



JC-FL-001-011

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

_____)	
WILLIE M. ARIAS, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	TCA 79-0792
)	
LOUIE L. WAINWRIGHT,)	
)	
Defendant.)	
_____)	

STIPULATION AND AGREEMENT OF PARTIAL SETTLEMENT

WHEREAS the Amended Complaint ("Complaint") herein was filed on April 12, 1979, on behalf of plaintiffs and others similarly situated, alleging, inter alia, that defendant Louie L. Wainwright, Secretary of the Florida Department of Corrections, has failed to carry out his statutory duties to promulgate and enforce minimal constitutional standards relating to the maintenance and operations of Florida's county and municipal detention facilities ("jails" or "detention facilities") and that, as a result of defendant's acts and omissions, taken under color of state law, defendant has caused Plaintiffs' continued confinement under conditions that violate Plaintiffs' constitutional rights; and

WHEREAS the Complaint asserts causes of action against defendant arising under, and jurisdiction pursuant to, the Civil Rights Act, 42 U.S.C. §§ 1983 and 1988; 28 U.S.C. §§ 1331 and 1343 (3) & (4); 28 U.S.C. §§ 2201 and 2202; and the Constitution of the United States, specifically but not limited to the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments thereto; and

SEP 17 2013 50

10/

FILED

WHEREAS, pursuant to Rule 23 of the Federal Rules of Civil Procedure, this action has been certified by the Court as a class action on behalf of all persons who now are and in the future will be confined in jails in the State of Florida; and

WHEREAS defendant has filed an Answer denying the allegations in the Complaint; and

WHEREAS the signatories to this Stipulation and Agreement of Partial Settlement ("Agreement") represent that they are authorized to enter into this Agreement and to take all steps required of them by this Agreement; and

WHEREAS plaintiffs consider it desirable and in their best interests, and in the best interests of the members of Plaintiffs' class, to settle the issues set forth in Section I herein by entering into this Agreement; and

WHEREAS defendant considers it desirable and in his best interests, and in the best interests of the Department of Corrections and the State of Florida, to settle the issues set forth in Section I herein by entering into this Agreement; and

WHEREAS the parties have entered into this Agreement as a compromised settlement of some of their disputes, intending that this Agreement shall not be construed in any way as defining constitutional or statutory minima, thresholds or standards, nor as an admission that any condition, policy, rule, procedure, act or omission of the Department of Corrections or any employee or agent thereof was or is in any way in violation of any rights of plaintiffs; and

WHEREAS this Agreement shall not be admissible in evidence in any proceedings or trials other than for the purposes specified in this Agreement; and

WHEREAS Bob Graham, Governor, State of Florida, although he is not a party to this action or this Agreement, supports this Agreement as indicated herein;

NOW THEREFORE, in consideration of the dismissal with prejudice of the allegations, claims and prayers for relief set forth in Section I herein, the parties, by and through their counsel, hereby stipulate and agree as follows:

I. Scope of the Agreement

1. This Agreement resolves only the disputes between the parties regarding (a) the duty of defendant to conduct jail inspections adequate to disclose violations of the standards for the maintenance and operation of jails in the State of Florida established by the jail rules and regulations ("rules") promulgated by defendant pursuant to Florida Statutes § 951.23, and (b) the duty of defendant to take effective action to enforce such rules and standards, and the claims and prayers for relief based thereon. The parties have not resolved their disputes regarding the sufficiency of any jail rules and standards established by defendant pursuant to Florida Statutes § 951.23 or the claims or prayers for relief based thereon, or any disputes regarding the sufficiency of any revisions of, substitutions or amendments to the jail rules, or any new rules and standards that defendant may propose to promulgate or hereafter promulgate pursuant to Florida Statutes § 951.23. Plaintiffs therefore retain all rights to continue in this action to litigate all issues concerning the constitutionality of any jail rule or standard, and to present all evidence relevant thereto.

