UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STATE OF ILLINOIS, Plaintiff, v. CITY OF CHICAGO, Defendant.	Case No. 17-cv-6260 Hon. Rebecca R. Pallmeyer

MOTION TO INTERVENE
BY PLAINTIFFS IN *WILKINS v. CITY OF CHICAGO*

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Introduction

Pursuant to Rule 24(a)(2) and 24(b)(1), Eric Wilkins, Mahari Bell, Essence Jefferson, José Manuel Almanza, Jr., and Jacquez Beasley, who are Plaintiffs and proposed class representatives in *Wilkins v. City of Chicago and Chicago Police Department*, No. 23-cv-4072 (N.D. Ill.)[1] (collectively, "*Wilkins* Plaintiffs"), respectfully move to intervene as party plaintiffs in this matter to address potential expansion of the Consent Decree herein (the "CPD Decree," Doc. 703) to encompass the City of Chicago and Chicago Police Department's (collectively, "Defendants") unlawful mass traffic stop program.[2] The *Wilkins* Plaintiffs seek intervention as of right or, alternatively, permissive intervention to ensure that their claims and demands for injunctive relief in *Wilkins*, a putative class action that already challenges Defendants' unlawful mass traffic stop program, are not compromised or abandoned without the *Wilkins* Plaintiffs' direct participation and consent. For the reasons set forth below, intervention should be granted.

Factual Background

The Mass Traffic Stop Program Begins. As alleged in the *Wilkins* Complaint ("Compl.") (Ex. A), and as acknowledged by the State (Tr. 10/16/23 at 21:24-22:2) (Ex. B), Defendants' mass traffic stop program began in or about 2016. At that time, a sharp increase in the total number of traffic stops recorded by the Chicago Police Department ("CPD") clearly signaled the future impact of CPD's decision to substitute mass traffic stops for mass stop-and-frisk. Compl. ¶¶ 407-13. CPD has maintained the mass traffic stop program over the years, and data now show that CPD

[1] The *Wilkins* Complaint, as filed on June 26, 2023, is attached as Exhibit A and serves as the *Wilkins* Plaintiffs' proposed pleading in this matter pursuant to Rule 24(c), with the exception of Count III, which previously was withdrawn (*see Wilkins* Doc. 39, n.1).

[2] The mass traffic stop program targets Black and Latino drivers in Chicago with extremely high volumes of traffic stops, frisks, and searches, not for the purpose of enforcing traffic laws ("pretextual" stops), but to harass, intimidate, and investigating community members on the basis of race and national origin. Complaint ("Compl.") (Ex. A) ¶ 2.

officers are far more likely to pull over the vehicles of Black and Latino drivers than white drivers. *Id.* ¶¶ 520-30. Specifically, since 2016, Black drivers in Chicago have been four to seven times more likely than white drivers to be stopped by police. Latino drivers have been about twice as likely to be stopped as white drivers. Chicago police are also far more likely to search Black and Latino drivers and their vehicles, even though the police are more likely to find illegal contraband (weapons or drugs) in the vehicles of white drivers. *Id.* ¶¶ 562-76.

The CPD Consent Decree is Entered. The CPD Decree was approved by this Court on January 31, 2019, to resolve the State's lawsuit against various CPD practices. The CPD Decree as originally filed was massive both in scope and length, comprising 799 paragraphs demanding complete transformation of the ways in which CPD officers interact with the public. Doc. 703. Notable here, however, is the indisputable fact that the CPD Decree *did not address* Defendants' traffic stop practices, even though the essential elements of the mass traffic stop program were in place by 2019. To the contrary, the State, City and Monitor repeatedly have acknowledged to this Court that bringing traffic stops within the scope of the CPD Decree will require amendment of the Decree. *See, e.g.*, Tr. 10/16/23 at 11:14-21 (Ex. B) (Monitor acknowledging that traffic stops would need to be "added to the consent decree…"); 21:16-20 (same acknowledgement by State); Doc. 1115 (Sept. 29, 2023 order setting public hearing and seeking "feedback from Chicago community members regarding whether traffic stops *should now be incorporated* into the Consent Decree."); Doc. 1167 (May 14, 2024 Order setting public hearing: "the Parties are seeking additional community input on what specific traffic-stop-related requirements *should be added* to the Consent Decree, if any.") (emphases added).

