

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

**ELIZABETH LEYBA, NATASHA
APODACA, NANCY ELLIN, MONICA
GARCIA, LUCY M. MARQUEZ, MARK
MILLER, COPPER PERRY, DAVID
SANDOVAL, KRISTI SEIBOLD, RUSSELLA
SERNA, and KIMBERLY WRIGHT,
on their own behalf and on behalf of a class of
similarly situated persons,**

Plaintiffs,

vs.

No. CIV 05 0036 BB/ACT

**SANTA FE COUNTY BOARD OF
COMMISSIONERS; MANAGEMENT
& TRAINING CORPORATION;
SANTA FE COUNTY SHERIFF GREG
SOLANO, in his individual and official
capacities; FORMER SANTA FE COUNTY
SHERIFF RAYMOND L. SISNEROS, in his
individual and official capacities; and KERRY
DIXON, in his individual and official capacities,**

Defendants.

**NOTICE OF PROPOSED SETTLEMENT OF
SANTA FE COUNTY CLASS ACTION STRIP SEARCH CASE**

If you were strip searched at intake and booking at the Santa Fe County Detention Facility before you were arraigned between January 12, 2002 and July 6, 2006, you may be entitled to monetary compensation under a proposed class action settlement.

There is presently pending a lawsuit filed as a class action in the United States District Court, District of New Mexico. The parties have proposed a settlement that, if it receives final approval, after all appeals, will provide that certain persons subject to strip searches at the Santa Fe County Adult Detention Center will receive money. Records of the Santa Fe County Detention Facility show that you were booked into the facility during the relevant time period. To receive monetary compensation in this pending settlement, **you must fill out and mail a claim form by November 6, 2006.**

**IF YOU WISH TO CLAIM MONETARY COMPENSATION,
OBTAIN, FILL OUT AND MAIL THE CLAIM FORM AS SOON
AS POSSIBLE BUT NO LATER THAN NOVEMBER 6, 2006.**

For more information, please read this notice.

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY.
YOU MAY BE ENTITLED TO RECEIVE A PAYMENT.**

There is now pending in the United States District Court, District of New Mexico, an action filed as a class action on behalf of persons allegedly illegally strip searched at the Santa Fe County Detention Facility between January 12, 2002 and July 6, 2006. A Stipulation of Settlement, approved preliminarily by the Court, defines the class included in this settlement as follows:

All pre-arraignment detainees who were subjected to a strip search upon booking and intake to the Santa Fe County Detention Facility during the Class Period (January 12, 2002 through July 6, 2006) without individualized reasonable suspicion that the search would lead to the discovery of contraband or weapons, not including persons arrested or booked on charges involving drugs, weapons or violence, substantially similar to those charges in Exhibit 3 to the Stipulation of Settlement.

You have received this Notice either because records of the Santa Fe County Detention Facility indicate that you may be in the class, or because you contacted the Claims Administrator. Whether or not you qualify as a class member will be based upon the records of the Santa Fe County Detention Facility. If these records do not contain your name and show you to be within the definition of the class, you will not qualify.

This Notice is to inform you that a settlement has been proposed in this action and that, as a potential class member, your rights may be affected by the settlement. This Notice also summarizes the terms and effect of the proposed settlement, what you can do to participate in it, how you may obtain money under the settlement, and what you must do if you choose to exclude yourself from the class.

SUMMARY OF THE CASE

On January 12, 2005, Plaintiffs Elizabeth Leyba, Natasha Apodaca, Nancy Ellin, Monica Garcia, Lucy M. Marquez, Mark Miller, Copper Perry, David Sandoval, Kristi Seibold, Russella Serna, and Kimberly Wright (“Plaintiffs”), on behalf of themselves and all persons similarly situated, filed a complaint in the above-captioned matter against Defendants Management & Training Corporation and Kerry Dixon, in his individual and official capacities (“MTC Defendants”), and Santa Fe County Board of Commissioners, Santa Fe County Sheriff Greg Solano, in his individual and official capacities, and former Santa Fe County Sheriff Raymond L. Sisneros, in his individual and official capacities (“Santa Fe County Defendants”), in which they challenged

