

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

FILED
at Santa Fe, NM

DEC 28 2004

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

**JIMMY (BILLY) MCCLENDON,
et. al.,**

Plaintiffs,

vs.

CIV-95-0024 MV/ACT

CITY OF ALBUQUERQUE, et. al.,

Defendants,

vs.

**E.M., R.L., W.A., D.J., P.S., and
N.W. on behalf of themselves and
all others similarly situated,**

Plaintiff Intervenors.

**STIPULATED SETTLEMENT AGREEMENT
BETWEEN PLAINTIFFS AND DEFENDANTS**

The Plaintiffs and Defendants have met and conferred regarding the termination of this litigation. The Plaintiffs and Defendants agree that it is in their respective best interest to enter into this Stipulated Settlement Agreement. The Plaintiffs and Defendants agree that this Stipulated Settlement Agreement complies with all of the requirements of the Prison Litigation Reform Act, 18 U.S.C. § 3626, *et seq.*

Nothing contained in this Stipulated Settlement Agreement constitutes an admission by the Defendants that they have ever violated the constitutional rights of any inmates, or that the Defendants have ever violated any Order of Court and nothing in this Stipulated Settlement Agreement should be construed as an admission by the Defendants that any prior or present policy, procedure, practice, event, circumstance, act or failure to act by the Defendants, their elected officials, contractors, agents or employees violated the civil rights laws of the United States, failed

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to meet applicable federal or constitutional standards, failed to comply with any Order of Court, or otherwise fell short of any standard of care imposed by law.

The Plaintiffs and Defendants enter into this Stipulated Settlement Agreement for the purpose of avoiding the risks and burdens of litigation and in order to describe conditions both parties wish to see maintained or improved at the Bernalillo County Metropolitan Detention Center, 100 John Dantis Road SW, Albuquerque, New Mexico. The Plaintiffs and Defendants intend that this Stipulated Settlement Agreement will maintain and improve the conditions at the Metropolitan Detention Center for the benefit of the Defendants, their employees, agents and staff and for the benefit of the Plaintiff class.

The Plaintiffs acknowledge that the Defendants already have policies that address areas described in this Stipulated Settlement Agreement and the Defendants acknowledge that they will continue to abide by the policies and procedures of the Metropolitan Detention Center. If necessary, the Defendants will revise and/or develop as necessary the policies, procedures, protocols, training materials and practices to ensure that the Defendants continue to comply with the policies and procedures of the Metropolitan Detention Center and that these policies and procedures are consistent with the requirements of the United States Constitution, the advisory standards of the American Correctional Association's Standards for Adult Detention Centers (which do not establish any minimum constitutional standard but which reflect prevailing professional practices) and the terms set forth in this Stipulated Settlement Agreement.

Plaintiffs and Defendants will jointly select two Auditor(s) (one Auditor for items 1-14 below, and one Auditor for medical issues) who will, over a nine month period (or sooner), evaluate the Defendants' compliance with the policies and procedures of the Metropolitan Detention Center, the United States Constitution, the advisory standards set forth in the American Correctional

Association's Standards for Adult Detention Centers, and the terms set forth in this Stipulated Settlement Agreement and report in writing to the Plaintiffs and Defendants concerning the following aspects of the Bernalillo County Metropolitan Detention Center:

1. Population Management Initiatives (as more fully described *infra*)
2. Facility maintenance and sanitation (including the provision of adequate linen, bedding, and hygiene supplies)
3. Inmate safety (including, but not limited to, use of excessive force by officers and protection against a known risk of assault by other inmates)
4. Inmate access to law library
5. Food services
6. Inmate disciplinary process (including the provision of an inmate handbook in each housing unit which describes the disciplinary process)
7. Inmate grievance process (including the provision of an inmate handbook in each housing unit which describes the grievance process and other inmate rights and responsibilities)
8. Inmate programming (excluding mental health programming)
9. Inmate classification (consistent with the advisory standards of the American Correctional Association's Standards for Adult Detention Centers)
10. Inmate case management
11. Inmate access to mail
12. Inmate access to telephones
13. Inmate access to commissary
14. Inmate visitations (including the provision of an inmate handbook in each housing unit which describes the visitation process)
15. Medical services (including good faith efforts to comply with the advisory Guidelines of the National Commission on Correctional Health Care)

Plaintiffs and Defendants will jointly select one Auditor who will be responsible for items 1-14 above, and a second Auditor who will be responsible for evaluating and reporting on item 15 above (medical services). However, if the Plaintiffs and Defendants cannot agree on the Auditor(s) in these two areas, the Plaintiffs and Defendants agree to submit a list of names to the Honorable Martha Vázquez and the Court will select the Auditor.

In evaluating the Defendants' compliance with Item Number One, Population Management Initiatives, the Auditor will recognize that many factors affect the population at the Metropolitan Detention Center which are beyond the control of the Defendants. Therefore, in evaluating the

Defendants' compliance with Item Number One, Population Management Initiatives, the Auditor will ensure *only* that the Defendants will employ their best efforts to manage the population of the Metropolitan Detention Center and will use all available population management initiatives (such as the Community Custody Program, pre-arrest diversion programs, the Population Management Review Team, and the resources of the Pre-Trial Services Office) to manage the population of the Metropolitan Detention Center. Community Custody Program staff will be added in response to increases in referrals to the Community Custody Program. The Auditor will also ensure that the Defendants provide classification officers and case workers and assign a benefits manager to assist residents of the Metropolitan Detention Center. Further, the Auditor will ensure that the Defendants will continue to maintain a detoxification program and an alcohol treatment program. The purpose of all of these population management initiatives is to assist the Defendants in using their best efforts to manage the population of the Metropolitan Detention Center because the parties realize that the unabated rise in the population of the Metropolitan Detention Center places unnecessary burdens on all aspects of the jail, its staff, and the provision of basic resident services.