The* Wilkins *Class Action is Filed. In June 2023, the *Wilkins* Plaintiffs filed the *Wilkins* case as a putative class action demanding an immediate end to the Defendants' practice of racially

discriminatory mass traffic stops. Each of the *Wilkins* Plaintiffs has been subjected to numerous and repeated traffic stops, and in certain cases, frisks and searches of their cars. They allege that their experiences are typical of the hundreds of thousands of discriminatory, pretextual traffic stops of drivers of color by CPD officers every year. The *Wilkins* Plaintiffs assert that the Defendants' mass traffic stop program violates the Equal Protection Clause as well as federal and state civil rights laws. All of the *Wilkins* Plaintiffs have demonstrated a strong commitment to seeking justice for themselves and other community members who have suffered as a result of Defendants' mass traffic stop program.

The mass traffic stop program consists of targeting Black and Latino drivers in Chicago with extremely high volumes of traffic stops, frisks, and searches, for purposes other than enforcing traffic laws ("pretextual" stops), such as harassing, intimidating, and unnecessarily detaining and investigating community members on the basis of race and national origin. Compl. ¶ 2. The mass traffic stop program includes the following specific policies, practices and customs: (a) conducting high volumes of traffic stops, frisks and searches concentrated in Chicago neighborhoods where predominantly Black or Latino residents live; (b) implementing quotas for traffic stops, frisks, and searches that result in a disproportionate number of stops, frisks, and/or searches of Black and Latino individuals in Chicago; and (c) racially profiling Black and Latino drivers throughout the City of Chicago, including in predominantly white neighborhoods. Compl. ¶¶ 681, 706, 720. The *Wilkins* Plaintiffs accordingly have demanded injunctive relief including but not limited to:

- Banning pretextual traffic stops (stops that are an excuse to search for contraband like weapons or drugs);
- Prohibiting Defendants from targeting neighborhoods with predominantly Black and Latino residents for a high volume of pretextual traffic stops;
- Ending traffic stop quotas;

- Decreasing the total number of traffic stops, frisks and searches by CPD officers;
- Prohibiting officers from making traffic stops for low-level non-moving violations such as equipment and registration issues;
- Eliminating unjustified racial and ethnic disparities in traffic stops, citations, frisks and searches;
- Disbanding all teams of CPD officers who primarily conduct aggressive traffic stops, such as tactical units;
- Creating a plan to adequately hire, train, monitor, supervise, and discipline CPD officers who conduct disproportionate numbers of traffic stops, frisks and searches against Black and Latino drivers; and
- Requiring Defendants to adopt a process of robust, ongoing community engagement with directly impacted community members and organizations.

The City and CPD Defend the Mass Traffic Stop Program and Block Discovery in Wilkins. Defendants have fought the *Wilkins* case at every turn for the past year. First, they moved to dismiss the *Wilkins* complaint, arguing that the claims were legally deficient.[3] Next, Defendants have generally resisted discovery, including refusing to produce certain traffic camera and sensor data, refusing to disclose their claimed justification for the mass traffic stop program, and refusing to conduct a comprehensive search for e-mails and other electronically stored information, forcing the *Wilkins* Plaintiffs to file two motions to compel discovery.[4] At no time have Defendants proposed to negotiate any settlement of the *Wilkins* Plaintiffs' demands. Rather, they are continuing to fight for the ability to *maintain* the program despite its ineffectiveness as a policing strategy and its demonstrably discriminatory, harmful effects on community members.

Potential But Undefined Expansion of the CPD Decree to Address Traffic Stops is Raised. In October 2023, at the parties' request, this Court held a public hearing about the

[3] *See* Defendants' Motion to Dismiss Plaintiffs' Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) (*Wilkins* Doc. 29) and Defendants' Motion to Strike Certain Paragraphs from Complaint (*Wilkins* Doc. 30).

[4] *See* Plaintiffs' Motion to Compel (*Wilkins* Doc. 66) and Plaintiffs' Second Motion to Compel (*Wilkins* Doc. 72).

