UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF MAINE,

Defendant.

Case No. 1:24-cv-00315-SDN

MEMORANDUM OF AMICI CURIAE DISABILITY RIGHTS MAINE, AMERICAN CIVIL LIBERTIES UNION OF MAINE, GLAD LAW, AND CENTER FOR PUBLIC REPRESENTATION'S OPPOSITION TO JOINT MOTION TO MODIFY SETTLEMENT AGREEMENT

INTRODUCTION

The United States initiated this lawsuit because Maine was unnecessarily "segregat[ing] hundreds of children with mental health and/or developmental disabilities … away from their families and communities in institutions in- and out-of-state" in violation of the Americans with Disabilities Act. Compl. ¶ 1, ECF No. 1. The parties negotiated—and the Court approved—a comprehensive settlement agreement designed to ensure that *all* Maine children, including those within the juvenile-justice system, receive behavioral health services "in the most integrated setting appropriate to meet their needs." Agreement § I(E)-(F), ECF No. 20-1. Central to this agreement was an independent reviewer who would provide technical assistance, approve Maine's implementation plan, and assess how the agreement actually affected children.

Now, less than a year later, the United States has "reconsidered its earlier position." Joint Motion at 3, ECF No. 31. The parties ask this Court to approve the elimination of the independent reviewer and other so-called "minor changes." *Id.* at 1; *see* ECF No. 31-2 (tracking proposed changes). But these proposed modifications are hardly inconsequential; they will likely cause eligible children to be excluded from the agreement's benefits, delay access to necessary services, and erode accountability. Put simply, the alterations will not improve "the health and wellbeing of Maine's children," and they are not in the public interest. Order Granting Leave at 4, ECF No. 35.

The Court should deny the motion. When the Court entered final judgment, it retained jurisdiction to enforce the agreement, which was attached to the Court's order and itself requires Court approval for any modifications. The parties have neither satisfied Federal Rule of Civil Procedure 60(b) to reopen and modify that final judgment, *see Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 378 (1992), nor shown that the Court should exercise any other authority to endorse the proposed changes. Courts grant such requests to reopen final judgments "sparingly." *Karak v. Bursaw Oil Corp.*, 288 F.3d 15, 19 (1st Cir. 2002). And the parties have not cited Rule 60(b) in their joint motion, let alone attempted to satisfy its demands. Even if they had made such an effort, this is not an "extraordinary" circumstance where parties should be relieved from their "free, calculated, deliberate choices." *Ackermann v. United States*, 340 U.S. 193, 212 (1950); *see,*

e.g., *United States v. Essa Bank & Tr.*, 2025 WL 2087776, at *1 (E.D. Pa. July 23, 2025) (denying unopposed motion to terminate consent order); *CFPB v. Townstone Fin. Inc.*, --- F. Supp. 3d ---, 2025 WL 2017118, at *7 (N.D. Ill. June 12, 2025) (denying joint motion to vacate stipulated final judgment). The Court should deny the motion and withhold its approval of any modifications that would lessen protections for justice-involved children. If the Court is nevertheless inclined to consider elimination of the independent reviewer or other changes, it should take on a more active role to preserve the core of the original agreement—safeguarding children's rights, ensuring compliance, requiring outreach, and maintaining accountability.

BACKGROUND

The ADA precludes discrimination against persons with disabilities, including through "unjustified institutional isolation." *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999); *see* 42 U.S.C. § 12132. Maine's Department of Health and Human Services ("DHHS") administers the State's Medicaid program through which it funds behavioral health services for children. *See* Compl. ¶¶ 26, 29, 31-32. Based on Disability Rights Maine's complaint, the United States instituted this suit, alleging that Maine unnecessarily segregates children with mental health or developmental disabilities in institutional settings. The United States specifically charged that Maine's community-based services were too frequently inaccessible, *id.* ¶¶ 58, 64-66; that too few therapeutic foster care placements were available, *id.* ¶¶ 85-88; and that the State was using the Long Creek Youth Development Center as a de facto psychiatric facility, *id.* ¶¶ 122-132. It alleged that children were kept locked in their cells at Long Creek for up to 23 hours per day and that they could not leave the facility because other treatment options were unavailable. *See id.* ¶¶ 126-31.

