

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

JIMMY (BILLY) MCCLENDON, et al.,

Plaintiffs,

vs.

No. CV 95-24 JAP/KBM

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.

SETTLEMENT AGREEMENT

The Plaintiffs, Plaintiff-Intervenors, and Defendants have met and conferred regarding the termination of this litigation. To ensure that improvements achieved thus far by Defendants are preserved, and in recognition of the parties' shared interests in establishing a durable remedy for the class and sub class, the parties hereby enter into this Settlement Agreement:

1. The parties hereby agree that it is in the best interest of all parties to resolve all outstanding issues by entering into a global Settlement Agreement.

A. Plaintiffs' and Plaintiff-Intervenors' consideration for entering into this Settlement Agreement are improvements in the operation of the County jail system, a fair

and reasonable check-out audit for each of the domains listed in the Check-Out Audit Agreements described below, assurance that a finding of substantial compliance is meaningful, the establishment of a durable remedy and, during the pendency of the lawsuit, identification of any domains, if any, in which backsliding has occurred so that appropriate corrective action can be taken.

B. Defendants' consideration for entering into this Settlement Agreement is knowing exactly what must be done to achieve substantial compliance, understanding what elements of their obligations will be audited and how those audits will be conducted, and having their obligations described specifically and clearly enough to have their compliance accurately and objectively measured.

2. Definitions:

A. Backsliding: For purposes of this Agreement, backsliding is defined as deviations from Defendants' obligations that are sufficiently significant that, had those deviations been found at the time substantial compliance originally was determined as to that domain, the deviations would have prevented a finding of substantial compliance as to that domain.

B. Bernalillo County jail system: As used in this document, Bernalillo County jail system refers to every adult detention facility owned or operated by the County of Bernalillo or a contractor of the County within Bernalillo County; as well as those detainees who are a part of the County's Community Custody Program. Bernalillo County jail system does not refer to inmates who are housed in a facility that is neither

owned nor operated by the County or a contractor of the County. Adult detention facility does not include a facility that is licensed as a treatment facility even if it is a locked facility.

C. Substantial Compliance: As used in this Settlement Agreement, “substantial compliance” means that Defendants generally are in compliance with the terms of the substantive requirements listed in the Check-Out Audit Agreements. Incidents of non-compliance do not necessarily prevent a finding of substantial compliance. The determination of substantial compliance will take into account the extent to which exceptions to compliance are sporadic or isolated in nature, are unintentional, are the temporary result of actions by MDC inmates and are promptly and properly addressed by corrective action and, where appropriate, disciplinary action against staff members responsible for the exception to compliance. In no event will a determination of substantial compliance be made if exceptions to compliance are the result of willful or intentional actions by Defendants.

1) Initial Finding of Substantial Compliance:

Once the Defendants believe that they have sufficient evidence to demonstrate substantial compliance in a particular domain, the Defendants may move the Court for an initial finding of substantial compliance.

2) Sustained Compliance:

Substantial compliance for a period of time determined sufficient by the Court to demonstrate that a durable remedy is in place. The time period for

substantial compliance may vary by domain.

D. Check Out Audit: The Check Out Audit will occur at the end of the period set for sustained compliance for any given domain.

E. Domain: A domain refers to a unit of this case as set forth below in Paragraph 9.

F. Subcategory: Subcategory refers to the discrete requirements listed in the Check-Out Audit Agreements.

3. Defendants will ensure that the population at the Bernalillo County Metropolitan Detention Center, located at 100 Deputy Dean Miera, Dr. SW (*hereinafter* "MDC"), remains at or under 1,950. The mechanisms by which the County will keep the population at or below 1,950 are set out in the Stipulated Order Setting Population Capacity for the Bernalillo County Metropolitan Detention Center [Doc. No. ___].

4. Initial Finding of Substantial Compliance:

A. The parties agree that once the Defendants believe that they have sufficient evidence to demonstrate substantial compliance in a particular domain the Defendants may move the Court for a finding of initial substantial compliance.

B. The parties agree that the Court will determine whether the record supports a finding of initial substantial compliance with respect to each domain of the applicable Check-Out Audit Agreements based on the experts' reports and other evidence presented by the parties. If the Court requires additional information in order to make his or her recommended findings, the Court will provide guidance to the appropriate expert

as to what additional information is required. If the Court finds that there is an area in non-compliance, the Court, in consultation with the appropriate expert, will direct Defendants as to what must be accomplished to achieve initial substantial compliance.

C. When making the determination of initial substantial compliance, the Court will also determine the date upon which initial substantial compliance began as to each domain.

5. Sustained Substantial Compliance:

A. After the Court has determined Defendants have achieved initial substantial compliance, the Court will set a period of self-monitoring for each domain which the Court determines is a sufficient period to reach sustained substantial compliance based upon the complexity of the domain, the date when initial substantial compliance began as well as any other factors determined by the Court.

B. The Court-appointed experts in each area, in conjunction with Defendants, will develop self-monitoring protocols. These protocols will require:

- 1) that data regarding each of the subcategories set forth in the Check-Out Audit Agreements be collected and analyzed;
- 2) that MDC and/or the medical contractor staff will collect the data regarding the subcategories set forth in the Check-Out Audit Agreements and issue a preliminary analysis of each subcategory;
- 3) that the current Court-appointed experts or an expert determined by the Court's expert to be qualified by training, experience, and education

in the appropriate subject matter area will review the data collected on each subcategory and the preliminary analysis; conduct, or require the MDC and/or medical contractor staff to conduct, any additional fact-gathering that is necessary; and provide a written analysis of whether County Defendants are substantially complying with each of the substantive requirements set forth in the applicable Check-Out Audit Agreement;

4) that, if the expert determines that County Defendants are not in substantial compliance with a particular subcategory, the expert will provide a recommendation for corrective action;

5) that MDC and/or the medical contractor implement the corrective action recommended by the expert or will achieve substantial compliance through alternative action acceptable to the expert;

C. During the period of self-monitoring for each domain, Defendants will submit quarterly reports to the expert for that domain, and to counsel for Plaintiff and Plaintiff-Intervenors as to Defendants' continued substantial compliance with each particular domain. The quarterly reports will contain sufficient data for the expert for that domain to determine whether County Defendants remain in compliance with each of the subcategories listed under the domain.

D. During the period of self-monitoring for each domain, counsel for

Plaintiffs and Plaintiff-Intervenors only will be compensated for monitoring in that domain as follows: (1) for reviewing Defendants' self-monitoring reports and providing feedback to the Defendants and their counsel regarding whether the Defendants are in compliance with the provisions of the self-monitoring agreement, (2) for previously agreed upon participation in expert site visits and reviewing and commenting on reports during the Check Out Audits, and (3) for receiving complaints from an individual class member or sub class member with respect to an allegation rising to the level of risk of irreparable harm and conveying any concerns to Defendants' counsel.

6. The parties agree that at end of the period established for self-monitoring, the Court's experts will conduct Check-Out Audits as to each domain and make a finding of compliance, partial compliance, or non-compliance with the substantive requirements of the Check-Out Audit Agreements listed below.

A. Check-Out Audit Agreement No. 1 covers the provision of all medical services, but not including the provision of mental health services. Check-Out Audit Agreement No. 1 is attached as Exhibit 1 to this Settlement Agreement. The parties understand and agree that the terms and conditions set forth in Check-Out Audit Agreement No. 1 are incorporated into this Settlement Agreement.

B. Check-Out Audit Agreement No. 2 covers all mental health services, but does not including the provision of medical services. Check-Out Audit Agreement No. 2 is attached as Exhibit 2 to this Settlement Agreement. The parties understand and agree that the terms and conditions set forth in Check-Out Audit Agreement No. 2 are

incorporated into this Settlement Agreement.

C. Check-Out Audit Agreement No. 3 covers all conditions of confinement except for the provision of medical and mental health services. Check-Out Audit Agreement No. 3 is attached as Exhibit 3 to this Settlement Agreement. The parties understand and agree that the terms and conditions set forth in Check-Out Audit Agreement No. 3 are incorporated into this Settlement Agreement. Check- Out Audit Agreement No. 3 covers Jail Operations Groups A and B, as well as population management, housing and segregation, sexual misconduct, and use of force and internal investigations.

D. In the performance of their check-out audits, the Court's experts will submit proposed findings of fact with respect to each subcategory of the applicable Check-Out Audit Agreements.

7. If a Check-Out Audit reflects that a domain has not remained in sustained substantial compliance (due to failure to comply with the substantive requirements set forth in the Check-Out Audit Agreements or due to backsliding), Defendants will have a period of 90 days to cure that deficiency. If Defendants determine that more than 90 days are required to correct the deficiency, Defendants will inform the Court of the reasons for the need to exceed 90 days and the amount of time necessary to correct the deficiency.

8. Based upon the Defendants' self-monitoring reports as well as the experts' proposed findings at the Check-Out Audits, the Court will determine whether the record supports a finding of sustained substantial compliance as to each domain. If the Court determines there is

not sustained substantial compliance, the Court will set an additional period for self-monitoring. At the conclusion of the additional period of self-monitoring, the expert for that domain will conduct another Check-Out Audit.

9. Parties agree for incremental vacation of orders regarding particular as follows:

A. Domain 1: Mental Health Services, set forth in Check-Out Audit Agreement No.1.

B. Domain 2: Medical Services, set forth in Check-Out Audit Agreement No. 2.

C. Domain 3: Group A of Jail Operations, set forth in Check-Out Audit Agreement No. 3.

D. Domain 4: Group B of Jail Operations, set forth in Check-Out Audit Agreement No. 3.

E. Domain 5: Population management, set forth in Check-Out Audit Agreement No. 3.

F. Domain 6: Housing and segregation, set forth in Check-Out Audit Agreement No. 3.

G. Domain 7: Sexual misconduct, set forth in Check-Out Audit Agreement No. 3.

H. Domain 8: Use of force by security staff and internal investigation, set forth in Check-Out Audit Agreement No. 3.

10. The parties agree that after the Court makes a finding of sustained substantial

compliance as to a particular domain as listed above, all provisions of extant orders related to that domain will be vacated.

11. If Plaintiffs or Plaintiff-Intervenors believe that the Defendants have engaged in backsliding as to a domain that was previously vacated, they may move the Court to re-engage oversight over that particular domain.

12. The Court will grant a motion to re-engage oversight over a domain only where Plaintiffs and/or Plaintiff-Intervenors have established by a preponderance of the evidence that Defendants engaged in backsliding with regards to the requirements of the Check Out Audit Agreement applicable to the domain at issue.

13. Dismissal: The parties agree that this lawsuit with all extant orders except for the Stipulated Order Setting Population Capacity for the Bernalillo County Metropolitan Detention Center [Doc. No.] will be vacated and all claims dismissed with prejudice after the Court finds that Defendants have demonstrated sustained substantial compliance for each and every domain. If Defendants have demonstrated sustained substantial compliance for each domain listed in the Check Out Audit Agreements, Plaintiffs and Plaintiffs-Intervenors agree to move the Court for dismissal of all claims with prejudice. The Stipulated Order Setting Population Capacity for the Bernalillo County Metropolitan Detention Center [Doc. No. __] will remain in effect after the dismissal of this action and any violation of that Order can result in enforcement actions before this Court.

14. If Defendants invoke emergency circumstances to take action that departs from what would otherwise be the requirements of this Settlement Agreement, Defendants will

immediately notify the Court, the experts, Plaintiffs' counsel, and Plaintiff-Intervenors' counsel of the following:

- A. The emergency circumstances relied upon;
- B. The corresponding action taken;
- C. What Defendants believe will be the duration of such circumstances and such action; and
- D. The steps Defendants are taking to attempt to limit the duration of such action to as short a term as practicable.

15. For purposes of this Settlement Agreement, an emergency is defined as a circumstance caused by a riot, fire, or similar event not caused intentionally by Defendants, their agents or employees, that makes compliance with the provisions of this Settlement Agreement temporarily impossible, extraordinarily difficult, or infeasible. Construction delays or labor disputes not caused intentionally or reasonably anticipated by Defendants may constitute an emergency, but legislative, executive, or administrative policy decisions not to appropriate funds or allocate resources to MDC and its operation will not justify the declaration of an emergency. Legislative decisions regarding sentencing will not justify declaration of an emergency.