Monitor's comprehensive assessment, including the potential expansion of the CPD Decree to address CPD's traffic stop practices. Doc. 1115. Notably, at the time of the October hearing, there was no disclosure that the State had undertaken any investigation of CPD's traffic stop practices and the parties did not identify what specific practices would be addressed or how they would be remedied. This made it difficult for the public to provide meaningful comments, but community members (including counsel for the *Wilkins* Plaintiffs, Tr. 10/16/23 at 96:10-102:5 (Ex. B)) did their best, with several testifying against the proposed Decree expansion. In addition to the pendency of *Wilkins*, community members were concerned about the slow pace of change under the CPD Decree and the need for the City Council and the Community Commission for Public Safety and Accountability ("CCPSA") to have ongoing authority to remedy CPD's discriminatory traffic stop practices. *See, e.g.*, *id.* at 72:19-76:19 (testimony of Loren Jones).

Potential Expansion of the CPD Decree is In Limbo. For seven months after the October 2023 hearing, neither the State nor the City publicly disclosed any plans to amend the CPD Decree to cover traffic stops. During a status hearing on November 16, 2023, counsel for the State said merely that, "[t]he OAG is deeply concerned about recent public reports reporting about CPD's traffic stop practices. We continue to evaluate these reports and are committed to listening to the community to determine the best path forward to approach this issue." Tr. 11/16/23 at 39:21-25 (Ex. C). On March 12, 2024, counsel for the State made a similarly non-committal statement during a status hearing: her office was "strategizing about the best remedy to address" CPD's traffic stop practices. Tr. 3/12/24 at 15:1-2 (Ex. D). The public and the *Wilkins* Plaintiffs had no notice that expansion of the CPD Decree was still under consideration.

Release of Video from Fatal CPD Traffic Stop Shooting Prompts Public Outcry. In April 2024, the Civilian Office of Police Accountability ("COPA") released video footage showing CPD

officers shooting a Black driver, Dexter Reed, ninety-six times during what has been reported as a pretextual traffic stop on the West side of Chicago.[5] In the midst of ensuing community outrage, the Superintendent told the media that CPD would bring traffic stops "under the consent decree."[6] After hearing the comments by CPD's Superintendent, the Court Monitor apparently "renewed" her recommendation to the parties that "the City and the OAG pursue an agreement on specific policy, training, and implementation requirements" addressing CPD's traffic stop practices. *See* Independent Monitoring Report 9 at ECF p. 5 (Doc. 1172).

The Parties Again Seek Public Comment on an Undefined Decree Expansion. The public, including the *Wilkins* Plaintiffs, did not learn of the Monitor's recommendation to amend the CPD Decree to cover traffic stops until May 14, 2024, when, at the parties' request, this Court issued an order setting a June 11, 2024 hearing for public testimony on traffic stops and the CPD Decree. Doc. 1167 (the "May 14 Order"). The Order states in relevant part: "Recently, the Superintendent for the Chicago Police Department (CPD) indicated that adding traffic stops to the Consent Decree would benefit the CPD, its practices, and community trust. The Monitor has recommended that the Parties [the State of Illinois and the City of Chicago] come to agreement on what specific policy, training, and implementation requirements the Consent Decree should include for traffic stops." *Id.* at 2. The May 14 Order seeks testimony from the public about "what specific traffic-stop-related requirements should be added to the Consent Decree, if any." *Id.*

As with the October 2023 hearing, the public has been asked to provide comment without

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[5] Matt Masterson and Heather Cherone, *4 Chicago Police Officers Fired at Dexter Reed 96 Times in 41 Second After He Shot Officer in Arm: COPA*, WTTW (Apr. 9, 2024), https://news.wttw.com/2024/04/09/4-chicago-police-officers-fired-dexter-reed-96-times-41-seconds-after-he-shot-officer-arm.

[6] Francia Garcia Hernandez, *Family Of Man Slain By Police Beg Top Cop For Answers At Forum: 'Help Me!'*, Block Club Chicago (Apr. 9, 2024), https://blockclubchicago.org/2024/04/09/family-of-man-slain-by-police-beg-top-cop-for-answers-at-forum-help-me/ (At a community meeting, "Snelling said 'traffic stops are going under the consent decree,'…").

disclosure of what investigation, if any, the State has undertaken regarding CPD's traffic stop practices, without providing data or other factual information about CPD's practices that are causing the astonishingly high numbers of, and racial disparities in, traffic stops, and without any suggestion as to the State's proposed solutions for the practices it intends to challenge. Though a non-exclusive list of "traffic-stop-related issues" has been provided, the list does not include racial and ethnic discrimination in traffic stops—the central legal violation that the *Wilkins* Plaintiffs seek to remedy—or CPD's use of quotas. *Id.*