II. Settlement Class

2. In accordance with the Court's certification Order, this action shall be maintained as a class action on behalf of all persons who now are or in the future will be confined in jails in the State of Florida.

III. Notice to Class Members

3. Pursuant to Rule 23(e), Fed. R. Civ. P., defendant shall, within ten (10) days of execution of this Agreement, provide notice of this Agreement and the proposed partial settlement to those members of the plaintiffs' class presently confined in Florida's jails by posting in each jail, in a place accessible to prisoners, a notice in the form attached hereto as Exhibit A. The costs of providing such notice shall be borne by defendant in his official capacity. Class members shall have twenty (20) days after notice to them to file with the clerk of the Court any written objections to this Agreement or the proposed partial settlement. All objections will be considered fully by the Court.

IV. Submission to Court of Proposed Partial Settlement and Use of Best Efforts To Obtain Approval

4. Promptly upon execution of this Agreement, counsel for the parties shall jointly submit such Agreement to the Court for its approval and recommend that the Court approve the Agreement. Counsel for both parties also shall take all steps that may be required or requested by the Court and use their best efforts to consummate this partial settlement, obtain the Court's approval of this Agreement, and obtain entry of a final judgment.

V. Effectiveness of Agreement

5. This Agreement shall be effective immediately upon entry of an Order of the Court approving it. In the event that the Court declines to approve this Agreement or any portion herein, this Agreement shall be null and void and without prejudice to the parties' rights.

VI. Inspections and Enforcement

6. The Department of Corrections shall employ a sufficient number of inspectors to carry out fully the terms of this Agreement, the obligations imposed by the jail rules, including any revisions of, substitutions or amendments to such rules, and any new jail rules, and the Court's orders. Each jail shall be inspected by the Department of Corrections at least twice a year. The jail inspectors shall be properly equipped and trained so as to be able adequately to detect and precisely and fully to report the state of compliance with each jail rule and portions thereof. Jail inspections shall be exacting, comprehensive, and adequately documented.

7. As soon as possible after approval of this Agreement by the Court but in no event later than forty-five (45) days after such approval is granted, defendant shall vigorously, promptly, effectively and thoroughly enforce, to the full extent of the authority vested in him by law, all jail rules and standards, including any revisions of, substitutions or amendments to such rules and any new jail rules, and he shall fully implement and enforce Florida Statutes § 951.23.

(a) With respect to any violation of a jail rule or other condition or practice that appears to pose a

substantial and immediate danger to the life, health or safety of one or more prisoners or staff members ("an aggravated violation"), defendant shall, within seven (7) days after receiving notice of the existence of any such aggravated violation, promptly seek appropriate relief from the Circuit Court, pursuant to Florida Statutes §§ 951.23(3) and (4), to cure such violation.

(b) With respect to any violation of a jail rule other than an aggravated violation, defendant shall seek appropriate relief from the Circuit Court, pursuant to Florida Statutes §§ 951.23(3) and (4), to cure such violation, within twelve (12) months after receiving notice of the existence of any such violation; provided, however, that defendant (i) may at the expiration of such time determine not to seek relief from the Circuit Court if he makes a written finding, supported by the evidence, that the jail officials of the jail in which such violation exists have demonstrated that they will bring the jail into full compliance with the applicable jail rule within a reasonable period not to exceed sixty (60) days beyond the twelve (12) month period following notice to the defendant of the violation. If, following sixty (60) days after expiration of the twelve (12) month period, the violation has not been corrected, defendant promptly shall seek appropriate relief from the Circuit Court pursuant to Florida Statutes §§ 951.23(3) and (4); (ii) may grant a reasonable extension of time, not to exceed eighteen (18) months, for a jail to be brought into full compliance with such a jail rule if defendant determines that the jail is in substantial compliance with each other jail rule but that full compliance would require major construction which could not practically have been completed

within the maximum time limits otherwise required by this paragraph. A lack of funds or resources does not justify an extension. Any extension granted pursuant to this paragraph shall not exceed the period of time reasonably required for the jail to be brought into full compliance or be any broader than necessary to achieve full compliance with the jail rule for which the extension is granted. Each determination to grant an extension shall be in writing and a copy of the document granting an extension shall be retained in the office of the Chief Inspector and distributed to the county commissioners and the sheriff of the jail for which the extension is granted.