16. Prior to dismissal of this action and pursuant to the terms of this Settlement Agreement, the parties agree that they will jointly request that the District Court enter a permanent injunction pertaining to the Bernalillo County jail system. Because of County Defendants' population management initiatives, the parties recognize and agree that County Defendants have not engaged in a number of the following practices for a significant period of

time. However, County Defendants cannot anticipate future fluctuations in the population. Accordingly, the injunction will have the following provisions: (a) The population of the Metropolitan Detention Center will be limited to the operational capacity of the MDC, which as of the date of this document is at 1950, which will be determined by the operations expert and reviewed from time to time but no less than every six months based on factors which include design capacity, staffing levels, the impact of inmate classification on inmate segregation numbers, and other factors to be mutually agreed to in writing by the parties; (b) no inmates will be triple celled, unless the facility is designed for triple celling; (c) no inmates will sleep in dayrooms or in other areas not designed for sleeping, except in the detoxification units; (d) defendants will not double cell any inmates requiring segregation who are high-risk or security threats with any other inmates, unless those inmates have been determined to be compatible. Segregated inmates who are in protective custody or new intakes may be double celled if they have been determined to be low risk and compatible using a reliable objective classification tool; (e) defendants will not house inmates who have not yet been classified with inmates who require segregation. The permanent injunction will include stipulated findings that it is narrowly drawn; extends no further than necessary to correct violations of the federal rights of class members; is the least intrusive means necessary to correct violations of the federal rights of class members; and will have no adverse impact on the public safety or the operation of the criminal justice system. Two years after the Court enters the permanent injunction, the County Defendants will reacquire the right to file motions under the Prison Litigation Reform Act.

17. Any future contempt motions by either Plaintiffs or Plaintiff-Intervenors must be

filed on a timely basis, after mediation, and be based on the requirements of this Agreement and the substantive requirements set forth in the Check-Out Audit Agreements.

18. This Settlement Agreement will not be admissible as evidence in any proceeding or trial other than for the sole and limited purpose of enforcement of the Agreement.

19. The parties do not intend to create in any non-party the status of a third-party beneficiary. This Settlement Agreement will 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 Settlement Agreement will only bind the parties to this Settlement Agreement.

20. The parties stipulate and agree that the United States District Court will retain jurisdiction for purposes of enforcing this Settlement Agreement.

21. This Settlement Agreement will be submitted to the Court for its review and approval pursuant to Rule 23 of the Federal Rules of Civil Procedure.

22. Plaintiffs, Plaintiff-Intervenors, and Defendants agree to cooperate regarding any fairness or other hearings that are required by the United States District Court in order to facilitate the dismissal of Plaintiffs' and Plaintiff-Intervenors' claims.

23. This Settlement Agreement will not have any force and effect until such time as it has been approved by the Board of County Commissioners of Bernalillo County in an open meeting.

24. If this Settlement Agreement is not approved in its entirety by the United States District Court, then this Settlement Agreement will be null and void.

25. This Settlement Agreement is a document which all parties have negotiated and

drafted. Since all parties participated equally in drafting its terms, the general rule of construction interpreting a document against the drafter will not be applied in future interpretation of this Settlement Agreement.

26. Any request for a modification of this Settlement Agreement will be mediated by the U.S. Magistrate Judge or Special Master Alan C. Torgerson before it is submitted to the United States District Court for consideration.

27. Any claimed breach of this Settlement Agreement will be mediated by the U.S. Magistrate Judge or Special Master Alan C. Torgerson before it is submitted to the United States District Court for consideration.

28. This Settlement Agreement is narrowly drawn; extends no further than necessary to correct violations of the federal rights of class members; is the least intrusive means necessary to correct violations of the federal rights of class members; and will have no adverse impact on the public safety or the operation of the criminal justice system. Two years after the Court enters this Settlement Agreement, the County Defendants will reacquire the right to file motions under the Prison Litigation Reform Act.

IT IS SO ORDERED.

The Honorable James A. Parker
SENIOR UNITED STATES DISTRICT JUDGE

APPROVED:

Randy Autio
Attorney for County Defendants

Luis Robles
Marcus J. Rael, Jr.
Attorney for County Defendants

Mark Baker
Attorney for Plaintiffs

Jeffrey L. Baker
Attorney for County Defendants

Mark H. Donatelli
Attorney for Plaintiffs

Peter Cubra
Attorney for Plaintiff-Intervenors

Zachary A. Ives
Attorney for Plaintiffs

Nancy L. Simmons
Attorney for Plaintiff-Intervenors

The Honorable Alan Torgerson
Special Master

Julie Morgas Baca
Bernalillo County Manager

EXHIBIT B

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

JIMMY (BILLY) MCCLENDON, et al.,

Plaintiffs,

vs.

No. CV 95-24 JAP/KBM

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.

**CHECK-OUT AUDIT AGREEMENT No. 1:
THE PROVISION OF MEDICAL SERVICES AT THE
BERNALILLO COUNTY METROPOLITAN DETENTION CENTER**

1. The subcategories covered in Check-Out Audit Agreement No. 1 (*hereinafter* referred to as the “Agreement”) include the provision of all medical services, but does not include the provision of mental health services or conditions of confinement.

2. This Agreement provides definitive, specific, and measurable tasks to be accomplished in order to achieve substantial compliance.

3. With respect to the provision of medical services, this Agreement is comprehensive. Thus, the parties understand and agree that this Agreement incorporates (but

does not supersede) all extant orders and agreements. The expert's review will be governed solely by the Settlement Agreement and this Check-Out Audit Agreement.

4. This Agreement sets forth, area by area, the scope of the check-out audit for the provision of medical services only.

5. The parties agree that the Court's medical expert will review the provision of medical services at MDC as set forth in paragraph 6 of this Agreement.

6. The Court's medical expert will make findings of fact which address the subcategories listed below:

A. Whether MDC's provision of medical services complies with MDC's medical policies and procedures;

B. Whether MDC is in compliance with the advisory standards set forth in the American Correctional Association's Standards for Adult Detention Centers;

C. Whether MDC has made and is making good faith efforts to comply with the advisory Guidelines of the National Commission on Correctional Health Care;

D. Whether MDC is conducting and completing a history and physical exam of each inmate in a timely manner, i.e., within 72 hours for inmates with serious medical needs identified at booking and no later than 14 days otherwise;

E. Whether MDC inmates who complain orally or in writing of serious acute illness or serious injury are given immediate medical attention;

F. Whether all inmate requests for medical care are timely communicated to medical personnel for appropriate treatment.

G. Whether MDC has made necessary revisions to existing policies, procedures and practices for any deficiencies identified by MDC or the monitors regarding the provision of timely access to appropriate medical care and is following the revised policies, procedures and practices.

H. MDC's Quality Improvement Process:

1) Whether MDC operates an adequate Quality Assurance/Improvement system regarding medical care, its medical and health care policies and procedures, including but not limited to those identified in NCCHC standards and MDC policy and has implemented appropriate corrective action;

2) Whether MDC has a committee that reviews individual and system data about triggers and thresholds, and determines whether these data indicate trends either for individuals or for the adequacy of treatment overall;

3) Whether MDC's Quality Improvement Committee conducts analyses of the medical and health care processes and makes recommendations on changes and corrective actions;

a. Provides oversight of the implementation of medical policies, procedures, guidelines and support plans;

- b. Reviews policies, training, and staffing levels;
- c. Monitors implementation of recommendations and corrective actions;
- d. Reports its findings and recommendations to appropriate County officials periodically; and
- e. Refers appropriate incidents to the Morbidity/Mortality Committee for review, as necessary.

7. Constitutionally adequate medical care

A. Whether the medical care provided by MDC to its inmates evidences repeated examples of negligent acts, which disclose a pattern of conduct by MDC medical staff;

B. Whether the examples of negligent acts disclose a pattern of conduct by MDC medical staff that effectively denies inmates access to adequate medical care;

C. Whether there are systematic and gross deficiencies in staffing, facilities, equipment, or procedures; and

D. Whether the systematic and gross deficiencies effectively deny the inmate population access to adequate medical care.

8. Americans with Disabilities Act

A. Whether adequate communication occurs between MDC administration and treating health care professionals regarding an inmate's significant health needs that must be considered in classification decisions in order to preserve the health and safety of

that inmate, other inmates, or staff;

1) Whether MDC security staff is advised of inmates' special medical needs that may affect housing, work, program assignments, disciplinary measures, and admissions to and transfers from institutions.

2) Whether health care and security staff communicate about inmates with special needs conditions.

B. Whether MDC follows a proactive program which provides care for special needs patients who require close medical supervision or multidisciplinary care.

1) Whether individual treatment plans are developed by a physician or other qualified clinician at the time the condition is identified and updated when warranted.

2) Whether the treatment plan includes, at a minimum:

a. The frequency of follow-up for medical evaluation and adjustment of treatment modality;

b. The type and frequency of diagnostic testing and therapeutic regimens; and

c. When appropriate, instructions about diet, exercise, adaptation to the correctional environment, and medication.

C. Whether medical and dental orthoses, prostheses, and other aids to impairment are supplied in a timely manner when the health of the inmate would otherwise be adversely affected, as determined by the responsible physician or dentist.

1) Whether health records confirm that patients receive prescribed aids to impairment.

2) Where the use of specific aids to impairment is contraindicated for security reasons, whether alternatives are considered so the health needs of the inmate are met.

D. Whether the medical care provided to subclass members is adequate and whether the medical care provided to sub class members is at least equivalent in quality to the medical care provided to others;

E. Regarding inmates who are qualified individuals with disabilities under the ADA, whether the Defendants have made modifications to their policies, procedures and practices that are necessary to provide to inmates with disabilities with medical care which is equivalent in quality to the care provided to inmates without disabilities.

9. The Court's medical expert will conduct the check-out audit for the provision of medical services after (i) the Court makes an initial finding that defendants are in substantial compliance for all subcategories pertaining to medical care and (ii) defendants' self-monitoring demonstrates substantial compliance for a period determined by the Court. After review of Defendants' self-monitoring and subsequent Check-Out Audit, The Court's medical expert will make findings regarding compliance, partial compliance or non-compliance and submit a copy of his or her proposed findings to the Court and provide copies to all counsel. The Court will then make a finding as to whether Defendants are in sustained substantial compliance with the provisions of the Check-Out Audit Agreement.

10. If the Check-Out Audit reflects that the domain is not in sustained substantial compliance (due to failure to accomplish the tasks described in this Agreement), the Court's medical expert will identify the deficiency and provide Defendants with specific corrective action which Defendants must take to obtain substantial compliance. Defendants may propose alternative remedial action to obtain substantial compliance which must be approved by the Court's medical expert. Defendants will have a period of 90 days to cure the deficiency, unless Defendants provide notice that more time is needed, as set forth in the Settlement Agreement.

11. If the Court determines that the domain is not in sustained substantial compliance, the Court will set an additional period for self-monitoring, after which the Court's medical expert will conduct another Check-Out Audit.

12. The parties understand and agree that the terms and conditions set forth in the Settlement Agreement to which this Agreement is attached are incorporated herein.

IT IS SO ORDERED.

The Honorable James A. Parker
SENIOR UNITED STATES DISTRICT JUDGE

APPROVED:

Randy Autio
Attorney for County Defendants

Luis Robles
Marcus J. Rael, Jr.
Attorney for County Defendants

Mark Baker
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EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
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JIMMY (BILLY) MCCLENDON, et al.,

Plaintiffs,

vs.

No. CV 95-24 JAP/KBM

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.

**CHECK-OUT AUDIT AGREEMENT No. 2:
THE PROVISION OF MENTAL HEALTH SERVICES
AT THE BERNALILLO COUNTY METROPOLITAN DETENTION CENTER**

1. The subcategories covered in Check-Out Audit Agreement No. 2 (*hereinafter* referred to as the “Agreement”) include the provision of all mental health services, but does not include the provision of medical services or conditions of confinement.

2. This Agreement provides definitive, specific, and measurable tasks to be accomplished in order to achieve substantial compliance.