certain practices of Defendants including the strip search of certain detainees, and sought damages and declaratory and injunctive relief. Plaintiffs allege that they were unlawfully subjected to strip searches performed pursuant to the policies, practices and customs of Defendants of conducting strip searches of all incoming pre-arraignment detainees. Plaintiffs allege that these strip searches were performed without regard to the nature of the alleged offenses for which Plaintiffs had been arrested, and without Defendants having a reasonable belief that the Plaintiffs so searched possessed weapons or contraband, or that there existed facts supporting a reasonable belief that the searches would produce contraband or weapons.

Plaintiffs sought damages for civil rights violations under 42 U.S.C. § 1983, and for claims arising under the New Mexico Tort Claims Act and New Mexico common law. Plaintiffs additionally sought a judgment declaring that Defendants must cease the activities described herein and enjoining Defendants from any further strip searches without individualized reasonable suspicion. Plaintiffs brought this action on their own behalf and on behalf of a class of similarly situated individuals.

The MTC Defendants contend that the admissions search policies at the Santa Fe County Adult Detention Facility were reasonably related to legitimate penological interests in deterring the introduction of weapons, drugs and other contraband into the detention center. As such, Defendants submit that detention center policies are entitled to deference under the law, and that the policies should not be found to violate the Constitution or any state law. Defendants deny that all of the Plaintiffs were subject to strip searches upon admission to the detention center, and they deny that all pre-arraignment arrestees were strip searched during the period of time in question. Defendants further deny that searches of the Plaintiffs violated any state or federal statutory or common law.

The Santa Fe County Defendants deny any and all liability for their own acts and omissions and deny any liability for the acts and omissions by independent contractor MTC and MTC's employees. The Santa Fe County Defendants contend that Count II fails to state a claim upon which relief can be granted under the New Mexico Tort Claims Act. In addition, Defendant Solano and Defendant Sisneros affirmatively assert that they had no role whatsoever in the formulation or implementation of MTC's strip search policies and have no individual responsibility for any of the allegedly unconstitutional policies, practices or acts of the MTC Defendants, and they also assert qualified immunity as to the violations of 42 U.S.C. § 1983 alleged in the complaint.

In addition, Defendants assert that a class action is inappropriate and that the claim for injunctive relief is moot.

The Parties entered into extensive discovery which included exchange of documents, preparation of and responses to requests for production of documents, and depositions.

SUMMARY OF THE PROPOSED TERMS

A Stipulation of Settlement (“Settlement”) was entered into after intensive negotiations between the parties, conducted with the assistance of a third party mediator. The Parties are requesting that the Court approve the Settlement.

A. Parties to the Settlement.

The Parties to the Settlement are the Plaintiffs, the MTC Defendants, and the Santa Fe County Defendants.

Class Counsel are Mark H. Donatelli, Robert R. Rothstein and John C. Bienvenu of the Law Offices of Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, LLP, 1215 Paseo de Peralta, P.O. Box 8180, Santa Fe, NM 87504-8180.

B. Defendants Do Not Admit Any Liability.

Plaintiffs allege that the acts and/or omissions that are the subject of the claims covered by this action (strip searches) violated various state and federal laws. Defendants deny all allegations of wrongdoing and deny any liability to Plaintiffs or to any other class members. The Parties have agreed that, in order to avoid long and costly litigation, this controversy should be settled pursuant to the terms of the Settlement, subject to approval of the Court.