The Parties Refuse to Negotiate With the* Wilkins *Plaintiffs. On September 26, 2023 and June 7, 2024, counsel for the *Wilkins* Plaintiffs met with counsel for the State. On both occasions, counsel for the State said that the only parties at the negotiating table regarding any Decree amendment about traffic stops will be the State and the City, and that the *Wilkins* Plaintiffs will be limited to providing input about CPD traffic stops through the same channels as all other community members. Counsel for the State did not commit to carving out the *Wilkins* Plaintiffs' claims from any potential amendment of the Consent Decree, to prevent their impairment or preemption. Similarly, the City has not initiated any negotiations with the *Wilkins* Plaintiffs. Thus, it is apparent that absent an order of this Court, no party to the CPD Decree is willing to substantively negotiate the interests of the putative class representatives in the *Wilkins* case, all of whom have been personally and directly harmed by CPD's mass traffic stop program, and all of whom have already shouldered the heavy burden of challenging the CPD directly to protect the rights of other community members who have been similarly victimized.

Argument

I. Legal Standard.

The *Wilkins* Plaintiffs seek to intervene in this action either as of right, pursuant to Rule

24(a)(2), or, in the alternative, permissively under Rule 24(b)(1). A third party "has a right to intervene when: (1) the motion to intervene is timely filed; (2) the proposed intervenors possess an interest related to the subject matter of the action; (3) disposition of the action threatens to impair that interest; and (4) the named parties inadequately represent that interest." *Wisc. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 657-68 (7th Cir. 2013) (citing *Ligas ex rel. Foster v. Maram*, 478 F.3d 771, 773 (7th Cir. 2007)) (overruled on other grounds). The Court "must accept as true the non-conclusory allegations of the motion" to intervene. *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995).

Permissive intervention is allowed where "(1) a claim or defense of the would-be intervenor has a question of law or fact in common with the main action; and (2) the intervention request is timely." *Kostovetsky v. Ambit Energy Holdings, LLC*, 242 F. Supp. 3d 708, 728 (N.D. Ill. 2017) (quoting *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000) (internal quotation marks omitted)).

II. The *Wilkins* Plaintiffs Are Entitled to Intervene as of Right Under Rule 24(a)(2).

The *Wilkins* Plaintiffs meet the test for intervention as of right. *See Wisc. Educ. Ass'n Council*, 705 F.3d at 657-68. This motion is timely. The intervenors seek to preserve their ability to vindicate the civil rights claims asserted in their pending lawsuit. The City and State propose to expand the CPD Decree in a fashion that threatens to impair the rights of the *Wilkins* Plaintiffs and the proposed *Wilkins* class without their involvement or consent. And neither the City nor State adequately represents the interests of the *Wilkins* Plaintiffs or the proposed *Wilkins* class.

A. This Motion is Timely.

The *Wilkins* Plaintiffs have filed this motion within four weeks of the Court's May 14 Order stating that the State and the City have renewed discussions regarding expansion of the Decree to

cover CPD's traffic stop practices. The determination of whether a Rule 24(a)(2) motion is timely is "essentially one of reasonableness," requiring the proposed intervenors "to be reasonably diligent in learning of a suit that might affect their rights" and acting "reasonably promptly." *City of Chicago v. Sessions*, No. 17 C 5720, 2017 WL 5499167, at *6 (N.D. Ill. Nov. 16, 2017) (quoting *Reich*, 64 F.3d at 321 (internal quotation marks omitted)). While timeliness is analyzed under the totality of the circumstances, the Court should consider: "(1) the length of time the intervenor knew or should have known of his or her interest in this case, (2) the prejudice to the original party caused by the delay, (3) the resulting prejudice to the intervenor if the motion is denied, and (4) any unusual circumstances." *Ragsdale v. Turnock*, 941 F.2d 501, 504 (7th Cir. 1991) (quotation marks omitted).

