nd day of April, 2025, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the ACMS system.

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