The Auditor(s) shall have free access to all areas of the Metropolitan Detention Center, at such times and for such duration as the Auditor(s) desire. The Auditor(s) shall have unlimited access to all Metropolitan Detention Center personnel and records, and to all inmates of the Metropolitan Detention Center. The Defendants will provide the Auditor(s) with unlimited access to all personnel who work for the Metropolitan Detention Center, their private vendors, their independent contractors, or their agents who provide services to the Metropolitan Detention Center.

The Auditor(s) will notify the Director or his designee of the Auditor's visits to the Metropolitan Detention Center, so that the Auditor's personal security can be assured. However, in extraordinary circumstances in the discretion of the Auditor(s), the Auditor(s) shall not be refused

admittance to the Metropolitan Detention Center if s/he is not able to provide advance notice prior to a visit at the Metropolitan Detention Center.

The Defendants will ensure that the Auditor(s) shall have the opportunity to conduct confidential interviews with inmates, as well as the opportunity to conduct interviews with Metropolitan Detention Center staff, their private vendor staff, their independent contractors, or their agents, outside the presence of other staff or supervisors. The only exception would be when an active criminal investigation is on-going, so as not to compromise the integrity of the criminal investigation.

If, at the end of the nine month period (or sooner), the Auditor(s) report that one or more of the fifteen (15) items do not meet United States constitutional requirements, the policies and procedures of the Metropolitan Detention Center, the advisory standards of the American Correctional Association's Standards for Adult Detention Centers, and the terms of the Stipulated Settlement Agreement, the Auditor(s) shall continue to evaluate and report on those particular items. The Auditor will, however, cease to review those items the Auditor(s) has deemed are in compliance with United States constitutional requirements, the policies and procedures of the Metropolitan Detention Centers, the advisory standards of the American Correctional Association for Adult Detention Centers and the terms of this Stipulated Settlement Agreement.

If any items in the above list (1-15) are determined by the Auditor(s) not to be in compliance with United States constitutional requirements, the policies and procedures of the Metropolitan Detention Center, the advisory standards of the American Correctional Association's Standards for Local Detention Facilities, and the terms of this Stipulated Settlement Order, the Auditor(s) shall continue to evaluate and report on any such items until such time as all fifteen listed items are in compliance with the United States constitutional requirements, the policies and procedures of the

Metropolitan Detention Center, the advisory standards of the American Correctional Association, and this Stipulated Settlement Agreement.

Once the Auditor(s) reports that an item complies with United States constitutional requirements, the policies and procedures of the Metropolitan Detention Center, the advisory standards of the American Correctional Association's Standards for Local Detention Facilities, and the terms of this Stipulated Settlement Agreement, the Auditor will cease reviewing this area.

Plaintiffs' class will move to dismiss this case, with prejudice, when the Defendants obtain compliance in all areas.

The Plaintiffs and Defendants agree to cooperate regarding any fairness or other hearings which are required by the Court in order to facilitate the ultimate dismissal of Plaintiffs' claims.

The Auditor(s) will be compensated by the Defendants, at rates to be negotiated between the Auditor(s) and the Defendants.

During the initial nine month period (or shorter), Plaintiffs agree their counsel will be compensated at the rate of \$135.00 per hour, plus gross receipts tax, for the monitoring activities of Brian Pori and Marc Lowry, not to exceed a combined twenty (20) hours per month, and \$65.00 per hour, plus gross receipts tax, for the monitoring activities of paralegals, not to exceed a combined twenty-five (25) hours per month. At the end of the nine month period (or sooner), if any items listed above have not met the requirements of this Stipulated Settlement Agreement, Plaintiffs' lawyers and paralegals will continue to be limited to the hourly rates and number of hours described above for monitoring activities, unless modified in writing between Plaintiffs and Defendants. However, any such hours which Plaintiffs' counsel and paralegals bill the Defendants will still be subject to the requirements of reasonableness.

Until such time as the Auditor(s) declares all fifteen (15) items meet United States constitutional requirements, the policies and procedures of the Metropolitan Detention Center, the advisory standards of the American Correctional Association's Standards for Adult Detention Centers, and the terms of this Stipulated Settlement Agreement, counsel for Plaintiffs shall have the same right of access to the Metropolitan Detention Center and the same right to review all records (in any media) concerning Plaintiff class members which counsel for the Plaintiffs currently possess. However the number of hours for which Plaintiffs counsel and paralegals will receive compensation for these activities will be limited as described above.

The Defendants will not file any motion in the future asserting that this Stipulated Settlement should be terminated under the Prison Litigation Reform Act.

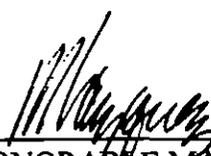
This Agreement shall be binding on all successors, assignees, employees, and all those working for or on behalf of the Defendants, and those working for or on behalf of the Plaintiffs.

The Plaintiffs and Defendants do not intend to create in any non-party the status of third party beneficiary. This Stipulated Settlement Agreement shall not be construed so as to create a private right of action to any non-party against the Defendants. The rights, duties and obligations contained in this Stipulated Settlement Agreement shall only bind the parties to this Agreement.

This Stipulated Settlement Agreement supercedes all previous Orders which pertain to Plaintiffs and Defendants.

Any claimed breach of this Stipulated Settlement Agreement will be mediated by the United States Magistrate Judge before it is submitted to the District Court.

IT IS SO ORDERED.



HONORABLE MARTHA VÁZQUEZ