With respect to the first timeliness factor, an intervenor should act "as soon as it knows or has reason to know that its interests might be adversely affected by the outcome of the litigation." *Heartwood, Inc. v. U.S. Forest Svc., Inc.*, 316 F.3d 694, 701 (7th Cir. 2003) (citations omitted). This Court has found intervention motions to be timely where new circumstances in the underlying litigation gave rise to the possibility of a proposed intervenor's interests being harmed. *See, e.g.*, *Cabrini-Green Loc. Advisory Council v. Chi. Hous. Auth.*, 13 cv 3642, 2014 WL 683710, at *2 (N.D. Ill. Feb. 21, 2014) (holding that motion was timely where proposed intervenors filed "shortly following" the Court's order on reassigning a related case). Here, the Court's May 14 Order is a significant change in circumstances. It was the first notice provided to the public—including the *Wilkins* Plaintiffs—suggesting that the State and the City were actively moving toward an agreement to expand the Decree to cover CPD's traffic stop practices and policies.

The second timeliness factor is satisfied here because the State and the City will not be prejudiced by the timing of this motion. *See Lopez-Aguilar v. Marion Cty. Sheriff's Dept.*, 924 F.3d

375 (7th Cir. 2019) (permitting intervention even after final judgment); *Nissei Sangyo Am., Ltd. v. United States*, 31 F.3d 435, 439 (7th Cir. 1994) ("[T]he most important consideration … is whether the delay in moving for intervention will prejudice the existing parties to the case.") (citation omitted). The May 14 Order indicates that the parties have not yet identified what traffic stop practices they intend to address through an expansion of the Decree, much less specific terms and appropriate remedies. The *Wilkins* Plaintiffs are seeking intervention at the precise time that public comment on the idea of Decree expansion is being invited by the parties and the Court.[7]

As to the third timeliness consideration, the *Wilkins* Plaintiffs' interests are likely to be prejudiced if this motion is denied at this time. *See Lopez-Aguilar*, 924 F.3d at 391; *Reich*, 64 F.3d at 322. If the State and the City negotiate an agreement to regulate traffic stops under the CPD Decree without including the *Wilkins* Plaintiffs directly, the *Wilkins* Plaintiffs cannot ensure that their claims and the injunctive relief they are fighting for on behalf of the asserted *Wilkins* class are not abandoned or compromised without the *Wilkins* Plaintiffs' involvement and consent. Past history in this case has demonstrated that the parties are not obligated to address comments or objections from non-parties,[8] and here, the State and City have ruled out the *Wilkins* Plaintiffs' participation in negotiations.

For the foregoing reasons, the *Wilkins* Plaintiffs' motion to intervene should be deemed timely both for intervention as of right and for permissive intervention.

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[7] Indeed, if the *Wilkins* Plaintiffs were to wait until discussions were more advanced, they would risk a determination that their motion was tardy. *See State of Illinois v. City of Chicago*, 912 F.3d 979, 985 (7th Cir. 2019) (denying Fraternal Order of Police's ("FOP") intervention motion as untimely after nine-month delay during which FOP knew the CPD Decree was being negotiated).

[8] This was graphically demonstrated in 2023, when the State and City finalized and obtained entry of the Investigatory Stop Stipulation *before* the fairness hearing, and subsequently refused to incorporate any public feedback regarding that Stipulation. *See* Docs. 1104, 1110, 1112.

B. The *Wilkins* Plaintiffs Have a Legally Protected Interest.

The legal interests of the *Wilkins* Plaintiffs and the proposed *Wilkins* class would be affected by any expansion of the CPD Decree to cover CPD's traffic stop practices. "Intervention as of right requires a direct, significant, and legally protectable interest in the question at issue in the lawsuit." *Wisc. Educ. Ass'n Council*, 705 F.3d at 658 (quoting *Keith v. Daley*, 764 F.2d 1265, 1268 (7th Cir. 1985)) (quotation marks omitted). The proposed intervenor's interest must be "unique" in the sense that it is "a personal stake that is not dependent on the interests of an existing party." *Bost v. Ill. Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023).

The *Wilkins* Plaintiffs have asserted unique civil rights claims seeking injunctive relief to stop CPD's discriminatory mass traffic stop program. They assert claims on behalf of themselves and other Black and Latino drivers stopped by CPD within the two years prior to the filing of *Wilkins*. These claims are entirely distinct from those underlying the existing Decree. As explained above (*supra* at 2), all parties agree that CPD traffic stops are not currently covered in the Decree. The State's complaint in this matter (Doc. 1) did not seek relief to change CPD's traffic stop policies and practices, nor did it allege legal violations pertaining to CPD traffic stops. The *Wilkins* Plaintiffs therefore have their own "direct, significant and legally protectable interest" in obtaining injunctive relief to end CPD's discriminatory mass traffic stop program. *Wisc. Educ. Ass'n Council*, 705 F.3d at 658.

