

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO, *et al.*,

*Plaintiffs,*

v.

ROY A. COOPER, III, *et al.*,

*Defendants,*

and

PHIL BERGER, *et al.*,

*Intervenor-Defendants.*

No. 1:16-cv-00236-TDS-JEP

**JOINT STATUS REPORT**

Pursuant to the Court’s order on May 20, 2019, that the “parties meet and confer within 14 days and endeavor to file a proposed consent decree addressing the court’s and parties’ concerns expressed during the hearing” (D.E. 286 at 1-2), the parties hereby submit this joint status report setting forth their positions regarding the modified proposed Consent Decree and Judgment.

A. Plaintiffs’ Position: As set forth in the motion for entry of the modified proposed Consent Decree, Plaintiffs support this Court’s entry of the modified proposed Consent Decree. The modified proposed Consent Decree is fair, adequate, and reasonable, and addresses the concerns the Court raised during the May 17, 2019 hearing.

B. Executive Branch Defendants' Position: Executive Branch Defendants support this Court's entry of the modified proposed Consent Decree. The modified proposed Consent Decree is fair, adequate, and reasonable. The Court's entry of the modified proposed Consent Decree would save substantial public costs and preserve resources associated with continued litigation, fairly resolve this controversy in a lawful manner after arm's length negotiations by the Consent Parties, and otherwise promote public interest. Proposed modifications to the Consent Decree address the concerns the Court raised during the May 17, 2019 hearing.

C. Legislative-Intervenors' Position: The Legislative Intervenors cannot agree to the modified proposed Consent Decree. The proposed modifications do not fully address the jurisdictional and other concerns raised during the May 17, 2019 hearing.

Most important, the second decretal paragraph still appears to constrain not only the named Executive Branch Defendants, but all of their successors, in how they enforce State law. Intervenors thus remain concerned that the decree would limit, for all time, how State officers can apply State trespass and other laws, including how the Attorney General cooperates with local law enforcement. *Opp.* at 10, 13–16. And it would put this Court—an arm of the federal government—in the position of overseeing this important area of State government. Intervenors cannot accept that result: It is for the Legislature, not any transient group of executive officers, to establish the permanent requirements of North Carolina law. Any federal consent decree that binds not only current state officials, but also their successors, in the application of State law therefore raises serious federalism and separation-of-powers concerns. Indeed, such a decree creates a

mechanism by which a group of private plaintiffs and an incumbent administration could routinely usurp the Legislature's role in establishing State law.

D. UNC Defendants' Position: The UNC Defendants take no position regarding the modified Proposed Consent Decree and Judgment.

Dated: May 31, 2019

Respectfully submitted,

/s/ Irena Como

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## CERTIFICATE OF SERVICE

I, Irena Como, hereby certify that on May 31, 2019, I electronically filed the foregoing JOINT STATUS REPORT, using the CM/ECF system, and have verified that such filing was sent electronically using the CM/ECF system to all parties who have appeared with an email address of record.

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