3. With respect to the provision of mental health services, this Agreement is

comprehensive. Thus, the parties understand and agree that this Agreement incorporates (but does not supersede) all extant orders and agreements. The expert's review will be governed solely by the Settlement Agreement and this Check-Out Audit Agreement.

4. This Agreement sets forth, area by area, the scope of the check-out audit for the provision of mental health care only.

5. The parties agree that the Court's mental health expert, will review the provision of mental health services at MDC as set forth in paragraph 6 of this Agreement.

6. The Court's mental health expert will make findings of fact which address the subcategories below:

A. Screening and Assessment

- 1) Whether MDC has developed and implemented policies and procedures for appropriate screening and assessments of inmates with serious mental health needs.
- 2) Whether MDC has developed and implemented an appropriate screening instrument that identifies mental health needs and ensures timely access to a mental health professional when inmates present symptoms requiring such care.
- 3) Whether MDC screens all inmates with Qualified Medical Staff upon booking at MDC, but no later than four (4) hours after booking, to identify the inmate's risk for suicide or self-injurious behavior.

- 4) Whether MDC's Qualified Medical Staff conducting intake screening receive adequate training on identifying and assessing suicide risk, are assigned appropriate tasks and guidance, and properly conduct intake screening.
- 5) Whether MDC Qualified Medical Staff, based on the screening, develop and implement an acuity system or triage scheme (P1, P2, or P3) to ensure that inmates with immediate mental health needs are prioritized for services.
- 6) Whether MDC provides "sufficient psychiatric services to assure that a psychiatrist will evaluate no later than the business day after a resident's admission, any resident who: (1) reports being on any psychoactive medication when taken into custody, (2) requests any psychoactive medication or other psychiatric service, or (3) has been identified by any mental health or health professional at the jail as appropriate for a psychiatric assessment. [*Doc. No. 256, III(C)(1-3)*].
 - a. Whether MDC provides adequate and timely psychiatric services to assess any inmate who:
 - (1) reports being on any psychiatric medication when taken into custody;
 - (2) requests any psychiatric medication or other

- psychiatric service; or
 - (3) has been identified by any mental health or health professional at the jail as appropriate for a psychiatric assessment.
- b. Whether a psychiatrist assesses (no later than the business day after an inmate's admission) any inmate who:
- (1) reports being on any psychiatric medication when taken into custody;
 - (2) requests any psychiatric medication or other psychiatric service; or
 - (3) has been identified by any mental health or health professional at the jail as appropriate for a psychiatric assessment.
- 7) Whether MDC implements policies and procedures, commensurate with the level of risk of suicide or self-harm, that ensure that inmates are protected from identifiable risks for suicide or self-injurious behavior.
- 8) Whether MDC's policies and procedures require that a Qualified Mental Health Professional performs a mental health assessment within the prescribed period of time, based on the inmate's risk.
- 9) Whether MDC security staff monitors inmates who are presumed

to be of moderate or high risk of suicide or self-harm with constant supervision until the inmate is seen by a Qualified Mental Health Professional for assessment, and thereafter on the schedule chosen by the Mental Health Professional.

- 10) Whether MDC conducts appropriate mental health assessments within the following periods from the initial screen:
 - a. 14 days, or sooner, if medically necessary, for inmates classified as low risk (P3);
 - b. 8 hours, or sooner, if medically necessary, for inmates classified as moderate risk (P2); and
 - c. Immediately, but no later than four hours, for inmates classified as high risk (P1).

- 11) Whether MDC ensures that mental health assessments include the assessment factors described below:
 - a. Intake screening shall inquire as to the following:
 - (1) Current mental health conditions;
 - (2) Current psychiatric medications;
 - (3) Current suicidal ideation, threat, or plan;
 - (4) Past suicidal ideation and/or attempts;
 - (5) Prior mental health treatment or hospitalization;
 - (6) Recent significant loss - such as the death of a

- family member or close friend;
- (7) History of suicidal behavior by family members and close friends;
- (8) Any reported observations of the transporting officer, court, transferring agency, or similar individuals regarding the inmate's potential suicidal risk.
- 12) Whether MDC Qualified Mental Health Professionals complete all assessments, pursuant to generally accepted correctional standards of care.
- 13) Whether MDC Qualified Mental Health Professionals perform in-person mental health assessments no later than one working day following notification of any adverse triggering event (*i.e.*, any suicide attempt, any suicide ideation, and any aggression to self-resulting in injury).
- 14) Whether MDC Mental Health Staff conduct in-person assessments of inmates before placing them on suicide watch, clinical seclusion, or segregation and on regular intervals thereafter, as clinically appropriate and defined by MDC policy.
- 15) Whether MDC houses seriously mentally ill inmates in general population without a written evaluation. [*Doc. No. 106, p. 15*].

- 16) Whether MDC notifies its inmates, orally and in writing, that MDC provides mental health services. *[Doc. No. 256, III(F)(3)]*.
- 17) Whether MDC notifies all residents of any area intended to provide mental health services, orally and in writing, of their rights and of the methods available to initiate a grievance regarding the possible violation of their rights. *[Doc. No. 256, III(F)(3)]*.

B. Treatment Plan

- 1) Whether Defendants provide treatment plans consistent with prevailing professional standards for those inmates requiring a treatment plan.
 - a. Whether treatment plans for inmates in specialized mental health units are designed by an appropriate treatment team; and
 - b. Whether the plans are reviewed periodically, ordinarily at least every 90 days, and at the request of the resident.
- 2) Whether MDC's policies and procedures ensure that adequate and timely treatment for inmates are continued and further developed for inmates whose assessments reveal serious mental health needs and/or suicidal ideation, including timely and appropriate referrals for specialty care and visits with Qualified Mental Health Professionals, as clinically appropriate. *[Doc. No. 256, III(I)]*.

- 3) Whether MDC's treatment plans adequately address inmates' serious mental health needs and whether the plans contain interventions specifically tailored to the inmates' diagnoses and problems. *[Doc. No. 256, III(I)]*.
- 4) Whether MDC makes available appropriate therapy services by a licensed mental health provider where medically necessary for inmates with serious mental health needs as ordered by their attending psychiatrist.
- 5) Whether MDC completes mental health evaluations as part of the disciplinary process and can demonstrate that the hearing officer incorporates those recommendations into the disciplinary process for determining whether an inmate's actions should be excused and, if not, for mitigation of sanctions if the inmate's behaviors were a result of a mental or developmental disability. *[Doc. No. 256, IV(A)(1)]*.
- 6) Whether MDC implemented an adequate scheduling system to ensure that mental health professionals assess inmates with mental illness as clinically appropriate, regardless of whether the inmate is prescribed medications. *[Doc. No. 256, III(I)]*.
- 7) Whether MDC inmates have the opportunity to participate meaningfully in the development of a treatment plan. *[Doc. No.*

256, III(I)].

- 8) Whether MDC inmates receive appropriate psychotropic medications in a timely manner.
- 9) Whether MDC's use of psychotropic medications is reviewed by a Qualified Mental Health Professional on a regular, timely basis.
- 10) Whether MDC properly monitors and timely adjusts medications.
- 11) Whether MDC has established standards for the frequency of review and associated charting of psychotropic medication.
- 12) Whether a psychiatrist personally assesses every MDC inmate on psychiatric medication at least once every thirty (days. [*Doc. No. 256, III(C)*].
 - a. With what frequency should a psychiatrist personally assess every MDC inmate on psychiatric medication who is not seriously mentally ill.
 - b. With what frequency should a psychiatrist personally assess every seriously mentally ill inmate.
- 13) Whether MDC's treatment of suicidal inmates involves more than segregation and close supervision (*i.e.*, providing psychiatric therapy, regular counseling sessions, and follow-up care).
- 14) Whether MDC has housed MDC inmates on the PSU caseload outside of the MDC facility when the inmate has not requested the

placement.

- 15) Whether MDC has housed MDC inmates on the PSU caseload, without the approval of a psychiatrist or psychologist. [*Doc. No. 256, IV(A)*].
- 16) Whether Defendants have developed and implemented adequate formal procedures for seeking psychiatric hospitalization or other appropriate residential mental health care for residents who need and would benefit from such care, and who are eligible for such placement, consistent with the court imposed conditions of their confinement; whether Defendants established formal policies and procedures requiring the initiation of civil commitment proceedings whenever an individual diagnosed as having a mental or developmental disorder requests placement in a residential treatment or evaluation facility, assuming the court imposed conditions of confinement are consistent with such placement; and whether only a licensed and qualified psychiatrist makes the decision not to initiate civil commitment proceedings on behalf of any resident who requests placement in a psychiatric hospital or other residential treatment or evaluation facility.
- 17) Whether Defendants have developed and implemented adequate formal procedures for seeking psychiatric hospitalization or other

appropriate residential mental health care for inmates who need and would benefit from such care, and who are eligible for such placement, consistent with the court imposed conditions of their confinement. [*Doc. No. 256, III(M)*].

- a. Whether MDC has sent an inmate to a psychiatric hospital or other appropriate residential mental health care for inmates who need and would benefit from such care, and who are eligible for such placement, consistent with the court imposed conditions of their confinement.
- b. Whether MDC has the realistic option of sending an inmate to a psychiatric hospital or other appropriate residential mental health care for inmates who need and would benefit from such care, and who are eligible for such placement, consistent with the court imposed conditions of their confinement.

C. Suicide Precautions

- 1) Whether MDC's suicide prevention policies, procedures, and practices include provisions for constant direct supervision of actively suicidal inmates, close supervision of special needs inmates with lower levels of risk (*e.g.*, 15 minute checks), and follow-up assessments after the suicide watch is discontinued.

- 2) Whether MDC inmates on suicide watch are monitored by security with constant direct supervision until a Qualified Mental Health Professional conducts a suicide risk assessment, determines the degree of risk, and specifies the appropriate degree of supervision.
- 3) Whether MDC security staff provide the amount of supervision specified by a Qualified Mental Health Professional and accurately document their well-being checks on forms that do not have pre-printed times.
- 4) Whether MDC follows its policy of having a psychiatrist or psychologist evaluate all inmates placed on suicide precautions before they are removed from suicide watch, and whether MDC assures that its policies are followed.
- 5) Whether MDC conducts all follow-up assessments on all inmates discharged from suicide watch.
- 6) Whether MDC's policies and procedures for suicide precautions set forth the conditions of the suicide watch, including a policy requiring an individual clinical determination of allowable clothing, property, and utensils.
- 7) Whether MDC's policies and procedures for suicide precautions prohibit a revision of the conditions of suicide watch except upon the written instruction of a Qualified Mental Health Professional,

under emergent circumstances, or when security considerations require.

- 8) Whether MDC has developed and implemented appropriate policies for the housing of suicidal inmates.
- 9) Whether MDC assures that its policies and procedures in paragraphs 1-8 are followed.

D. Suicide Prevention Training Program

- 1) Whether MDC's suicide prevention training program includes the following topics:
 - a. suicide prevention policies and procedures;
 - b. analysis of facility environments and why they may contribute to suicidal behavior;
 - c. potential predisposing factors to suicide;
 - d. high-risk suicide periods;
 - e. warning signs and symptoms of suicidal behavior;
 - f. case studies of recent suicides and serious suicide attempts;
 - g. differentiating suicidal and self-injurious behavior;
 - h. mock demonstrations regarding the proper response to a suicide attempt; and
 - i. the proper use of emergency equipment.
- 2) Whether all medical and mental health staffs are trained on the

suicide screening portion of the mental health intake form and medical intake tool.

- 3) Whether all MDC staff who work directly with inmates have demonstrated competence in identifying and managing suicidal inmates and have shown comprehension of the training objectives via a performance measure tool such as a pre-and post-test.
- 4) Whether all security, medical, and mental health staff complete a minimum of four hours of in-service training annually regarding issues related to suicide prevention, to include training on updated policies, procedures, and techniques.
- 5) Whether all MDC security staff is certified in cardiopulmonary resuscitation.
- 6) Whether an emergency rescue tool is in close proximity to all housing units.
- 7) Whether all staff coming into regular contact with inmates knows the location of the emergency rescue tool and are trained in its use.