C. Amendment of the CPD Decree to Cover Traffic Stops May Impair the *Wilkins* Plaintiffs' Interests.

An expansion of the Decree to regulate CPD's traffic stop policies and practices directly threatens the interests of the *Wilkins* Plaintiffs and the proposed *Wilkins* class. Under Rule 24(a), "[t]he existence of 'impairment' depends on whether the decision of a legal question involved in the action would as a practical matter foreclose rights of the proposed intervenors in a subsequent

proceeding." *Meridian Homes Corp. v. Nicholas W. Prassas & Co*., 683 F.2d 201, 204 (7th Cir. 1982); *see also Hanover Ins. Co. v. L&K Dev.*, 12 C 6617, 2013 WL 1283823, at *2 (N.D. Ill. Mar. 25, 2013). "The possibility of foreclosure is measured by the standards of *stare decisis*." *Am. Nat'l Bank of Chi. v. City of Chicago*, 865 F.2d 144, 148 (7th Cir. 1989). In practice, courts have permitted intervention where a given outcome in the underlying litigation would be incompatible with the intervenor's desired relief. *See, e.g.*, *Cabrini-Green Loc. Adv. Council*, 2014 WL 683710, at *4 ("We agree with proposed intervenors that if we were to grant the *Cabrini* Plaintiffs the injunction they seek, the proposed intervenors could not secure the mixed-income development they seek."). And as noted above, the *Wilkins* Plaintiffs cannot rely on their opportunity to provide public comments to ensure that their claims will not be extinguished in whole or in part by expansion of the CPD Decree.

Although the State and the City have not articulated the exact terms of any Decree amendment regarding CPD traffic stops—or even the scope of the changes to be negotiated—the subject matter of the Decree expansion under consideration will overlap at least in part with the claims and injunctive relief that the *Wilkins* Plaintiffs seek in their separate lawsuit. And under those circumstances, the City has advised, and almost certainly will argue, that any terms about traffic stops to which it agrees under the Decree will moot and/or foreclose the *Wilkins* Plaintiffs' claims.[9] This clear threat is more than sufficient to establish the *Wilkins* Plaintiffs' right to intervene under Rule 24(a)(2). *See City of Chicago v. Fed. Emergency Mgmt. Agency*, 660 F.3d 980, 985 (7th Cir. 2011) (future ruling need not have preclusive effect on would-be intervenors to impair their interests within the meaning of Rule 24(a)(2)).

[9] *See Wilkins* Joint Initial Status Report at 7 (*Wilkins* Doc. 34) ("It is Defendants' position that modification of the policing Consent Decree to include traffic stops could potentially moot some or all of the injunctive relief being sought in this matter [*Wilkins*]."

D. The State and City Do Not Adequately Represent the *Wilkins* Plaintiffs.

Finally, the *Wilkins* Plaintiffs are entitled to intervene under Rule 24(a)(2) because none of the parties adequately represents their interests and those of the proposed *Wilkins* class. The City is directly adverse to the *Wilkins* Plaintiffs and their challenge to CPD's mass traffic stop program. The *Wilkins* Plaintiffs further respectfully submit that the State likewise is not adequately representing the *Wilkins* Plaintiffs' interests with respect to the issues of whether and how the Decree should be expanded to address CPD's mass traffic stop program, and how the *Wilkins* Plaintiffs and proposed class can best be protected from CPD's unlawful traffic stop policies and practices.

Whether the *Wilkins* Plaintiffs' interests are being adequately represented by the State must be evaluated in the context of the State's invocation of its *parens patriae* role in this action and the requirements that must be satisfied under Rule 60(b)(5) if the CPD Decree is to be expanded. When modification of a decree is sought, the moving party bears the burden "to *prove* that modification is warranted, regardless of whether the party seeks to lessen its own responsibilities under the decree, impose a new and more effective remedy, or vacate the order entirely." *See League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 438 (5th Cir. 2011) (hereinafter "*LULAC*") (emphasis added). Indeed, the Seventh Circuit has emphasized that a consent decree is "no ordinary contract" and a district court must ensure there is "a substantial federal claim" to justify obligations under a court-supervised decree rather than merely acting on "the parties' say so." *See Evans v. City of Chicago*, 10 F.3d 474, 477, 479 (7th Cir. 1993).