Last November, the parties entered into a settlement agreement to address these issues and resolve this suit. As relevant here, the agreement requires Maine to: (1) assess the behavioral health needs for covered children, including those arrested and referred to Long Creek, *see* Agreement § III(A); (2) coordinate the care of children with behavioral health needs, *see id.* § III(B); (3) increase the availability of community-based services, *see id.* § IV; (4) conduct significant outreach and engage with the public regarding available community-based services, *see id.* § V(A);

(5) ensure adequate capacity of trained mental healthcare providers, *see id.* § VI(B)-(C), (I); (6) begin reintegration planning for children at Long Creek, *see id.* § IX(G); and (7) create an implementation plan for the agreement with timelines for each element, *see id.* § IX.

In addition to and in support of these requirements, the agreement also established the role of independent reviewer, who would be responsible for measuring compliance and monitoring progress toward specific remedial benchmarks. *See id.* § XI. This expert's responsibilities would include reviewing individual service plans ("ISPs"), interviewing relevant stakeholders, and delivering targeted technical assistance to address implementation challenges as they arise. *See id.* If the State's data reached certain thresholds, the independent reviewer would evaluate covered children's ISPs to ensure compliance with the agreement and the ADA. *See id.* § III(B)(8).[1]

ARGUMENT

I. The Proposed Changes Are Inconsistent With The Agreement's Goals And Will Harm Maine's Children

The parties entered the agreement to prevent children with behavioral health disabilities "from unnecessarily entering or remaining in an Out-of-Home Placement," to "strengthen the array of Community-Based Services available," to "ensure Timely access to those services," and to "furnish to Children and their families service planning and Care Coordination." Agreement § 1(F). The parties propose to change the agreement in three main ways: (1) remove protections for justice-involved children in Maine, (2) limit outreach and training, and (3) eliminate the independent reviewer. *See* ECF No. 31-2. Contrary to the parties' representations, the proposed modifications undermine the agreement's goals and will likely harm Maine's children.

Justice-Involved Children. The parties propose changes that would make it less likely that children currently at Long Creek, or who may be placed in the juvenile justice system, will receive the care to which they are entitled. For example, without any explanation, the parties want to add new conditions that must be satisfied before justice-involved children receive basic clinical

[1] Maine initiated a request for proposal ("RFP") process and awarded a conditional contract to the highest scoring applicant, but ultimately withdrew that offer when the United States notified Maine of its decision to withhold approval of the conditional contract award.

assessments or re-assessments of their needs. *See id.* at 5 (removing requirement that committed children be "made known" to DHHS before obligation to assess triggered), 9 (same for reassessment). Such modifications will delay access to critical diagnostic assessments and referrals to home-based services, if not deprive eligible children of these services altogether. Similarly, the parties want to remove the requirement that Maine "begin community reintegration planning at the point of admission" to a juvenile correctional facility and take steps toward community reintegration where appropriate. *Id.* at 22. But doing that will only increase the likelihood that children remain at Long Creek longer than necessary, that they experience unwarranted segregation, and that the State continues using that facility as a de facto psychiatric hospital. *See* Compl. ¶¶ 128-30; *see also Maine v. J.R.*, 191 A.3d 1157, 1167-68 (Me. 2018) (Saufley, C.J., concurring) (lamenting lack of alternatives to incarceration for children with behavioral health disabilities). Children at Long Creek are children, just like all of the other children covered by the agreement. Yet adopting these proposed changes will harm this particularly vulnerable population.

Outreach and Training. The parties further propose to eliminate specific outreach and training requirements. However, eliminating the State's obligation to conduct outreach to families, children, and stakeholders about new community-based services and how to access them will mean that fewer families and providers will be aware of those services and fewer children will access them. *See* ECF No. 31-2 at 15. And no longer requiring the State to implement "mandatory competency-based curricula" for community providers will dramatically increase the likelihood that provider staff are ill equipped to deliver consistent, professionally acceptable clinical interventions like those contemplated under the agreement. *See id.* at 17.