VII. Continuing Role of Certain of Plaintiffs' Counsel

8. The parties agree that plaintiffs' counsel (with the exception of Wilmer, Cutler & Pickering and any of its attorneys), collectively referred to in paragraphs 8-13 herein as "Plaintiffs' Compliance Counsel," shall evaluate defendant's implementation and enforcement of and compliance with this Agreement. Defendant shall, in his official capacity, pay Plaintiffs' Compliance Counsel their reasonable attorneys' fees and reasonable expenses to carry out their duties under this Agreement. Payment shall be made on a quarterly basis. Plaintiffs' Compliance Counsel will be responsible for evaluating defendant's implementation and enforcement of and compliance with this Agreement but may, as appropriate, act through assistants.

9. Plaintiffs' Compliance Counsel shall have unlimited access, with reasonable notice, to all records, files and papers maintained by defendant or the Department of Corrections relating to jails in the State of Florida. Upon request, Plaintiffs' Compliance Counsel shall be briefed twice annually by defendant or his designee as to the conditions of Florida jails and the state of inspection and enforcement under Florida Statutes § 951.23.

10. Upon forty-eight (48) hours notice to the Inspector General, Plaintiffs' Compliance Counsel shall be allowed access to all county and municipal jails, accompanied by an Inspector. Defendant shall ensure that an Inspector is made available and able to accompany Plaintiffs' Compliance Counsel within the forty-eight (48) hour notice period. Defendant shall use his best efforts to assist such Compliance Counsel in carrying out their duties herein.

11. Plaintiffs' Compliance Counsel shall be authorized by defendant or defendant's designee to conduct interviews with any staff member or employee of the Department of Corrections concerning jail inspections and conditions. In accordance with their other rights regarding conferences with class members, Plaintiffs' Compliance Counsel also shall specifically be authorized by defendant or defendant's designee to speak privately with inmates, after reasonable notice is given to the local jail authorities, so long as such conversations do not disrupt orderly jail administration or security.

12. The authority and access provided Plaintiffs' Compliance Counsel in paragraphs 3-11 herein shall expire at

the end of the thirty-eighth (38th) month following entry of the Order of the Court approving this Agreement pursuant to paragraph 5 herein, provided, however, that such authority and access may be extended by agreement of the parties or upon Order of the Court if the Court finds that a continuation of such authority and access is appropriate to ensure implementation of and compliance with this Agreement.

13. Plaintiffs' Compliance Counsel may at any time petition the Court for enforcement of this Agreement and may present all relevant evidence to prove that defendant is not complying with the terms of this Agreement, the jail rules, or the Court's orders.

VIII. Additional Covenants

14. Defendant Louie L. Wainwright agrees that he, his officers, employees, agents, successors and all those acting in concert or participating with him shall fully comply with and enforce this Agreement, including all its terms, conditions and Exhibits, the jail rules, and the Court's orders.

15. Within ten (10) days of entry of an Order of the Court approving this Agreement, counsel for the parties shall execute a Stipulation of Dismissal in such form as is attached hereto as Exhibit B, which, within five (5) days after execution, shall be filed with the Court by counsel for plaintiffs.

16. Neither party will appeal the Order attached hereto as Exhibit C if such Order is entered by the Court.

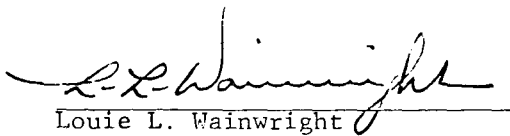
IX. Costs and Fees

17. The parties agree that plaintiffs are the prevailing parties in this action and, as such, are entitled under 42 U.S.C. §1988 to reasonable attorneys' fees as part of their costs. Plaintiffs' counsel shall submit appropriate papers to the Court.