Here, before the Court may expand the Decree to encompass traffic stops, the State, the City, or both jointly will have to demonstrate that there has been "a significant change" in circumstances that was not known or anticipated when the Decree was entered in 2019, and that

the terms of the proposed expansion are "suitably tailored" specifically to address those changed circumstances. *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383-384 (1992); *see also Am. Council of the Blind v. Mnuchin*, 396 F. Supp. 3d 147, 177 (D.D.C. 2019). The obligation to provide this factual support applies regardless of whether the parties have stipulated to the terms of the decree expansion. *See LULAC*, 659 F.3d at 438-39 (district court abused its discretion in approving agreed modification expanding consent decree where parties failed to provide sufficient evidentiary basis for the expansion); *see also Crawford v. Honig*, 37 F.3d 485, 487-89 (9th Cir. 1994).

Given the Rule 60(b)(5) standard, the State's first inquiry on behalf of the public in respect to a proposed expansion of the CPD Decree should be to determine whether there has been a "significant" "change in circumstances" that could support expansion of the Decree. *Rufo*, 502 U.S. at 384; *LULAC*, 659 F.3d at 437-38. There is no indication that this question has even been considered by the City or State, though it presents what appears to be an insurmountable bar to expansion given that the mass traffic stop program was well underway and well known at the time the Decree was entered in 2019. Next, even if such "significant" changed circumstances could be established with respect to CPD's traffic stop practices, the State's next responsibility on behalf of the public is to conduct a thorough and responsible investigation to identify what "new" unlawful traffic stop practices CPD has adopted since the Decree was entered in 2019, and to assemble evidence identifying the extent, nature and impact of those practices. By way of illustration, prior to entry of the Decree in 2019, the U.S. Department of Justice conducted an extensive investigation, the results of which were reflected in the State's filed complaint (Doc. 1) articulating the factual and legal basis of the City's constitutional violations and the necessary remedies. In contrast, there is no indication the State has undertaken any such investigation regarding the

specific CPD practices that are resulting in mass discriminatory traffic stops of Black and Latino drivers throughout Chicago.

The State instead merely has offered a non-exclusive list of "traffic-stop-related issues" (Doc. 1167 at 2) that could have been included in the Decree in 2019 but were omitted. These issues apparently could be the subject of a proposed Decree expansion, but fail to include racial or ethnic discrimination/disparities and traffic stop quotas, both of which are hallmarks of the mass traffic stop program, as alleged in the *Wilkins* Complaint.

Moreover, the Court should be aware that the *Wilkins* Plaintiffs have met nothing but the stiffest resistance in their own efforts to secure documents relevant to the mass traffic stop program through discovery in *Wilkins*. *Supra* n.4. In light of the Defendants' recalcitrance in producing discovery in the *Wilkins* action, the *Wilkins* Plaintiffs cannot imagine how the State could be obtaining the kind of evidence *it* would need to assess whether the mass traffic stop program should be addressed through the Decree and, if so, how best to do so in a "suitably tailored" manner.

And there are other reasons weighing in favor of a finding that the interests of the *Wilkins* Plaintiffs and proposed class are not adequately protected by the parties. For starters, the parties (including the State) have not operated with a level of transparency appropriate given the important civil rights issues at stake. The lack of transparency is evident in the parties' failure to publicly explain why they suddenly reversed course and sought a traffic stop agreement after deciding not to move forward following the October 2023 public hearing. Nor has there been disclosure of the details of any agreement, or articulation of how any such agreement will end Defendants' unlawful and discriminatory mass traffic stop program or remedy any other constitutional or statutory violations. As noted above, this approach essentially ensures that the community cannot offer meaningful input, which on its face is flatly contradictory to what one would expect where the

State is purporting to act on behalf of that very community.