E. Use of Clinical Restraints

- 1) Whether MDC policy requires written approval by a Qualified Medical or Mental Health Professional before the use of four point restraints on inmates with mental health needs or requiring suicide precautions, unless emergency security concerns dictate otherwise.

[Doc. No. 256, III (N)&(I)].

- 2) Whether the MDC policy requires restrained inmates with mental health needs are monitored at least every 15 minutes by security staff to assess their physical condition. *[Doc. No. 256, III (N)&(I)].*
- 3) Whether the MDC policy requires Qualified Medical or Mental Health staff to complete documentation on the use of restraints, including the basis for and duration of the use of restraints and the performance and results of welfare checks on such restrained inmates. *[Doc. No. 256, III (N)&(I)].*
- 4) Whether MDC follows its clinical restraint policies. *[Doc. No. 256, III (N)&(I)].*

F. Use of Security Four Point Restraints

- 1) Whether MDC ensures that, in the event an emergency results in a four point restraint of an individual identified as having a psychiatric, neuropsychological or developmental disorder, a Qualified Mental Health professional is notified immediately and personally assesses the appropriateness of the restraint and designs a plan to safely end the restraint as soon as possible.

G. Basic Mental Health Training

- 1) Whether MDC provides adequate pre-service and annual in-service basic training to Qualified Medical and Mental Health Staff and

security staff that addresses mental health needs. MDC will provide no less than forty (40) hours of specialized training. *[Doc. No. 256, III (L)]*.

- 2) Whether MDC provides adequate specialized training for all security staff working on specialized mental health units.

H. Mental Health Staffing

- 1) Whether the caseload for psychiatrists treating MDC inmates exceeds 100 residents per FTE. *[Doc. No. 256, III(C)]*.
 - a. What caseload allows psychiatrists treating MDC inmates to provide for adequate access to psychiatric care for inmates in need of such treatment.
 - b. Whether the current caseload for psychiatrists treating inmates provides for adequate access to psychiatric care for inmates in need of such treatment.
- 2) Whether MDC's mental health staffing is sufficient to provide all safety precautions (referencing suicide prevention and planned use of force), treatment, and services required by the Court's orders.
- 3) Whether MDC provides adequate care for inmates' serious mental health needs.
- 4) Whether MDC's mental health staffing is sufficient to provide adequate care for inmates' serious mental health needs, consistent

with generally accepted correctional mental health standards of care.

- 5) Whether MDC annually reviews staffing patterns based on data of time frames in which staff have completed necessary functions such as response to sick call requests, initial assessments, follow up contacts, and other essential clinical processes during the past year.
- 6) Whether there is evidence that MDC addressed staffing needs whenever new programming was initiated.

I. Quality Assurance/Improvement [*Doc. No. 256, III(K)*].

- 1) Whether MDC developed and implemented policies and procedures that create an adequate quality management system to review suicide and self-injurious behaviors, morbidity and mortality and implementation of its mental health policies and procedures and implemented appropriate corrective action to prevent or minimize future harm to inmates.
- 2) Whether MDC developed and implemented a Suicide Prevention Committee that reviews individual and system data about triggers and thresholds, and determines whether these data indicate trends either for individuals or for the adequacy of treatment and suicide prevention overall.

- 3) Whether MDC's Quality Improvement Committee:
 - a. Includes the Medical Director, the Psychiatric and Behavioral Health Directors, related clinical disciplines, Jail Director or the Assistant Chief of Operations, and the Health Services Administrator;
 - b. Conducts analyses of the mental health processes and makes recommendations on changes and corrective actions;
 - c. Provides oversight of the implementation of mental health policies, procedures, guidelines and support plans;
 - d. Reviews policies, training, and staffing levels;
 - e. Monitors implementation of recommendations and corrective actions;
 - f. Reports its findings and recommendations to appropriate County officials periodically; and
 - g. Refers appropriate incidents to the Morbidity/Mortality Committee for review, as necessary.

- 4) Whether MDC's Morbidity/Mortality Committee reviews suicides, serious suicide attempts, all other deaths of people committed to the custody of the MDC, and other sentinel events occurring at MDC in order to improve care on a jail-wide basis.
 - a. Whether MDC's Morbidity and Mortality Review

- Committee conducts an interdisciplinary review, consisting of members of the correctional, medical, and mental health staffs, of all deaths of people housed at MDC, serious suicide attempts and other sentinel events;
- b. Whether MDC's Morbidity and Mortality Review Committee's inquiry includes:
 - (1) circumstances surrounding the incident;
 - (2) facility procedures relevant to the incident;
 - c. All relevant training received by involved staff;
 - d. Pertinent medical and mental health services/reports involving the victim;
 - e. Possible precipitating factors leading to the event;
 - f. Recommendations, if any, for changes to policy, training, physical plant, medical or mental health services, and operational procedures; and
 - g. Tracking of whether MDC implements recommendations and, if so, when.
- 5) Whether the review team, when appropriate, develops a written plan (and timetable) to address areas that require corrective action.
 - 6) Whether MDC's Mortality Committee or Suicide Prevention Committee (for review of morbidity only) conducts a preliminary

mortality or morbidity review within 30 days of each suicide or serious suicide attempt (*e.g.*, those incidents requiring hospitalization for medical treatment).

- 7) Whether Mortality Committee or Suicide Prevention Committee's preliminary report of any mortality review is completed within 30 days of each suicide or serious suicide attempt.
- 8) Whether MDC completes a final mortality review report within 30 days after the pathological examinations are complete.

J. Other Matters

- 1) Whether any individual who has been identified as having a psychiatric, neuropsychological or developmental disorder who was subjected to a Taser, pepper gas, mace or other chemical agent is assessed by a mental health professional and the circumstances of the event is included in the resident's mental health file.
- 2) Whether Defendants have developed an adequate plan to implement an effective jail diversion program for persons with psychiatric or developmental disabilities. [*Doc. No. 319 at 6 ¶ 4*].
- 3) Whether Defendants developed, in consultation with The Court's Mental Health Expert, a plan for the provision of specialized mental health treatment for both female and male residents who are segregated. May 22, 2013 "Order Resolving Order to Show

Cause,” *[Doc. No. 1004]*.

K. Constitutionally adequate mental health care

- 1) Whether the mental health care provided by MDC to its inmates evidences repeated examples of negligent acts;
- 2) Whether the conduct of MDC mental health staff effectively denies inmates access to adequate mental health care;
- 3) Whether there are systematic deficiencies in staffing, facilities, equipment, or procedures; and
- 4) Whether the inmate population is effectively denied access to adequate mental health care.

L. Americans with Disabilities Act

- 1) Whether the Defendants have made the modifications to their policies, procedures and practices that are necessary to provide to sub class members mental health care which is adequate.
- 2) Whether sufficient communication occurs between MDC administration and treating mental health care professionals regarding an inmate's significant mental health needs that must be considered in classification and housing decisions in order to preserve the health and safety of that inmate, other inmates, or staff;
- 3) Whether MDC security staff is adequately advised of inmates'

special mental health needs that may affect housing, work, program assignments, disciplinary measures, and admissions to and transfers from institutions.

- 4) Whether mental health care and security staff communicate sufficiently about inmates with special needs conditions.
- 5) Whether MDC follows a proactive program which provides care for special needs patients who require close mental health supervision or multidisciplinary care.
- 6) Whether individual mental health treatment plans are developed by a psychiatrist or other qualified clinician at the time the condition is identified and updated when warranted.
- 7) Whether the mental health treatment plan includes, at a minimum:
 - a. The frequency of follow-up for mental health evaluation and adjustment of treatment modality;
 - b. The type and frequency of diagnostic testing and therapeutic regimens; and
 - c. When appropriate, instructions about diet, exercise, adaptation to the correctional environment, and medication.

7. The Court's mental health expert will conduct the Check-Out Audit for the provision of mental health care after (i) the Court makes an initial finding that defendants are in substantial compliance for all subcategories pertaining to mental health care and (ii) defendants'

self-monitoring demonstrates substantial compliance for a period of time determined by the Court. After review of the Defendants' self-monitoring and self-reporting and subsequent Check-Out Audit, the Court's mental health expert will make findings regarding compliance, partial compliance or non-compliance and submit a copy of his or her proposed findings to the Court and provide copies to all counsel. The Court will then make a finding as to whether Defendants are in sustained substantial compliance with the provisions of the Check-Out Audit Agreement.

8. If the Check-Out Audit reflects that the domain is not in substantial compliance (due to failure to accomplish the tasks described in this Agreement), The Court's Mental Health Expert will identify the deficiency and provide Defendants with specific corrective action which Defendants must take to obtain substantial compliance. Defendants may propose alternative remedial action to obtain substantial compliance which must be approved by the Court's medical expert. Defendants will have a period of 90 days to cure the deficiency, unless Defendants provide notice that more time is needed, as set forth in the Settlement Agreement.

9. If the Court determines that the domain is not in sustained substantial compliance, the Court will set an additional period for self-monitoring, after which and the Court's mental health expert will conduct another Check-Out Audit.

10. The parties understand and agree that the terms and conditions set forth in the Settlement Agreement to which this Agreement is attached are incorporated herein.

IT IS SO ORDERED.

The Honorable James A. Parker
SENIOR UNITED STATES DISTRICT JUDGE

APPROVED:

Randy Autio
Attorney for County Defendants

Luis Robles
Marcus J. Rael, Jr.
Attorney for County Defendants

Mark Baker
Attorney for Plaintiffs

Jeffrey L. Baker
Attorney for County Defendants

Mark H. Donatelli
Attorney for Plaintiffs

Peter Cubra
Attorney for Plaintiff-Intervenors

Zachary A. Ives
Attorney for Plaintiffs

Nancy L. Simmons
Attorney for Plaintiff-Intervenors

The Honorable Alan Torgerson
Special Master

Julie Morgas Baca
Bernalillo County Manager

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

JIMMY (BILLY) MCCLENDON, et al.,

Plaintiffs,

vs.

No. CV 95-24 JAP/KBM

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.

**CHECK-OUT AUDIT AGREEMENT No. 3:
THE CONDITIONS OF CONFINEMENT AT THE
BERNALILLO COUNTY METROPOLITAN DETENTION CENTER**

1. The subcategories covered in Check-Out Audit Agreement No. 3 (*hereinafter* referred to as the “Agreement”) include all conditions of confinement except for the provision of medical and mental health services.

2. This Agreement provides definitive, specific, and measurable tasks to be accomplished in order to achieve substantial compliance.

3. With respect to the conditions of confinement, this Agreement is comprehensive.

Thus, the parties understand and agree that this Agreement incorporates (but does not supersede) all

extant orders and agreements. The expert's review will be governed solely by the Settlement Agreement and this Check-Out Audit Agreement.

4. This Agreement sets forth, area by area, the scope of the check-out audit for the conditions of confinement at MDC only.

5. The parties agree that the Court's jail operations expert will review the conditions of confinement at MDC as set forth in paragraph 6 of this Agreement.