X. Entire Agreement

18. This Agreement and its exhibits contain the entire agreement between the parties.

STIPULATED AND AGREED to this 12th day of June, 1981.



Louie L. Wainwright
Secretary
Department of Corrections
1311 Winewood Boulevard
Tallahassee, Florida 32301

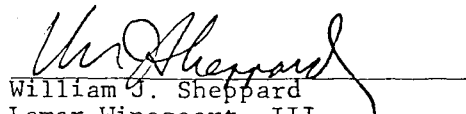
Jim Smith
Attorney General



Sydney H. McKenzie, III
Chief Trial Counsel
James A. Peters
Assistant Attorney General
Department of Legal Affairs
The Capitol - Suite 1501
Tallahassee, Florida 32301

Attorneys for Defendant

Dated: June 3, 1981



William J. Sheppard
Lamar Winegeart, III
Sheppard and Carithers, P.A.
215 Washington Street
Jacksonville, Florida 32202



Alvin J. Bronstein
Steven Ney
The National Prison Project
Suite 1031
1346 Connecticut Avenue, N.W.
Washington, D. C. 20036



Arthur F. Mathews
Lynn Bregman
Joseph E. Killory
Wilmer, Cutler & Pickering
1666 K Street, N.W.
Washington, D. C. 20006



Roderick N. Petrey
Florida Justice Institute, Inc.
1260 First Federal Building
Miami, Florida 33131

Albert J. Hadeed
Southern Legal Counsel, Inc.
Suite A - 115 Northeast 7th Avenue
Gainesville, Florida 32601

Attorneys for Plaintiffs

Dated: 6/12/81

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

_____)	
)	
WILLIE M. ARIAS, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	TCA 79-0792
)	
LOUIE L. WAINWRIGHT,)	
)	
Defendant.)	
_____)	

STIPULATION OF DISMISSAL

The parties, by their counsel, hereby stipulate and agree that, pursuant to paragraphs 1 and 14 of the Stipulation and Agreement of Partial Settlement executed by the parties on _____, 1981 and submitted to the Court on _____, 1981, and paragraph 7 of the Order attached to the Stipulation and Agreement of Partial Settlement as Exhibit C, all claims and prayers for relief in this case based upon plaintiffs' claim that the defendant has (a) failed to conduct inspections of jails in the State of Florida adequate to disclose violations of the jail rules and regulations promulgated by defendant pursuant to Florida Statutes § 951.23 and (b) failed to take effective action to enforce such rules and standards, shall be voluntarily dismissed, with prejudice. The remaining

issues and allegations, and the claims and prayers for relief based thereon, shall not be dismissed.

Jim Smith, Esq.
Attorney General

James A. Peters, Esq.
Assistant Attorney General
Department of Legal Affairs
Suite 1501-Capitol
Tallahassee, Florida 32301

Attorneys for Defendant

Dated: _____

William J. Sheppard
Lamar Winegeart, III
Sheppard and Carithers, P.A.
215 Washington Street
Jacksonville, Florida 32202

Arthur F. Mathews
Lynn Bregman
Joseph E. Killory
Wilmer, Cutler & Pickering
1666 K Street, N.W.
Washington, D.C. 20006

Alvin J. Bronstein
Steven Ney
The National Prison Project
Suite 1031
1346 Connecticut Avenue, N.W.
Washington, D.C. 20036

Roderick N. Petrey
Florida Justice Institute, Inc.
1260 First Federal Building
Miami, Florida 33131

Albert J. Hadeed
Southern Legal Counsel, Inc.
Suite A
115 Northeast 7th Avenue
Gainesville, Florida 32601

Attorneys for Plaintiffs

Dated: _____