Independent Reviewer. The parties also propose to eliminate the independent reviewer. That means no outside mental-health professional will have input on the State's implementation plan or have responsibility for assessing compliance, removing barriers to service delivery, and ensuring children receive reasonable modifications. *See id.* at 26. No external evaluator will have sufficient funding and authority to visit residential facilities without notice, to interview children, families, and stakeholders regarding services provided, or to report their findings publicly. *See*

ECF No. 31-2 at 26-27. If certain indicators of non-compliance are present, no independent mental-health review will be required to assess the causes of any deficiencies through client reviews, family interviews, and program site visits. *See id.* at 11.[2] That non-compliance is hardly hypothetical. As the United States alleged, Maine has made promises before and "fail[ed] to provide children access to community-based behavioral health services." Compl. ¶ 5; *see id.* ¶ 4; DHHS, *2016 Update: Maine's Response to the* Olmstead *Decision*, https://www.maine.gov/dhhs/oads/about-us/policy-planning/olmstead. Without the independent reviewer, children will lack key safeguards that protect their access to community-based services. And without the independent reviewer's reporting and compliance evaluation, families, providers, schools, and other stakeholders will be without the critical on-the-ground information needed to fill the gap. *See* ECF No. 31-2 at 11, 19, 25-29. None of this fits with the agreement's stated goals.

* * *

These charges are anything but "minor." If adopted, they will not advance the health or wellbeing of Maine's children. On the contrary, they risk entrenching the very segregated and unlawful conditions that this lawsuit sought to eliminate. Such an outcome serves neither Maine's children and families, nor their providers and stakeholders, nor the broader public interest. The parties' requests therefore demand this Court's careful scrutiny.

II. The Parties Have Not Shown That The Court Should Approve The Proposed Modifications

The United States and Maine have not justified the proposed modifications or shown it is in the public interest to inflict such harms. When the Court entered final judgment, it "retain[ed] jurisdiction to enforce the parties' Settlement Agreement, attached to [the] Order as Exhibit A, in accordance with its terms and for its duration." ECF No. 20. That agreement requires the parties to obtain the Court's approval before making any substantive modifications to the agreement. *See*

[2] The parties further propose to decrease the frequency with which this indicator data are produced, making it more difficult to identify and address non-compliance in short order. *See* ECF No. 31-2 at 11 (permitting Maine to provide data every twelve—rather than six—months).

Agreement § XIV(G). And in asking the Court to retain jurisdiction to enforce the agreement the parties chose to make their settlement "enforceable as … a judicial decree" and "subject to the rules generally applicable to other judgments and decrees." *Rufo*, 502 U.S. at 378. Federal Rule of Civil Procedure 60(b) accordingly applies and guides—if not outright controls—the Court's decision on the motion to modify. *See Hutchinson ex rel. Julien v. Patrick*, 636 F.3d 1, 11 (1st Cir. 2011). Under that rule, modification of a judgment is permitted only "under a limited set of circumstances," *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005), and the party seeking relief bears the burden of establishing that the standard has been satisfied, *see Rosie D. ex rel. John D. v. Baker*, 958 F.3d 51, 56 (1st Cir. 2020). Here, the parties have not shown that there are changed circumstances justifying modification of the judgment and agreement or that the proposed changes are in the public interest. *See* Fed. R. Civ. P. 60(b)(5), (6).[3]

A. No changed circumstances warrant modification of the agreement.

Contrary to the parties' submission, neither the United States's reconsideration of its position nor Maine's unspecified "learned experiences" constitute changes circumstances that justify modification of the agreement.

Rule 60(b)(5) permits modification of a final judgment when "applying it prospectively is no longer equitable." To obtain relief, the movant must demonstrate that "a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest." *Horne v. Flores*, 557 U.S. 433, 447 (2009). Courts assess current conditions and ask whether "changes in factual conditions" "have made compliance with the [agreement] too 'onerous,' 'unworkable because of unforeseen obstacles,' or 'detrimental to the public interest.'" *Consumer Advisory Bd. v. Glover*, 151 F.R.D. 496, 499 (D. Me. 1993). Where the asserted issues "were anticipated at the time" of the agreement, the movant bears a particularly "heavy burden"

[3] The parties have never suggested that facts exist that would indicate subsections (b)(1) to (b)(4) of Rule 60 might apply. Nor would they be able to show that modification is appropriate under Rule 60(b)(5) because "the judgment has been satisfied." An agreement "may not be changed" under this provision "if the purposes of the litigation ... have not been fully achieved," *Bd. of Educ. v. Dowell*, 498 U.S. 237, 240 (1991), which has not occurred.

to show it should be relieved of its obligations. *Rufo*, 502 U.S. at 385.