In addition, the Court should not ignore the strong public perception that the State at best has conflicted interests here. It is the State's responsibility to routinely defend convictions resulting from CPD traffic stops in innumerable appellate and post-conviction proceedings. Having seen the State defend the actions of CPD officers in those instances, it is certainly fair for the public, the *Wilkins* Plaintiffs, and members of the proposed *Wilkins* class to question the State's *bona fides* to fully maintain an arms' length posture in negotiations that require zealous and unconditional fidelity to the interests of Black and Latino motorists who have been routinely targeted by CPD in mass discriminatory traffic stops. In light of these concerns, the State, even under its *parens patriae* power,[10] is not the appropriate party to represent Black and Latino motorists who have been and continue to be victimized by CPD's mass traffic stop program.

Given all of the above, it is difficult to determine which of the three standards the *Wilkins* Plaintiffs should be required to satisfy in order to show inadequacy of representation by the State. *Bost*, 75 F.4th at 688. Where there is no notable relationship between a proposed intervenor and existing parties (which at least arguably is the case here), "the burden … should be treated as minimal" and is met if the movant shows that its interests *may be* impaired. *Lake Inv. Dev. Grp. v. Egidi Dev. Grp.*, 715 F.2d 1256, 1261 (7th Cir. 1983) (quotations omitted). An "intermediate standard" applies "if the prospective intervenor and the named party have the same goal." *Bost*, 75 F.4th at 688 (quotation marks omitted). Under such circumstances, the Court will presume that representation is adequate, which can be overcome by demonstrating the existence of a conflict between the parties. *Hanover Ins. Co.*, 2013 WL 1283823, at *3. Finally, if "the representative

[10] Action under the *parens patriae* doctrine to address CPD's discriminatory mass traffic stop program is unnecessary because the *Wilkins* plaintiffs and proposed class already have filed their lawsuit with the assistance of competent *pro bono* counsel of their choice.

party is a governmental body charged by law with protecting the interests of the proposed intervenors," good faith is presumed absent "a showing of gross negligence or bad faith." *Ligas*, 478 F.3d at 774.

The *Wilkins* Plaintiffs respectfully submit that at most the intermediate standard for evaluating the State's inadequate representation applies here. That was the standard applied to a motion to intervene filed by the by the Fraternal Order of Police ("FOP") earlier in this action. The Court stated that it was not "convinced that the FOP must show that the State has acted with gross negligence or bad faith in order to call into question whether the State can adequately represent the FOP's interests. The State's interests in this proceeding clearly are at odds with the FOP's expressed views in significant ways." Doc. 88 at 21. But regardless of the test applied, the *Wilkins* Plaintiffs and proposed class clearly have shown that their rights and interests in ensuring a complete and effective end to CPD's mass traffic stop program are not being adequately protected. The *Wilkins* Plaintiffs respectfully submit that they have fully satisfied the Rule 24(a) standard that the "existing parties [do not] adequately represent [their] interest."

III. ***Wilkins* Plaintiffs Should Be Permitted to Intervene Under Rule 24(b)(1)(B).**

Alternatively, the Court should allow the *Wilkins* Plaintiffs to intervene permissively. "Rule 24(b)(1)(B) gives the district court the power to allow anyone to intervene who 'has a claim or defense that shares with the main action a common question of law or fact[,] … a highly discretionary decision." *Bost*, 75 F.4th at 690. Rule 24(b)(3) requires only that the Court consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights," but does not otherwise limit the Court's discretion. *Planned Parenthood of Wisc., Inc. v. Kaul*, 942 F.3d 793, 803 (7th Cir. 2019). For the reasons explained above (*supra* at 8-10), intervention is timely. In addition, a proposed agreement between the State and the City about the

Defendants' traffic stop practices undoubtedly would share some common questions of fact or law with the *Wilkins* action. Under these circumstances, the *Wilkins* Plaintiffs respectfully submit that they should be granted leave to intervene permissively.

WHEREFORE, the *Wilkins* Plaintiffs respectfully request that the Court grant them leave to intervene in this matter as of right, under Rule 24(a)(2), or permissively, under Rule 24(b)(1), to ensure that their claims and demands for injunctive relief in *Wilkins*, a putative class action that challenges Defendants' unlawful mass traffic stop program, are not compromised or abandoned without the *Wilkins* Plaintiffs' direct participation and consent, and for any further appropriate relief.

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Respectfully Submitted,
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