C. Monetary Terms of the Settlement.

The total settlement fund (not including the separate settlement funds allocated for claims administration expenses, as set forth below), which shall be used to pay all verified claims of Settlement Class Members (“SCMs”), administrative costs and attorneys’ fees, is up to \$8,000,000 (Eight Million Dollars) (“Settlement Fund”). In addition, up to \$500,000.00 will be paid by the Santa Fe County Defendants for all claims administration expenses. Within 30 days of preliminary approval by the United States District Court of the terms of the Stipulation of Settlement, Defendants will deposit the Settlement Fund in an interest-bearing Qualified Settlement Fund. Funds will be distributed to SCMs and their counsel pursuant to an agreed upon Plan of Allocation. If all funds deposited into the Settlement Fund are expended pursuant to the Plan of Allocation, then all interest earned on the Settlement Fund shall inure to the benefit of the Class. The Settlement Fund will be allocated as follows:

- a. Subject to possible reduction in the funds available to SCMs, as provided in Paragraphs 29 and 30 of the Stipulation of Settlement, up to \$5,529,750.00 (plus interest earned on the Settlement Fund, and any additional amounts allocated to the Settlement Fund) will be allocated to pay verified claims, pursuant to the Plan

of Allocation (see below). If the total amount of verified claims exceeds this amount, or the amount reduced as provided in Paragraph 30 of the Settlement, the amount payable to SCMs for each claim shall be reduced proportionately so that the entire available amount in the Settlement Fund is paid out to SCMs. If the total amount paid to SCMs is less than \$5,529,750.00, or some lesser amount pursuant to Paragraph 31 of the Settlement, the balance will be refunded to the Defendants;

- b. \$2,000,000.00 will be allocated to Plaintiffs' attorneys' fees, gross receipts tax on Plaintiffs' attorneys fees, and litigation expenses incurred on behalf of Plaintiffs, subject to approval of the Court. Defendants agree not to contest Plaintiffs' request for approval of this amount for fees, gross receipts tax, and litigation expenses. In the event the Court approves less than this amount, the balance remaining in the Settlement Fund will be added to the amount allocated to pay verified claims; and
- c. \$470,250.00 will be allocated equally among the class representative to acknowledge their participation and efforts in this lawsuit, separate and apart from any payment due for their individual claims as SCMs, subject to approval of the Court. Defendants agree not to contest Plaintiffs' request for approval of this payments to class representatives. In the event the Court approves less than this amount, the balance remaining in the Settlement Fund will be added to the amount allocated to pay verified claims.
- d. Separate and apart from the Settlement Fund, up to \$500,000.00 will be paid by the Santa Fe County Defendants for all claims administration expenses. If the total amount of claims administration expenses incurred is more than \$500,000, then the allocation to pay verified claims will be reduced and such overage of administrative costs shall be paid from the \$5,529,750.00 allocated to the Settlement Fund. If the total amount of claims administration expenses incurred is less than \$500,000, then the balance remaining will be returned to Santa Fe County.
- e. The Settlement proposes the following Plan of Allocation:

A. All SCMs who were searched in the period January 12, 2002 through June 8, 2003 ("Period A") and who submit verified claims shall be entitled to receive the following payments in full satisfaction of their claims, subject to the reduction factors listed below and a pro rata reduction as set forth in Paragraphs 29 and 30 of the Settlement:

- 1. \$1,000 if he or she was strip searched one time during Period A;

2. An additional \$250 if he or she was strip searched two or more times during Period A;
3. An additional \$250 if he or she has a documented history (as defined in Paragraph 8 of the Stipulation of Settlement) of being the prior victim of sexual abuse;
4. An additional \$250 if he or she has significant physical deformities (as defined in Paragraph 14 of the Stipulation of Settlement) that were exposed as a consequence of any strip search in Period A;
5. An additional \$250 if she was menstruating at the time of any strip search in Period A;
6. An additional \$250 if he or she received documented (as defined in Paragraph 8 of the Stipulation of Settlement) formal counseling by a counselor or therapist or documented medical treatment because of any strip search in Period A, if the first counseling or medical session occurred within 60 days of the strip search; and
7. An additional \$100 if he or she was touched on the breasts, genitals, or buttocks during any strip search in Period A.

Notwithstanding the foregoing, the maximum possible payment to an SCM who was strip searched during Period A is \$2,250.