6. The Court's jail operations expert will make findings of fact which address the subcategories listed below:

A. Population Management

- 1) Whether MDC has created an Emergency Population Management Plan in cooperation with Criminal Justice Review Commission (CJRC) to ensure that the population at MDC remains at or under 1,950. [*Doc. No. 1161, pp. 6-7, para. 2(q)*].
- 2) Whether the Defendants provide what is necessary to obtain the appointment of one or more pro tem state judges who will have the authority and responsibility to: a) utilize a "judicial classification system" to evaluate the classification status of inmates; b) process probation and parole violators as expeditiously as possible; c) handle failure to appear warrants more expeditiously; d) issue orders to the Department of Corrections (DOC) to transport inmates to the local DOC facility for transport to court; and e) consider and implement

other measures consistent with the judgments and sentences to reduce the inmate population. *[Doc. No. 315, p. 4].*

- 3) Whether the Defendants provide direction to law enforcement officials to issue citations, where appropriate, and to use the “walk through procedures,” rather than incarcerating individuals, where appropriate. *[Doc. No. 319, p. 5, para. 1].*
- 4) Whether the Defendants have developed an adequate plan to include persons who do not have both a permanent address and a telephone number in the Community Custody Program. *[Doc. No. 319, p. 6, para. 3].*
- 5) Whether the Defendants operate a medical detox facility and alcohol treatment facility within the jail system. *[Doc No. 255 p. 4, para. 6].*
- 6) Whether the Defendants have participated in developing an adequate plan to expand the program for early resolution of criminal cases. *[Doc. No. 319, p. 7, para. 5].*
- 7) Whether the Defendants are continuing to use all appropriate population management tools in effect in 2002. *[Doc. No. 361, p. 2, para. 8].*
- 8) Whether the County has hired a full-time employee or contractor to monitor measures for the reduction of the inmate population at the MDC. *[Doc. No. 1004, p. 3, para. 1(i)].*

B. Use of Force by Security Staff

1) Whether MDC has developed and effectively implements comprehensive and contemporary policies regarding the appropriate use of force, including the following areas:

- a. restraint devices; *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;
- b. restraint and control (defensive tactics); *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;
- c. inflammatory and chemical agents; *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;

(1) Whether MDC implements a policy regarding the use of inflammatory agents to assist with the forced medication of seriously mentally and medically ill inmates which meets generally accepted correctional standards.

- d. Taser CEW; *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;

(1) Whether MDC implements a policy regarding the use of a Taser CEW to assist with the forced medication of seriously mentally and medically ill inmates which meet generally accepted correctional standards.

- e. less-lethal munitions and distraction devices; *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;

- f. restraint chair; *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;
- (1) Whether MDC only uses the restraint chair in a fashion consistent with the manufacturer's recommendations; *[Doc. No. 256, pp. 14-15, para. III(N)(3)]*;
 - (2) Whether MDC prohibits the use of metal restraints, including handcuffs unless the inmate has broken free of the chair's soft restraints; *[Doc. No. 256, pp. 14-15, para. III(N)(3)]*;
 - (3) Whether MDC prohibits the placement of inmates in the restraint chair, hand-cuffed or otherwise, restrained behind the back of the chair; *[Doc. No. 256, pp. 14-15, para. III(N)(3)]*;
 - (4) Whether MDC requires the prior authorization by a shift supervisor before an inmate is placed in a restraint chair; *[Doc. No. 256, pp. 14-15, para. III(N)(3)]*;
 - (5) Whether MDC requires the periodic check of a restrained inmate's wrists, preferably every 20 minutes; *[Doc. No. 256, pp. 14-15, para. III(N)(3)]*;
 - (6) Whether MDC requires written reports regarding use

of a restraint chair; [*Doc. No. 256, pp. 14-15, para. III(N)(3)*];

(7) Whether MDC requires the preparation of a written report every time that security staff places an inmate in a restraint chair; [*Doc. No. 256, pp. 14-15, para. III(N)(3)*]; and

(8) Whether the shift supervisor or his designee must investigate modification to the restraint chair and alternative forms of restraint; [*Doc. No. 256, pp. 14-15, para. III(N)(3)*].

g. firearms (deadly force); [*Doc. No. 1161, p. 5, para. 2(f)&(g)*].

2) Whether MDC's use of force policies address the following impermissible uses of force and whether the MDC effectively implements such policies:

a. use of force as a first response to verbal insults or inmate verbal taunts;

b. use of force as a first response to inmates' failure to follow instructions where there is no risk of harm to the safety of the institution, inmates, or staff, unless MDC security staff has attempted a hierarchy of nonphysical alternatives that are documented;

- c. use of force as punishment, discipline, or retaliation;
 - d. use of force against an inmate after the inmate has ceased to offer resistance and is under control;
 - e. use of choke holds on an inmate;
 - f. use of unnecessary or excessive force;
 - g. use of canines (dogs) for use of force purposes against any inmate; and
 - h. use of force before using confrontation avoidance techniques and other alternatives to the use of force, when the circumstances permit the use of such techniques and alternatives. *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;
- 3) Whether MDC policies require the presence of a unit supervisor during all planned uses of force and whether MDC effectively implements these policies.
- 4) Whether MDC has developed and effectively implements a policy to ensure that staff adequately and promptly reports all uses of force, including the use of the restraint chair. *[Doc. No. 1161, p. 5, para. 2(h)] & [Doc. No. 256, pp. 13-15, para. III(N)(1)&(3)]*.
- 5) Whether MDC had adopted and effectively implements a policy to ensure that use of force reports will:
- a. be written in specific terms in order to capture the details of

the incident;

- b. state whether staff attempted confrontation avoidance techniques or other alternatives to the use of force before using force and if not, include an explanation of the reasons why staff did not attempt to use such techniques or alternatives;
- c. contain an accurate, detailed account of the events leading to the use of force incident;
- d. include a description of the weapon(s) or instrument(s) of restraint, if any, and the manner in which it was used;
- e. be accompanied with the inmate disciplinary report that prompted the use of force incident, if applicable;
- f. state the nature and extent of injuries sustained both by the inmate and staff member;
- g. contain the date and time medical attention was actually provided;
- h. describe, in factual terms, the type and amount of force used and precise actions taken in a particular incident and avoid use of “boiler plate” descriptions for describing force, such as, “inmate taken to the ground with the force that was necessary”; and

- i. state whether the planned or controlled use of force was video recorded and, if it was not, include an explanation of why it was not.
- 6) Whether MDC staff consistently video record planned or controlled uses of force in accordance with MDC policies. [*Doc. No. 1161, p. 5, para. 2(h)*].
- 7) Whether MDC has developed and effectively implements a system to track all incidents of use of force that, at a minimum, includes the following information:
 - a. a tracking number;
 - b. the inmate(s) name;
 - c. housing assignment;
 - d. date;
 - e. type of incident;
 - f. injuries (if applicable);
 - g. if medical care is provided;
 - h. primary and secondary staff involved;
 - i. reviewing supervisor;
 - j. external reviews and results (if applicable);
 - k. remedy taken (if appropriate); and
 - l. administrative sign-off.

- 8) Whether MDC has adopted and effectively implements policies to ensure that, as part of a use of force incident package, security staff take photographs of any and all reported injuries sustained by inmates.
 - a. Whether MDC security staff promptly takes photographs following a use of force incident.
 - b. Whether the photographs become evidence and are made part of the use of force package and, if applicable, used for investigatory purposes.
- 9) Whether MDC has adopted and effectively implements policies to ensure that management reviews use of force reports and inmate grievances alleging excessive or inappropriate uses of force.
- 10) Whether MDC has adopted and effectively implements policies to ensure prompt administrative reviews of use of force reports.
 - a. Whether such reviews include a case-by-case review of individual incidents of use of force as well as a more systemic review in order to identify patterns of incidents.
 - b. Whether MDC incorporates such information into quality management practices and takes necessary corrective action.
- 11) Whether MDC has established and effectively implements a system for referring for investigation certain use of force incidents, including

but not limited to those involving:

- a. injuries that are extensive or serious;
- b. injuries involving fractures or head trauma;
- c. injuries of a suspicious nature (including black eyes, broken teeth, injuries to the genitals, etc.);
- d. injuries that require treatment at outside hospitals; and
- e. reports of events by staff and inmates which are inconsistent.

12) Whether MDC has adopted and effectively implements policies to ensure that inmates may report allegations of the use of excessive force verbally to any MDC staff member, who will reduce such reports to writing.

13) Where there is evidence of staff misconduct related to inappropriate or unnecessary force against inmates, whether MDC initiates appropriate personnel actions and systemic remedies, as appropriate.

a. Whether MDC appropriately disciplines any correctional officer found to have:

- (1) engaged in the use of unnecessary or excessive force;
- (2) failed to report or report accurately the use of force;
- (3) retaliated against an inmate or other staff member for reporting the use of excessive force; or
- (4) interfered or failed to cooperate with an internal

investigation regarding use of force.

- 14) Whether MDC developed and effectively implements accountability policies for the effective and accurate maintenance, inventory and assignment of inflammatory agents, chemical agents, less-lethal munitions, distraction devices, firearms, and other security equipment.
- 15) Use of Force Training; [*Doc. No. 1161, p. 5, para. 2(f)*]:
 - a. Whether MDC developed and employs an effective and comprehensive training program in the appropriate use of force.
 - b. Whether MDC ensures that correctional officers receive adequate training in MDC's use of force policies.
 - c. Whether MDC ensures that correctional officers receive adequate training in the following areas:
 - (1) use of force;
 - (2) confrontation avoidance techniques;
 - (3) the use of restraints;
 - (4) restraint and control techniques (defensive tactics);
 - (5) inflammatory and chemical agents;
 - (6) electronic control devices (Tasers);
 - (7) less-lethal munitions (if applicable);

- (8) distraction devices (if applicable);
 - (9) firearms (if applicable);
 - (10) documenting and reporting the use of force; and
 - (11) the MDC's policy regarding discipline for violations of policies related to the use of force.
- d. Whether MDC ensures that correctional officers receive pre-service and in-service training on reporting use of force and completing use of force reports.
- 16) Whether MDC ensures that incident reports, use of force reports, and inmate grievances are screened for allegations of staff misconduct and, if the incident or allegation meets established criteria, that it is referred for investigation.
- 17) Whether MDC established and effectively implements an "Early Warning System (EWS)" that will document and track correctional officers who regularly employ force on inmates and any complaints related to the excessive use of force.
- a. Whether MDC's EWS protocol includes the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit.
 - b. Whether MDC effectively uses the EWS as a tool for

correcting inappropriate staff behavior before it escalates to more serious misconduct.

- c. Whether the EWS alerts MDC administration to any potential need for retraining, problematic policies, or supervision lapses.
- d. Whether all appropriate MDC leadership, supervisors, and investigative staff have access to EWS information and are able to monitor the occurrences.
- e. Whether MDC's EWS allows MDC administration sufficient information to improve quality management practices, identify patterns and trends, and take appropriate corrective action both on an individual and systemic level.

C. Inmate Discipline [*Doc. No. 1161, p. 4, para. 2(c-e)*]

- 1) Whether MDC maintains and effectively implements policies and procedures for a formal disciplinary process, including:
 - a. timely issuance of written disciplinary citations, administrative review and disciplinary reports for alleged rule violations, in accordance with generally accepted correctional standards; and
 - b. a prohibition of the use of behavior modification programs, discipline, and punishment, unless permitted by MDC's

written inmate discipline policies. *[Doc. No. 1161, p. 4, para. 2(d)]*.

- 2) Whether MDC ensures that disciplinary charges against inmates with a mental or developmental disability are reviewed by a Qualified Mental Health Professional:
 - a. Whether the Qualified Mental Health Professional determines the extent to which the charge was related to a mental or developmental disability; and
 - b. Whether the Qualified Mental Health Professional communicates his or her finding to MDC to ensure that inmates who commit infractions resulting from a mental or developmental disability are not punished for behavior caused by a mental or developmental disability. *[Doc. No. 256, IV(A)(1)]*.
- 3) Whether MDC has adopted and effectively implements written policies for the use of disciplinary measures with regard to inmates with a mental or developmental disability (including inmates exhibiting recognizable signs or symptoms of mental or developmental disability) including the following:
 - a. Whether MDC staff consults with Qualified Mental Health Staff to determine whether initiating disciplinary procedures

is appropriate for inmates with a mental or developmental disability; and

- b. If a Qualified Mental Health Professional determines the inmates' actions that are the subject of the disciplinary proceedings are symptomatic of a mental or developmental disability, whether MDC mitigates the imposition of discipline.
- 4) Whether MDC ensures that inmate disciplinary hearings are conducted in a reasonably private and secure setting.
 - 5) Whether MDC ensures that all inmates placed in lock down status are timely provided with the protections set forth in MDC's policies and procedures and generally accepted correctional standards.
 - 6) Whether MDC ensures that the disciplinary officer's/board's written record accurately reflects the evidence and discussion from the disciplinary hearing, including any recommendations from a Qualified Mental Health Professional regarding the extent to which disciplinary charges are related to an inmate's mental or developmental disability, or suggestions for minimizing the deleterious effect of disciplinary measures on the inmate.
 - 7) Whether MDC alerts the facility's medical provider when inmates are placed in disciplinary segregation or protective custody.

