

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 13-cv-21570-BLOOM**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIAMI-DADE COUNTY, THE BOARD  
OF COUNTY COMMISSIONERS, *et al.*,

Defendants.

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**ORDER**

**THIS CAUSE** is before the Court following a status conference held on February 7, 2018. *See* ECF No. [82]. Plaintiff United States of America (the “Government”) and Defendants Miami-Dade County, Miami-Dade County Board of County Commissioners, and Miami-Dade County Public Health Trust (collectively, “Defendants” or the “County”) entered into a Consent Agreement, ECF No. [5-2] (“Consent Agreement”), effective May 22, 2013, that addressed alleged constitutional violations regarding the provision of medical and mental health care at the correctional facilities operated by Miami-Dade County Corrections and Rehabilitation Department (“MDCR”). According to the Consent Agreement, on April 2, 2008, the Government notified Miami-Dade County officials of its intention to investigate conditions at MDCR. *Id* at 4. After tours of the MDCR facilities in 2008 and 2009, the Government issued a Findings Letter on August 24, 2011 that concluded “certain conditions in the MDCR Jail violated the constitutional rights of inmates . . . .” *Id*. In the months that followed, cooperation between the Government and the County resulted in two agreements: the Consent Agreement

before this Court and a separate Settlement Agreement, which addressed protection from harm, fire and life safety, and inmate grievances. *Id.* at 5.

**The Consent Agreement.** The Consent Agreement contained deadlines and requirements for implementation of 119<sup>1</sup> provisions or paragraphs (the “Paragraphs”). The parties selected an Independent Monitor to “oversee implementation of the [Consent] Agreement.” ECF No. [5-2] at 31 (“Independent Monitor”). Except where otherwise agreed to under a specific provision of the Consent Agreement, the County was to implement all provisions of the Consent Agreement within 180 days of the Effective Date. *Id.* at 33. On May 22, 2013, the Honorable William J. Zloch entered a final order approving and entering the Consent Agreement. ECF No. [9]. For approximately five years, Judge Zloch, and now this Court, have continued to monitor compliance with the Consent Agreement based on a reports supplied by the parties and status conferences before the Court.

**First Revised Summary Action Plan.** The County did not achieve full compliance with the Consent Agreement within 180 days as originally contemplated in the Consent Agreement. ECF No. [25] at 1; *see also* Independent Monitor’s Report No. 1, ECF No. [11], dated November 5, 2013; Independent Monitor’s Report No. 2, ECF No. [12], dated May 22, 2014; Independent Monitor’s Report No. 3, ECF No. [22], dated November 28, 2014. The Court held status conferences regarding the non-compliance on October 21, 2014 and November 17, 2014. *See* ECF No. [19] & [21]. On December 17, 2014, the parties filed a Joint Motion for Entry of Stipulated Order, ECF No. [25], which attached a Consent Agreement Summary Action Plan, ECF No. [25-2] (“First Revised Summary Action Plan”). The First Revised Summary Action Plan included revised compliance deadlines which extended from May of 2015 through

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<sup>1</sup> According to the Independent Monitor, this number was later reduced to 115. ECF No. [80] at 88.

November of 2016. *See* ECF No. [25-2] at 1. The Court entered an Order granting the motion and approving and adopting the First Revised Summary Action Plan on December 18, 2014. ECF No. [27].

**Second Revised Summary Action Plan.** On April 20, 2016, the Court held a status conference during which the parties noted that the County was not in full compliance with the Consent Agreement. *See* ECF No. [44]. By May of 2016, the “Defendants stipulate[d] that they have not yet come into full compliance with several provisions of the Consent Agreement and [First Revised Summary Action Plan]” and that “they will be unable to meet many upcoming deadlines.” ECF No. [42] at 2; *see also* Independent Monitor’s Report No. 4, ECF No. [32], dated July 3, 2015; Independent Monitor’s Report No. 5, ECF No. [38], dated February 15, 2016. The parties therefore filed a Joint Motion for Entry of Stipulated Order, ECF No. [42], which attached a Consent Agreement Revised Summary Action (Compliance) Plan, ECF No. [42-1] (“Second Revised Summary Action Plan”). The Second Revised Summary Action Plan included revised compliance deadlines which extended from July of 2016 through February of 2017. *See* ECF No. [42-1] at 1–2. The Court entered an Order granting the motion and approving and adopting the Second Revised Summary Action Plan on May 23, 2016. ECF No. [43]. On September 9, 2016, the Independent Monitor filed its sixth report with the Court, which again noted that the County had still not reached full compliance with the Consent Agreement. ECF No. [45].

In advance of the February 21, 2017 deadlines, the Court held a hearing on January 26, 2017, during which the Government represented to the Court that the County had committed to full compliance with the Consent Agreement by the end of February 2017. ECF No. [56] at 7. On April 4, 2017, the Independent Monitor submitted its seventh report, which indicated that the

County had not achieved full compliance with the Consent Agreement. ECF No. [57]. The Court held a status conference on April 21, 2017. ECF No. [60]. At that hearing, the Government represented to the Court that “the latest summary action plan that had been filed with the Court showed that they would be in full compliance with all provisions by February. And obviously, those deadlines were missed. And this is now the third set of deadlines, unfortunately, that got missed.” ECF No. [63] at 11. Based on this hearing, the Court entered an Order, ECF No. [61], requiring the Independent Monitor to submit monthly reports regarding certain clinical performance measures.