The parties fail this test. First, neither party explains why children involved in the juvenile-justice system, including those segregated at Long Creek, deserve less protection, need fewer services, or are somehow less segregated now than they were when the agreement was made.[4] Nor has either party presented any new facts explaining why providers need less training, families need less information, or stakeholders need less outreach.

Second, the United States argues that the independent reviewer position can be eliminated because it "has reconsidered its earlier position and now supports self-reporting by Maine." Joint Motion at 3. But the agreement is not a "mere policy statement[] subject to reversal at the discretion of a changing Executive Administration." *Essa Bank*, 2025 WL 2087776, at *1 n.1. A party may not "test the waters" and "then, displeased with the outcome," avoid the consequences by "shifting to a different course after the fact." *Paul Revere Variable Annuity Ins. Co. v. Zang*, 248 F.3d 1, 8 (1st Cir. 2001). Final judgments demand more respect than the parties show here; they are not to be modified merely because a party has had second thoughts. *See, e.g.*, *Gonzalez*, 545 U.S. at 535; *Essa Bank*, 2025 WL 2087776 at *1 n.1. In all events, there is no credible claim that employing an independent reviewer is "onerous," "unworkable," or "detrimental to the public interest" when none has even been selected. *Glover*, 151 F.R.D. at 499. How to "updat[e] the United States on compliance" was a core component of the settlement, Joint Motion at 3, plainly "anticipated at the time," *Rufo*, 502 U.S. at 385, and a change in Executive Branch policy does not carry the "heavy burden" required to eliminate that bargained-for mechanism. *See Ackermann*, 340 U.S. at 211-12 (That "hindsight seems to indicate" a decision "was probably wrong" is not enough.).

Maine's asserted recent "learned experiences" likewise do not justify eliminating the independent reviewer. That Maine's reports have so far satisfied the United States does not make

[4] Earlier this year, legislation that would have required DHHS to assess justice-involved youth's behavioral health needs was tabled after DHHS argued that the bill was "duplicative with" and would "potentially complicate[] a requirement of the Settlement Agreement" in this case. *See* Testimony of Dean Bugaj, Maine Dep't of Health & Human Servs. (Mar. 24, 2025) (addressing LD 740), https://legislature.maine.gov/backend/app/services/getDocument.aspx?doctype=test&documentId=190474.

the independent reviewer "onerous," "unworkable," or "detrimental to the public interest." *Glover*, 151 F.R.D. at 499. Maine already initiated the RFP process and, with the full participation of representatives of both parties, awarded a conditional contract to the highest scoring applicant to serve in the position. The parties identify no flaw in that process and do not contend that technical assistance and monitoring would interfere with the State's operations. Maine suggests that funds earmarked for the independent reviewer could be redirected "to other state programs or activities," but it neither claims—nor offers evidence—that, for example, it cannot fund the role or that compliance would be "substantially more onerous." *See Rufo*, 502 U.S. at 383-4 (that the terms are "no longer convenient" does not justify modification under Rule 60(b)(5)).

Nor do Maine's "learned experiences" support the other substantive changes proposed. Maine agreed to address its use of Long Creek as a de facto psychiatric hospital and its holding of children there because, as one Maine official put it, "there are no other options." Compl. ¶¶ 130-31. Nevertheless, the parties would weaken the agreement's protections for these children—raising the bar for requiring a single assessment and care coordination, *see* ECF No. 31-2 at 5, 9, and removing the facility's obligation to begin community-reintegration planning at admission, *see id.* at 22. The joint motion does not even allege that these provisions are onerous, unworkable, or contrary to the public interest. And the same is true for their proposed elimination of the requirement that Maine conduct specific outreach across the State to inform children, families, and other stakeholders how to access services under this agreement. *See* Agreement § V(A)(1)-(2).

In short, the joint motion does not identify any changed circumstances justifying these proposed modifications. Like other courts faced with such paltry showings, this Court should deny the request. *See, e.g.*, *Essa Bank*, 2025 WL 2087776, at *4; *United States v. Seattle*, 2023 WL 5803364, at *2 (W.D. Wash. Sept. 7, 2023); *United States v. Baltimore Police Dep't*, 249 F. Supp. 3d 816, 819 (D. Md. 2017); *cf. Townstone*, 2025 WL 2017118, at *7 (Rule 60(b)(6)).