- 8) Whether a Qualified Mental Health Staff member works with the disciplinary officer or board, as needed, to address the needs of inmates who have a mental or developmental disability.
- 9) Whether MDC provides an adequate number of staff to carry out the duties and responsibilities of the inmate disciplinary system as required by MDC policy and procedure.
- 10) Whether MDC punishes groups of residents for the behavior of individuals and whether lockdowns of living units occur that are not authorized by the jail director or his designees. *[Doc. No. 256.]*
- 11) Whether MDC developed and employs an effective and comprehensive training program on inmate discipline. *[Doc. No. 1161 at p. 5, para. 2(j).]*
- 12) Whether MDC ensures that correctional officers receive adequate training in MDC's policies regarding inmate discipline. *[Doc. No. 1161 at p. 5, para. 2(j).]*

D. Classification

- 1) Whether MDC maintains and effectively implements policies and procedures for an appropriate, objective classification system that separates inmates in housing units by classification levels in order to protect inmates from an unreasonable risk of harm.
- 2) Whether MDC's classification system considers an inmate's security

level, severity of current charges, types of prior commitments, suicide risk, history of escape attempts, history of violence, and special needs.

- 3) Whether MDC ensures that classification staff has sufficient access to current information regarding cell availability throughout the facility.
- 4) Whether MDC provides adequate training and access to all correctional officer supervisors on the full capabilities of MDC's classification system.
- 5) Whether MDC provides ongoing internal and external review and validation of its inmate classification system to ensure its reliability and objectivity.
- 6) Whether MDC ensures that inmates requiring segregation who are high risk, security threats, seriously mentally ill, disciplinary, or reclassification are not double-celled, unless those inmates have been determined to be compatible using a reliable objective classification tool. *[Doc. No. 1161, p. 64, para. 2(m)]*.
- 7) Whether MDC ensures that segregation inmates who are in protective custody and new inmates are not double celled, unless the inmates have first been determined to be low risk and compatible using a reliable classification tool. *[Doc. No. 1161, p. 64, para. 2(m)]*.
- 8) Whether MDC ensures that inmates who have committed or been

charged with acts of violence are not housed with inmates who have not committed or been charged with such acts by using a pre-classification triage system as recommended by the Department of Justice National Institute of Corrections (NIC). *[Doc. No. 1161, p. 64, para. 2(n)]*.

- 9) Whether MDC ensures that inmates who have not yet been classified are not housed in the same pod as inmates who require segregation, as recommended by the NIC. *[Doc. No. 1161, p. 64, para. 2(o)]*.

E. Inmate Grievance Procedure

- 1) Whether MDC has adopted and effectively implements policies and procedures to ensure inmates have access to an adequate grievance process and to ensure that grievances may be accessed and filed confidentially, without requiring the intervention of a correctional officer, in accordance with generally accepted correctional standards.
- 2) Whether MDC has adopted and effectively implements policies to ensure that the grievances receive appropriate follow-up, including, providing a timely written response that explains to the grievant the reason(s) for the outcome and tracking implementation of resolutions.
- 3) Whether MDC ensures that grievance forms are available on all units and are available in Spanish.
- 4) Whether MDC ensures that there is adequate opportunity for illiterate

inmates, inmates who have physical, mental, or cognitive disabilities, and inmates who are not English speakers to access the grievance system.

- 5) Whether a member of MDC management staff reviews the grievance tracking system regularly in order to identify areas of concern and takes adequate corrective action, as needed, to improve its grievance system.
- 6) Whether MDC developed and employs an effective training program regarding inmate grievances. *[Doc. No. 1161 at p. 5, para. 2(j).]*
- 7) Whether MDC ensures that staff receive adequate training in MDC's policies regarding grievances. *[Doc. No. 1161 at p. 5, para. 2(j).]*
- 8) Whether MDC ensures that inmate grievances are screened for allegations of staff misconduct and abuse or mistreatment, if the incident or allegation meets established criteria, are referred for investigation.
- 9) Whether incident reports regarding allegations of staff misconduct and abuse or mistreatment are provided to quality assurance staff and reported on by the quality assurance system to determine if the system of inmate grievance is functioning properly. *[Doc. No. 256.]*

F. Safety and Supervision

- 1) Whether MDC has adopted and effectively implements security and

control-related policies, procedures, and practices, including but not limited to effective training, that will result in a reasonably safe and secure environment for all inmates and staff, in accordance with generally accepted correctional standards.

- 2) Whether MDC has adopted and effectively implements policies, procedures, and practices to ensure the adequate supervision of inmate work areas and trustees, in accordance with generally accepted correctional standards.
- 3) Whether MDC ensures that security staff appropriately monitor inmates to ensure that they are reasonably safe and secure, including but not limited to:
 - a. Whether rounds are conducted with sufficient frequency to provide inmates with reasonable safety.
 - b. Whether MDC provides direct supervision of inmates by posting an adequate number correctional officers inside the day room area of a housing unit to conduct constant surveillance.
 - c. Whether more frequent rounds are conducted for special management inmates who require more intensive supervision for security and safety reasons.
 - d. Whether all security rounds are accurately documented on

forms or logs that do not contain preprinted rounding times.

- 4) Whether MDC ensures that security supervisors conduct daily rounds in the inmate housing units, and document the results of their inspections.
- 5) Whether the number and nature of assaults and altercations indicates that the MDC is providing an environment that is reasonably safe for inmates.

G. Contraband Control

- 1) Whether MDC maintains and effectively implements procedures to prevent inmates from possessing or having access to dangerous contraband, including conducting regular inspections of cells and common areas of the housing units to identify and prevent rule violations by inmates.
- 2) Whether MDC has purchased and uses security equipment that is capable of detecting drugs and other forms of contraband from coming into the facility.
 - a. Whether MDC ensures that all inmates, staff, and visitors are properly screened through the use of MDC's security equipment before entering the secure area of the facility.
 - b. Whether MDC has purchased and uses drug scanning security equipment for the mailroom in order to properly screen all

incoming mail and packages.

- c. Whether MDC maintains in working order sufficient monitoring equipment at the facility, including cameras, alarms, radios (hand held), interior and exterior lighting, x-ray and other screening equipment, and walk-through metal detectors.

H. Housing and Segregation

- 1) Whether MDC ensures that three or more inmates are never housed in a cell designed to house two inmates. [*Doc. No. 1004, p. 1, para. 1(a)*] & [*Doc. No. 1161, p. 6, para. 2(l)*].
- 2) Whether MDC ensures that no fewer than two separate housing units are used for female inmates requiring segregation. (When the population of the MDC allows, MDC may house female inmates of different classifications in one *unit*, so long as MDC separates women with different classifications using security barriers. However, Defendants may only reduce the number of segregation units for female inmates pursuant to a plan approved by Manuel Romero.) [*Doc. No. 1161, pp. 5-6, para. 2(j)*].
- 3) Whether MDC provides inmates housed in segregation one (1) hour out of cell time per day, except in the case of a facility lockdown. [*Doc. No. 989, p. 2, para. 2*], [*Doc. No. 1004, p. 1, para. 1(b-c)*], &

[Doc. No. 1161, p. 4, para. 2(b)].

- 4) Whether MDC developed and effectively implements a consistent method of ensuring that there is adequate, accessible, and verifiable documentation of denial of out of cell time. *[Doc. No. 1161, p. 6, para. 2(l)].*
- 5) Whether MDC developed and employs an effective and comprehensive training program on out of cell time. *[Doc. No. 1161 at p. 5, para. 2(j).]*
- 6) Whether MDC ensures that correctional officers receive adequate training in MDC's policies regarding out of cell time. *[Doc. No. 1161 at p. 5, para. 2(j).]*

I. Sexual Misconduct

- 1) Whether MDC has developed and adequately implements policies, protocols, trainings, and audits consistent with the requirements of the Prison Rape Elimination Act of 2003, 42 U.S.C. § 15601, et seq.
- 2) Whether MDC's policies and protocols adequately address the prevention, detection, reporting, and investigation of sexual abuse, sexual harassment, and sexual touching.
- 3) Whether MDC's policies and protocols adequately address the collection of data regarding sexual abuse (including inmate-on-inmate and staff-on-inmate sexual abuse), sexual harassment, and sexual

touching.

- 4) Whether MDC adequately protects inmates from sexual abuse, sexual harassment, and sexual touching.

J. Internal Investigations [*Doc. No. 256, p. 16, para. IV(B)*]

- 1) Whether MDC maintains and adequately implements comprehensive policies, procedures, and practices for the timely and thorough investigation of alleged staff misconduct, in accordance with generally accepted correctional standards.
- 2) Whether internal investigations are conducted by persons who were not involved in any way in the incident under investigation and who do not have supervisory responsibility for the staff member(s) being investigated.
- 3) Whether MDC ensures that all internal investigations include timely, thorough, and documented interviews of all relevant staff and inmates who were involved in, or witnessed, the incident in question.
- 4) Whether MDC ensures that internal investigation reports include all supporting evidence, such as witness and participant statements, policies and procedures relevant to the incident, physical evidence, video or audio recordings, and relevant logs.
- 5) Whether MDC ensures that all investigatory staff receives pre-service and in-service training on appropriate investigation policies and

procedures, the investigation tracking process, investigatory interviewing techniques, and confidentiality requirements.

- 6) Whether MDC provides all investigators who will be assigned to conduct investigations of use of force and sexual misconduct incidents with specialized training in investigating use of force and sexual misconduct incidents and allegations.
- 7) Whether MDC ensures that the results of each internal investigation are documented in an investigation report.
- 8) Whether MDC administration reviews the investigation reports, along with the underlying documentation, and takes corrective action, including disciplinary action and training, as appropriate.
- 9) Whether MDC adequately implements appropriate remedies based upon the results of internal investigations.
- 10) Whether MDC has a tracking system for all internal investigations.
- 11) Whether Defendants maintain a contract with an outside investigatory entity for conducting investigations of matters which are best investigated by an outside entity.

K. Staffing [*Doc. Nos. 1004 at p. 2, para. 1(h), 1161, p. 6, para. 2(p)*]

- 1) Whether MDC's correctional officer staffing and supervision levels at the facility are adequate to supervise inmates, protect inmates and staff, and allow for the safe operation of the facility, consistent with

generally accepted correctional standards.

- 2) Whether MDC has prepared a written staffing plan, in consultation with Manuel Romero, which requires correctional officer staffing and supervision levels at the facility that are adequate to supervise inmates, protect inmates and staff, and allow for the safe operation of the facility, consistent with generally accepted correctional standards and the Court's November 5, 1996 Order [*Doc. 256*].
- 3) Whether MDC effectively implements the written staffing plan with oversight by Manuel Romero.
- 4) Whether MDC employs adequate numbers of employees in the areas of inmate discipline, inmate grievance, inmate classification, case managers, and CCP.
- 5) Whether MDC has sufficient correctional officer staffing to provide inmates requiring treatment with adequate access to appropriate medical and mental health care by providing timely movement of inmates to medical units, transport of inmates who have been referred for outside specialty care, and escort, if necessary, to Qualified Medical and Mental Health Staff on housing units;

L. Fire and Life Safety

- 1) Whether MDC has a comprehensive fire safety program, which is approved by the fire prevention authority having jurisdiction.

- 2) Whether MDC has developed and implements an adequate evacuation plan for inmates and staff and ensures that comprehensive fire drills are conducted every three months on each shift.
- 3) Whether MDC has adequate fire and life safety equipment, including installation and maintenance of fire alarms and smoke detectors in all housing areas according to applicable fire codes.
- 4) Whether MDC properly maintains and routinely inspects all fire and life safety equipment.
- 5) Whether MDC staff are able to manually unlock all doors (without use of the manual override in the event of an emergency in which the manual override is broken), including in the event of a power outage or smoke buildup where visual examination of keys is generally impossible.
- 6) Whether MDC ensures that combustibles are adequately controlled and eliminates highly flammable materials throughout the facility and inmate living areas (e.g., inmates' use of paper bags as trash receptacles, ripped fire-retardant mattress covers, improvised cell light covers, blankets on cell floors, and improperly stored and labeled flammable liquids and other chemicals).