On July 28, 2017, the Court held a status conference. ECF No. [68]. While the parties reported progress, they also reported that the County was still not in full compliance with the Consent Agreement. *See* ECF No. [70]. During the hearing, the Government represented that the parties planned a “full compliance tour” scheduled for the week of September 11, 2017. *Id.* at 5. Due to Hurricane Irma, that tour was postponed until December 2017, and a status conference was set for February 7, 2018. ECF No. [75].

On January 19, 2018, the Independent Monitor filed its eighth report. ECF No. [80]. The report states that the County has not achieved full compliance with the Consent Agreement and that it is fully compliant with 29 of the 115 Paragraphs of the Consent Agreement. *Id.* at 95. Specifically, the Independent Monitor notes in the report that for certain provisions of the Consent Agreement “performance is poor,” “poorly documented,” and/or data is “insufficiently analyzed,” and that the County had made “insignificant progress,” has “not improved,” or has implemented “poorly conceived and ineffective” processes in response to the requirements of the Consent Agreement. *Id.* at 96.

The Independent Monitor further reports that MDCR is classifying any inmate with a who receives a mental health care emergency treatment order as a “use of force” incident and “require[e]s the Qualified Mental Health Professional (QMHP . . . ) to write an order authorizing use of force” for these incidents, a policy which is “outside the practice parameters of a QMPH” and which must “be stopped immediately.” *Id.* at 97. The Monitor further reported that two inmate deaths by suicide “may have been prevented had the patients been appropriately leveled,” that is, properly classified based on their mental health history and risk, per the Consent Agreement. *Id.* at 97. The report notes that “mental health staff [did] not follow[] the leveling guidelines despite having access to all relevant information” and that they instead used their “ ‘clinical judgment’ rather than following the guidelines, which lead to the errors.” *Id.*<sup>2</sup>

On February 7, 2018, the parties appeared before the Court for a status conference. At the Conference, the parties reiterated their commitment to full compliance, and the Independent Monitor highlighted several areas that required improvement. During colloquies with the Court, the Government represented that the parties had met and conferred regarding a new revised summary action plan and that the parties were prepared to file such plan on February 8, 2018 for Court approval. However, neither the Government nor the County was able to represent to the Court that the parties were *able* to comply with the deadlines contemplated in the proposed summary action plan as drafted.

This Court has been far too generous in the time permitted for the parties to remedy the unconstitutional conditions at MDCR, which were initially investigated by the Government nearly a decade ago and which “Defendants stipulate[d], and this Court [found], necessitate the

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<sup>2</sup> The Monitor further notes that “[h]ad the individuals of committed suicide been leveled appropriately, they would have been housed at a higher level of care (e.g., level 1) and their chance of completed suicide would have presumably decreased.” *Id.*

remedial measures contained in th[e Consent] Agreement.” ECF No. [5-2] at 5. Although the parties have represented to this Court—time after time—that they are committed to compliance, years have worn on without ever achieving full compliance while the safety and welfare of many individuals continue to be placed at risk. These are inmates who have no choice as to their housing and rely upon the government, here the Defendants, to comply with the law. Full compliance is necessary *as a first step* to achieve the sustainable and systemic change contemplated in the Consent Agreement. In sum, this Court will no longer tolerate vague representations of the parties’ “commitment” in place of demonstrable and documented full compliance.

Based on the foregoing, the representations of the parties, and the Court’s review of the entire record in this action, it is accordingly **ORDERED AND ADJUDGED** as follows:

1. **On or before February 28, 2018**, the parties shall meet and confer regarding the Independent Monitor’s findings and recommendations in the eighth report, ECF No. [80]. The Independent Monitor and representatives from both the Government and the County shall be present. Deputy Mayor Maurice Kemp shall also be present for the meet and confer.
2. **On or before March 7, 2018**, the parties shall submit to the Court, as a proposed order, a Proposed Third Revised Summary Action Plan. The proposed order must include **final deadlines** by which *the parties agree full compliance with the Consent Agreement will be achieved* (“Final Deadlines”). The proposed order must also include **interim deadlines** that allow sufficient time and opportunity for reports to be produced, analyzed, and any noncompliance remediated *prior to the Final Deadlines*. These interim deadlines may include, but need not be limited to, dates for interim

- tours, reports, production of documents, and implementation of recommendations by the Independent Monitor. Should these interim deadlines not be met, the Government shall advise the Court, within 10 days after the noncompliance, as to what sanctions it seeks.
3. The parties shall file a copy of the Settlement Agreement referenced in the Independent Monitor's reports **on or before February 15, 2018**.
  4. The County is cautioned that continued noncompliance with the Consent Agreement and this Court's Orders may result in the Court imposing sanctions on the County.
  5. The parties shall appear for a status conference before this Court on **September 7, 2018 at 1:30 p.m.** at 400 North Miami Avenue, Courtroom 10-2.

**DONE AND ORDERED** in Chambers at Miami, Florida, this 8th day of February, 2018.



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**BETH BLOOM**  
**UNITED STATES DISTRICT JUDGE**

Copies to:  
Counsel of Record