B. The proposed modifications are not in the public interest

Rule 60(b)(6) likewise provides no basis to modify the agreement. "Relief under Rule 60(b)(6) requires extraordinary circumstances," and it is available "only when Rules 60(b)(1)

through (b)(5) are inapplicable." *BLOM Bank*, 145 S. Ct. at 1619. The parties' agreement on the proposed changes does not relax the standard. *See Townstone*, 2025 WL 2017118 at *4. And the parties nowhere show extraordinary circumstances or that their proposed relief would be equitable.

Indeed, as explained above, *see* Part I, the requested modifications will harm Maine's children and families. Eliminating the independent reviewer will mean there is no neutral expert charged with ensuring children receive appropriate care and that Maine is accountable for complying with federal law. The changes related to justice-involved children will mean that those children are more likely to experience prolonged institutionalization at Long Creek and go without community-based services. And eliminating outreach and training requirements will mean that fewer children and stakeholders are aware of remedial services and that those services are less likely to be provided in a professionally adequate manner.

The parties nevertheless ask this Court to relieve them of bargained-for, court-approved obligations. The Court should not dilute Rule 60(b)'s standards or do the parties' work for them—especially where the requested changes would mean less accountability, less outreach, and fewer safeguards for Maine's children. The joint motion should be denied.

III. The Agreement Must Continue To Provide Safeguards For Children, Outreach To Families, And A Reliable Mechanism To Facilitate And Evaluate Compliance

Because the parties have not shown that changed circumstances require any of the proposed substantive changes or that they are in the public interest, the proposed modifications concerning justice-involved children, community outreach, or provider training should be rejected entirely. The parties have also not demonstrated that eliminating the independent reviewer is appropriate or necessary. Having the independent reviewer remains the best way to ensure that Maine's behavioral health services comply with the integration mandate. While the Court should order the parties to comply with their agreement fully, if it is inclined to entertain the elimination of the independent reviewer, the Coalition urges the Court to protect Maine's children by identifying alternative means for carrying out the reviewer's core responsibilities and by taking on a larger role in ensuring effective implementation of the agreement

One such alternative would be to appoint an expert under Federal Rule of Evidence 706 to perform key functions of the independent reviewer position, including client reviews, family interviews, and program site visits, particularly when there are indicators of noncompliance. *See* ECF No. 31-2 at 11. Aggregated data, self-reported at two-year intervals, is insufficient for determining when children are not receiving services to which the agreement entitles them and for identifying appropriate corrective actions to ensure compliance. This on-the-ground fact gathering is essential to ensuring Maine's compliance with federal law.

Additionally, if the parties wish to eliminate the independent reviewer's public reports and the resulting accountability to children, their families, and stakeholders, the Court should require semi-annual hearings where the parties report on Maine's progress under the to-be-developed implementation plan. These hearings would provide the Court with a window into the State's progress toward compliance and areas where additional efforts are needed to protect Maine's children. It would also allow for public scrutiny and feedback on Maine's self-reported implementation efforts. Given the Coalition's significant expertise on these issues, *see* ECF No. 24 Add. A, the Court should grant the Coalition amicus-plus status to assist the Court by participating in the hearings and evaluating the presentations. *See All. of Auto. Mfrs. v. Gwadowsky*, 297 F. Supp. 3d 305, 308 (D. Me. 2003).

In this vein, the Court should also require Maine to compile annual reports equivalent to those contemplated in Section XI(C) of the agreement and to publish public versions online. This would allow the Court and the public to have some understanding of "whether the State is progressing at an appropriate pace toward achieving compliance." *Id*.

CONCLUSION

The Coalition appreciates the Court granting leave to file this brief. The proposed modifications to the agreement are serious and, if implemented, will have severe consequences for Maine's children and families. The United States and Maine have not justified their proposal under Rule 60(b) or otherwise, and their motion should be rejected. The Coalition stands ready to assist the Court to the extent that the Court believes such assistance would be helpful and appropriate.

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Respectfully submitted,

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