M. Sanitation and Environmental Conditions

- 1) Whether MDC maintains an adequate written staffing plan and

sufficient staffing levels to provide for adequate maintenance of the facility.

- 2) Whether MDC maintains and adequately implements written housekeeping and sanitation plans to ensure the proper routine cleaning of housing, shower, and medical areas, in accordance with generally accepted correctional standards.
- 3) Whether MDC provides adequate ventilation throughout the facility to ensure that inmates receive an adequate supply of air flow and reasonable levels of heating and cooling.
- 4) Whether MDC ensures adequate lighting in all inmate housing and work areas.
- 5) Whether MDC ensures adequate pest control throughout the housing units, medical units, RDT, and food storage areas.
- 6) Whether MDC has developed and adequately implements policies and procedures for cleaning, handling, storing, and disposing of biohazardous materials, in accordance with generally accepted correctional standards.
- 7) Whether MDC has developed and adequately implements a policy on hazardous materials storage, in accordance with generally accepted correctional standards, and ensures that all MDC staff is properly trained on the procedure.

- 8) Whether MDC ensures the use of cleaning chemicals that sufficiently destroy the pathogens and organisms in biohazard spills.
- 9) Whether MDC has obtained a sufficient amount of stack-a-bunks or boats so that no inmate will have to sleep on the floor.
- 10) Whether MDC has a sufficient supply of towels, blankets, and pillows in stock and in reasonable condition, to provide every inmate with linen, a towel, and a blanket.
- 11) Whether MDC ensures that all inmates have access to needed hygiene supplies
- 12) Whether MDC has an adequate system for storing inmates' personal necessities such as hygiene products.
- 13) Whether MDC ensures adequate control and observation of all housing units, including distribution and collection of razors and cleaning supplies.
- 14) Whether MDC at all times stores in the female housing units sufficient supplies of tampons and/or sanitary pads for female inmates and whether MDC issues the same on request by any inmate.
- 15) Whether MDC implements adequate procedures and processes for the cleaning and sanitizing of inmate mattresses that are in use in all living areas.
- 16) Whether MDC has developed and adequately implements an inmate

indigent policy.

N. Sanitary Laundry Procedures

- 1) Whether MDC has developed and adequately implements policies and procedures for laundry procedures to protect inmates from risk of exposure to communicable disease, in accordance with generally accepted correctional standards.
- 2) Whether MDC ensures that inmates are provided adequate clean clothing, underclothing, and bedding, consistent with generally accepted correctional standards, and that the laundry exchange schedule provides consistent distribution and pickup service to all housing areas.
- 3) Whether MDC trains staff and educates inmates regarding laundry sanitation policies.
- 4) Whether MDC ensures that laundry delivery procedures protect inmates from exposure to communicable diseases by preventing clean laundry from coming into contact with dirty laundry or contaminated surfaces.
- 5) Whether MDC requires inmates to provide all clothing and linens for laundering and prohibit inmates from washing and drying laundry outside the formal procedures.

O. Food Service

- 1) Whether MDC ensures that food service at the facility is operated in a safe and hygienic manner and that foods are served and maintained at safe temperatures.
- 2) Whether MDC ensures that all types of meals (including meals served to inmates requiring medical diets, inmates with food allergies, and inmates with religious diets) provide adequate nutrition.
- 3) Whether MDC ensures that all food service staff, including inmate staff, are adequately trained in food service operations, safe food-handling procedures, and appropriate sanitation.
- 4) Whether MDC ensures that the kitchen is staffed with a sufficient number of appropriately supervised and trained personnel.
- 5) Whether MDC ensures that dishes and utensils, food preparation and storage areas, and vehicles and containers used to transport food are appropriately cleaned and sanitized.
- 6) Whether MDC checks and records, on a regular basis, the temperatures in the refrigerators, coolers, walk-in-refrigerators, the dishwasher water, and all other kitchen equipment with temperature monitors to ensure proper maintenance of food service equipment.

P. Access to Counsel and Legal Materials

- 1) Whether MDC provides inmates with adequate opportunities to use telephones during normal business hours so that they may contact

attorneys.

- 2) Whether MDC ensures that staff members do not interfere with inmates' access to materials pertaining to inmates' legal matters, including but not limited to attorney-client correspondence, discovery, legal research, and pleadings.

Q. Law Library

- 1) Whether MDC's law library meets the applicable standards stated in the American Correctional Association's Standards for Adult Detention Centers.
- 2) Whether MDC's law library is kept reasonably current. [*Doc. Nos. 115 at 1-2, 255, 416; see also Doc. 106 at 18.*]
- 3) Whether MDC follows its policies and procedures pertaining to the delivery of access to its law library. [*Doc. Nos. 115 at 1-2, 255, 416; see also Doc. 106 at 18.*]
- 4) Whether MDC provides inmates with mental or developmental disabilities reasonable accommodations and assistance in order for them to have effective access to the judicial system to challenge the length or conditions of their confinement and in order for them to attack their sentences. [*Doc. No. 256, p. 16, para. IV(C)(1)*].
- 5) Whether MDC provides inmates with mental or developmental disabilities reasonable access to the law library in a reasonable

amount of time. *[Doc. No. 256, p. 17, para. IV(C)(4)].*

- 6) Whether MDC provides inmates with mental or developmental disabilities assistance with the preparation of an initial pleading regarding the length or conditions of confinement or regarding the resident's conviction or sentence. *[Doc. No. 256, p. 17, para. IV(C)(4)].*

R. U.S. Mail Service

- 1) Whether MDC's U.S. mail service policies and practices meet the applicable standards stated in the American Correctional Association's Standards for Adult Detention Centers.
- 2) Whether MDC provides adequate resources to allow indigent inmates to correspond with their family, friends, and his/her attorney.
- 3) Whether MDC promptly delivers U.S. mail to inmates.
- 4) Whether MDC ensures that staff do not read attorney-client correspondence and do not open incoming attorney-correspondence outside the presence of the addressee.

S. Inmate Access to Telephones

- 1) Whether MDC provides its inmates access to telephones which meets the applicable standards stated in the American Correctional Association's Standards for Adult Detention Centers.
- 2) Whether MDC has adequate policies and procedures governing

inmate access to telephones and whether it adequately implements those policies.

- 3) Whether MDC has inmate telephones in the booking area and all housing units and whether it provides inmates with adequate access to those telephones.

T. Inmate Programming (excluding mental health programming)

- 1) Whether MDC's inmate programming (excluding mental health programming) meets the applicable standards stated in the American Correctional Association's Standards for Adult Detention Centers.
- 2) Whether MDC has adequate policies and procedures that address programming and whether they adequately implement those policies and procedures.
- 3) Whether MDC provides adequate resources and opportunities for recreation, exercise, reading, and other activities.

U. Inmate Access to Commissary

- 1) Whether MDC provides its inmates access to commissary which meets the applicable standards stated in the American Correctional Association's Standards for Adult Detention Centers.
- 2) Whether MDC has an adequate policy and procedure that addresses the commissary service and whether it adequately implements that policy and procedure.

- 3) Whether MDC inmates are provided the opportunity to purchase from the commissary store approved items not furnished by the jail.

V. Access to Community Services

- 1) Whether MDC has a full-time benefits manager to assist in securing public benefits for inmates. [*Doc. No. 361, p. 2, para. 10*].

W. Access to Information

- 1) Whether MDC ensures that newly admitted inmates receive information, through an inmate handbook or orientation video, regarding the following areas:
 - a. facility rules and regulations;
 - b. how to report misconduct;
 - c. how to report sexual abuse or assault;
 - d. the process for accessing medical and mental health care;
 - e. emergency procedures;
 - f. rules for sending and receiving mail;
 - g. the visitation process;
 - h. facility schedule;
 - i. the disciplinary process;
 - j. how to seek redress of grievances; and
 - k. a description of the *McClendon* class action and the methods for contacting counsel for the class and subclass.

- 2) Whether MDC ensures that materials and information on facility rules and services are available for inmates who are not literate, inmates who do not speak English, and inmates who have a mental or developmental disability.

X. Competency Evaluations

- 1) Whether the County contracts with a licensed psychologist to provide written competency evaluations to jail residents charged with misdemeanors who are ordered by the Courts to undergo such evaluations. *[Doc. No. 255, p. 4, para. 7]*.
- 2) Whether the County funds a program to provide appropriate court-sanctioned written competency evaluations prepared by a qualified mental health professional whenever the results of such evaluation could result in the release of a resident. *Doc. No. 255, p. 4, para. 7]*.

Y. Supplemental opinions

- 1) Whether the conditions of confinement at MDC evidence repeated examples of acts that put inmates at risk of harm;
- 2) Whether the examples of acts that put inmates at risk of harm disclose a pattern of conduct by MDC security staff that effectively denies inmates an appropriate classification system, appropriate procedural safeguards in the areas of grievances, discipline, classification and segregation, safe conditions of confinement or reasonably sanitary conditions of

confinement;

- 3) Whether there are systematic or gross deficiencies in staffing, facilities, equipment, or procedures; and
- 4) Whether the systematic or gross deficiencies effectively deny the inmate population fairness, safe conditions of confinement or reasonably sanitary conditions of confinement.

Z. Supplemental opinions continued

- 1) Whether adequate communication occurs between MDC administration and treating health care professionals regarding an inmate's significant medical needs and mental health needs that must be considered in classification decisions in order to preserve the health and safety of that inmate, other inmates, and staff;
 - a. Whether MDC security staff is sufficiently advised of inmates' special medical needs and mental health needs that may affect housing, work, program assignments, disciplinary measures, and admissions to and transfers from institutions.
 - b. Whether health care and security staff adequately communicates about inmates with special needs conditions.
- 2) Whether MDC security staff allows inmates the use of medical and dental orthoses, prostheses, and other aids as determined by the responsible physician or dentist.

- a. Whether patients receive and are permitted to retain prescribed aids to impairment.
- b. Where the use of specific aids to impairment is contraindicated for security reasons, whether alternatives are considered so the health needs of the inmate are met.

7. The Court's jail operations expert will conduct six (6) check-out audits regarding the conditions of confinement for the following domains:

A. Domain 3: Group A:

- 1) Fire and Life Safety;
- 2) Sanitation and Environmental Conditions;
- 3) Sanitary Laundry;
- 4) Food Service;
- 5) U.S. Mail Service;
- 6) Inmate Access to Telephones;
- 7) Inmate Access to Commissary;
- 8) Access to Community Services; and
- 9) Competency Evaluations.

B. Domain 4: Group B:

- 1) Inmate Discipline;
- 2) Classification;
- 3) Inmate Grievance Procedure;

- 4) Safety and Supervision;
- 5) Contraband Control;
- 6) Staffing;
- 7) Access to Counsel and Legal Materials;
- 8) Law Library;
- 9) Inmate Programming (excluding mental health programming);
- 10) Access to Information; and
- 11) Supplemental report subcategories as set forth in paragraphs 6(Y) and

6(Z), above.

- C. Domain 5: Population Management
- D. Domain 6: Housing and Segregation
- E. Domain 7: Sexual Misconduct
- F. Domain 8: Use of Force by Security Staff and Internal Investigations.

8. The Court's jail operations expert will conduct the check out audit for each domain after (i) the Court makes an initial finding that defendants are in substantial compliance with all subcategories listed in that domain and (ii) defendants' self-monitoring demonstrates substantial compliance with all of the subcategories in that domain for a period determined by the Court. As to each domain, after review of the Defendants' self-monitoring and self-reporting and subsequent Check-Out Audit, the Court's jail operations expert will make findings regarding compliance, partial compliance or non-compliance and submit a copy of his or her proposed findings to the Court and provide copies to all counsel. The Court will then make a finding as to whether Defendants are in

sustained substantial compliance with the provisions of the Check-Out Audit.

9. If the Check-Out Audit reflects that the domain is not in substantial compliance (due to failure to accomplish the tasks described in this Agreement) , the Court's jail operations expert will identify the deficiency and provide Defendants with specific corrective action which Defendants must take to obtain substantial compliance. Defendants may propose alternative remedial action to obtain substantial compliance which must be approved by the Court's medical expert. Defendants will have a period of 90 days to cure the deficiency, unless Defendants provide notice that more time is needed, as set forth in the Settlement Agreement.

10. If the Court determines that the domain is not in sustained substantial compliance, the Court will set an additional period for self monitoring, after which Manuel Romero will conduct another Check-Out Audit.

11. The parties understand and agree that the terms and conditions set forth in the Settlement Agreement to which this Agreement is attached are incorporated herein.

IT IS SO ORDERED.

The Honorable James A. Parker
SENIOR UNITED STATES DISTRICT JUDGE

APPROVED:

Randy Autio
Attorney for County Defendants

Luis Robles
Marcus J. Rael, Jr.
Attorney for County Defendants

Peter Cubra
Attorney for Plaintiff-Intervenors

Jeffrey L. Baker
Attorney for County Defendants

Mark H. Donatelli
Attorney for Plaintiffs

Mark Baker
Attorney for Plaintiffs

Zachary A. Ives
Attorney for Plaintiffs

Nancy L. Simmons
Attorney for Plaintiff-Intervenors

The Honorable Alan Torgerson
Special Master

Julie Morgas Baca
Bernalillo County Manager

EXHIBIT E

LEGAL NOTICE ABOUT PROPOSED SETTLEMENT

PLEASE READ THIS CAREFULLY. IT MAY AFFECT YOUR RIGHTS.

The United States District Court will hold a hearing to decide whether to approve the proposed settlement of the McClendon class action case. The hearing is scheduled for _____ am/pm on _____, 2016, at the United States Courthouse at 421 Gold Avenue SW, Sixth Floor. The case involves the detention of people at the Metropolitan Detention Center (MDC) by Bernalillo County or City of Albuquerque law enforcement officials, and the conditions within the County jail system. If you are detained in the MDC, you have the right to object to the proposed settlement.

What is the McClendon case about?

Primarily the lawsuit addresses jail conditions, including among other things:

- Excessive use of force by jail staff and other mistreatment by staff
- The disciplinary system
- The grievance system
- Medical services
- Mental health services
- Discrimination based on disability
- Safety issues, including assaults and classification problems

The lawsuit also addresses the arrest practices by County and City law enforcement officials.

The case **does not** involve claims for money damages.

Am I included?

If you are in the MDC, if you have been detained at the MDC in the past, or if you may be detained in the MDC in the future, you are included.

What does the settlement provide?

If the Court approves the settlement, experts in corrections, medical care, and mental health care will review jail conditions. The experts will report to the Court, which will

decide if the conditions in and operation of the MDC have improved enough so that the case against the County must be dismissed. If the case is dismissed, the Court will order the County to continue to prevent overcrowding in the jail and take steps regarding classification and housing.

The proposed settlement would not resolve any claims against the City of Albuquerque. It would only resolve the claims against Bernalillo County.

The proposed settlement would not provide money damages to any person.

What are my options?

If you accept the proposed settlement, you do not need to do anything.

If you object to the proposed settlement, you may either:

1. Mail a written objection to the Clerk of the Court, U.S. District Court, 333 Lomas Blvd NW, Albuquerque NM 87102 by _____ **[60 days from the date of notice, consistent with the Federal Judicial Center's recommendation];** or
2. Explain your objection to the lawyers for the people detained at the MDC. The lawyers will then inform the Court of your objection.

Zach Ives, Esq.
Vanessa Garcia, paralegal
Garcia Ives Nowara
924 Second St NW, Suite A
Albuquerque, NM 87102
phone 505.899.1030

Peter Cubra, Esq.
Kelly Waterfall, Esq.
3500 Comanche NE, Suite H
Albuquerque, NM 87107
phone 505.256.7690

You may call the lawyers free of charge from the phones in the MDC housing units.

How do I get more information?

A notice with more information about the settlement is posted in each housing unit in the MDC and in the MDC law library. The entire settlement agreement is available at the security desk in each housing unit and in the MDC law library. Both the notice with more information and the entire settlement agreement are also available on-line at the Bernalillo County web site [http://www.bernco.gov/\[add full cite\]](http://www.bernco.gov/[add full cite])

If you have questions about the notice or the settlement agreement, please **do not** send them to the Court. Please contact the lawyers and their staff if you have a question.

EXHIBIT F

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

THE PROPOSED SETTLEMENT OF A CLASS ACTION COULD AFFECT YOUR RIGHTS IF YOU ARE NOW, EVER WERE, OR EVER WILL BE DETAINED AT THE METROPOLITAN DETENTION CENTER.

- The class action case involves conditions at the Metropolitan Detention Center or MDC and allegations that the Bernalillo County is violating the rights of inmates. The County does not agree that it is violating the rights of inmates at the MDC.
- If the Court approves the proposed settlement of this case, experts in corrections, medical care, and mental health care will review conditions at the MDC. The experts will report to the Court, which will decide if the conditions in and operation of the MDC have improved enough so that the case against the County must be dismissed. If the case is dismissed, the Court will order the County to continue to prevent overcrowding in the jail and take steps regarding classification and housing.
- **Please read this notice carefully.** Your legal rights may be affected whether you act or don't act.

YOUR LEGAL RIGHTS AND OPTIONS

OBJECT IN WRITING	Write a letter to the Court or the lawyers for the inmates about why you don't like the settlement.
OBJECT IN PERSON	If you are not detained at the time of the settlement approval hearing, you may ask to be heard in court about the fairness of the settlement.
DO NOTHING	If you do not object during the time for objecting, the Court will not consider your views when it decides whether to accept or reject the settlement.

- These rights and options—and the deadlines to exercise them—are explained in this notice.

WHAT THIS NOTICE CONTAINS

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1. What is the purpose of this notice?
2. What is this lawsuit about?
3. Why is this a class action?

Who is part of the settlement? 4

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BASIC INFORMATION

1. What is the purpose of this notice?

The purpose is to give you information about the settlement. You have a right to know about the proposed settlement and your options before the Court decides whether to approve the settlement.

This package explains the lawsuit, the settlement, and your legal rights. The Court in charge of the case is the United States District Court for the District of New Mexico. The case is *McClendon v. City of Albuquerque, et al.*, No. 95-CV-24 JAP.

2. What is this lawsuit about?

This lawsuit addresses a variety of issues regarding jail conditions. Those issues include:

- Mistreatment by jail staff, including excessive use of force and sexual abuse
- Assaults on inmates by other inmates
- Overcrowding
- Classification problems
- Disciplinary system
- Grievance system
- Internal investigation system
- Medical services
- Mental health services
- Discrimination based on disability
- Adequacy of staffing
- Contraband, such as weapons and drugs, in the jail
- Provision of adequate out-of-cell time
- Fire and life safety

- Sanitation and environmental conditions
- Food service
- Access to counsel, legal materials, and law library
- Mail service, including legal mail
- Access to telephones
- Inmate programming
- Access to commissary
- Access to community services
- Access to information
- Competency evaluations

The plaintiffs allege that jail conditions violate the constitutional and statutory rights of the inmates. Bernalillo County denies this.

This is not a lawsuit for money damages. The goal of bringing claims against Bernalillo County is only to improve jail conditions.

The lawsuit also addresses the arrest practices by County and City law enforcement officials. However, the claims about arrest practices are not part of this settlement.

3. Why is this a class action?

In a class action, one or more people called Class Representatives sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members. U.S. District Judge James A. Paker is in charge of this class action.

In the *McClendon* case, there are two different groups of class members—a class and a subclass. The subclass consists of people at MDC who have a mental disability or developmental disability. Only those with a mental disability or developmental disability are members of the sub-class. All other people at the MDC are members of the class.

WHO IS PART OF THE SETTLEMENT?

If you are currently detained the MDC, have ever been detained at the MDC in the past, or might be detained at the MDC in the future, you are part of the settlement. Whether you are a member of the class or subclass depends on whether you have a mental disability or developmental disability, as explained above.

BENEFITS OF THE SETTLEMENT

If the Court approves the settlement, experts in (1) corrections, (2) medical care, and (3) mental health care will review a large variety of different issues regarding jail conditions. The section of this notice called “What is this lawsuit about?” includes a general description of the issues that the experts will review. The check-out audit agreements include a far more detailed list of those issues. Complete copies of all three check-out audit agreements are available at the security desk in each housing unit, in the MDC law library, and on-line at the Bernalillo County web site [http://www.berncoco.gov/\[add full cite\]](http://www.berncoco.gov/[add full cite]).

After reviewing the conditions, each expert will report his findings to the Court. The lawyers for the inmates and the lawyers for the County will have a chance to make arguments and present evidence in response to the experts’ reports. The Court will decide if the conditions in and operation of the MDC have improved enough so that the case against the County must be dismissed. If the case is dismissed, the Court will order the County to continue to prevent overcrowding in the jail and take steps regarding classification and housing. This is a very general description of the process. The settlement agreement includes a far more detailed description the experts’ reviews, including what the County and its lawyers, the lawyers for the inmates, and the Court may do in response to the experts’ reviews. The entire settlement agreement is available at the security desk in each housing unit, in the MDC law library, and on-line at the Bernalillo County web site [http://www.berncoco.gov/\[add full cite\]](http://www.berncoco.gov/[add full cite]).

The proposed settlement would not provide money damages to any person.

The proposed settlement would not resolve any claims against the City of Albuquerque. It would only resolve the claims against Bernalillo County.

THE LAWYERS REPRESENTING YOU

Lawyers for the class

Zach Ives, Esq.
Vanessa Garcia, paralegal
Garcia Ives Nowara
924 Second St NW, Suite A
Albuquerque, NM 87102
phone 505.899.1030

Mark Donatelli, Esq.
Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu LLP
1215 Paseo De Peralta
P.O. Box 8180
Santa Fe, NM 87504

Mark Baker, Esq.
Peifer Hanson & Mullins PA
20 First Plaza, Suite 725
Albuquerque, NM 87102

Lawyers for the subclass

Peter Cubra, Esq.
Kelly Waterfall, Esq.
3500 Comanche NE, Suite H
Albuquerque, NM 87107
phone 505.256.7690

Nancy Simmons, Esq.
120 Girard Blvd. SE
Albuquerque, NM 87106

To contact the lawyers and their staff, you may either:

1. call the listed phone numbers at no cost using the phones in the housing units
2. send a letter to one of the addresses listed above

OBJECTING TO THE SETTLEMENT

If you accept the proposed settlement, you do not need to do anything.

If you object to the proposed settlement in general or if you object to specific parts of the agreement, you may tell the Court or the lawyers for the inmates. If you object, you may communicate your objection by either:

1. Mailing a written objection to the Clerk of the Court, U.S. District Court, 333 Lomas Blvd NW, Albuquerque NM 87102 by _____ **[60 days from the date of first notice, consistent with the Federal Judicial Center's recommendation];**
or

2. Explaining your objection to the lawyers for the people detained at the MDC by _____ **[60 days from the date of first notice]**. The lawyers will then describe your objection to the Court before or during the fairness hearing.

Be sure to include your name, address, telephone number, your signature, and the reasons you object to the settlement.

If you do not submit your objection by [date based on time frame above], the only way you can inform the Court of your objection is to appear in person to address the Court at the fairness hearing.

THE COURT'S FAIRNESS HEARING

The United States District Court will hold a hearing to decide whether to approve the proposed settlement of the *McClendon* class action case. The hearing is scheduled for _____ am/pm on _____, 2016, at the United States Courthouse at 421 Gold Avenue SW, Sixth Floor.

At the hearing, the Court will consider all timely written objections it has received directly, all objections that have been shared with counsel for the inmates, and all objections stated in open court during the hearing.

After considering all objections and analyzing the settlement agreement to determine whether it is fair to the class and subclass, the Court will decide whether to accept the settlement.

GETTING MORE INFORMATION

Complete copies of the settlement agreement, including all three check-out audit agreements, are available:

1. at the security desk in each housing unit;
2. in the MDC law library; and
3. on-line at the Bernalillo County web site [http://www.bernco.gov/\[add full cite\]](http://www.bernco.gov/[add full cite]).

If you have questions, please *do not* send them to the Court. Please contact the lawyers and their staff.