B. All SCMs who were searched in the period June 9, 2003 through November 17, 2004 (“Period B”) and who submit verified claims shall be entitled to receive the following payments in full satisfaction of their claims, subject to the reduction factors listed below and a pro rata reduction as set forth in Paragraphs 29 and 30 of the Settlement:

1. \$2,200 if he or she was strip searched one time during Period B.
2. An additional \$250 if he or she was strip searched two or more times during Period B;
3. An additional \$250 if he or she has a documented history (as defined in Paragraph 8 of the Stipulation of Settlement) of being the prior victim of sexual abuse;

4. An additional \$250 if he or she has significant physical deformities (as defined in Paragraph 14 of the Stipulation of Settlement) that were exposed as a consequence of any strip search in Period B;
5. An additional \$250 if she was menstruating at the time of any strip search in Period B;
6. An additional \$250 if he or she received documented (as defined in Paragraph 8 of the Stipulation of Settlement) formal counseling by a counselor or therapist or documented medical treatment because of any strip search in Period B, if the first counseling or medical session occurred within 60 days of the strip search; and
7. An additional \$100 if he or she was touched on the breasts, genitals, or buttocks during any strip search in Period B.

Notwithstanding the foregoing, the maximum possible payment to an SCM who was searched in Period B is \$3,500.

C. All SCMs who were strip-searched in the period November 18, 2004 through July 6, 2006 (“Period C”) and who submit verified claims establishing that they were strip-searched without reasonable suspicion shall be entitled to receive the following payments in full satisfaction of their claims, subject to the reduction factors listed below and a pro rata reduction as set forth in Paragraphs 29 and 30 of the Settlement:

1. \$1,000 if he or she was strip searched one time during Period C.
2. An additional \$250 if he or she was strip searched two or more times during Period C;
3. An additional \$250 if he or she has a documented history (as defined in Paragraph 8 of the Stipulation of Settlement) of being the prior victim of sexual abuse;
4. An additional \$250 if he or she has significant physical deformities (as defined in Paragraph 14 of the Stipulation of Settlement) that were exposed as a consequence of any strip search in Period C;
5. An additional \$250 if she was menstruating at the time of any strip search in Period C;

6. An additional \$250 if he or she received documented (as defined in Paragraph 8 of the Stipulation of Settlement) formal counseling by a counselor or therapist or documented medical treatment because of any strip search in Period A, if the first counseling or medical session occurred within 60 days of the strip search; and
7. An additional \$100 if he or she was touched on the breasts, genitals, or buttocks during any strip search in Period C.

Notwithstanding the foregoing, the maximum possible payment to an SCM who was searched in Period C is \$2,250.

D. An SCM who was subject to a search in more than one Class Period may claim only for one period.

E. Reduction Factors. The total award made to an SCM under Periods A, B or C, as defined above, shall be reduced as follows:

1. Incarceration in any state or federal prison at any time within five years before the first strip search in Periods A, B or C shall reduce the total award by 80%.
2. Conviction of a crime and incarceration for that conviction in any county or juvenile detention center within five years before the first strip search in Periods A, B or C shall reduce the total award by 80 %.
3. If the SCM makes material false statements on the Claim Form, the total award shall be reduced to zero.

F. For SCMs with more than one applicable reduction factor, as defined above, only the reduction factor with the largest applicable reduction percentage will apply.

G. SCMs who qualify for payment pursuant to the terms of the Stipulation of Settlement shall receive payments as soon as practicable after the Effective Date of the Settlement.

D. Strip Search Policy.

The MTC Defendants no longer operate the Santa Fe County Adult Detention Center. The Santa Fe County Defendants have agreed that they will no longer strip search pre-arraignment detainees without reasonable individualized suspicion that the strip search would be productive of contraband or weapons.

E. Your Options as a Class Member.

1. You May Choose to be Bound by the Settlement.

To qualify for a payment you must send in a completed Claim Form to the Claims Administrator. If you receive a notice by First Class Mail, a Claim Form will be included in the notice package. You can also get a Claim Form by: (1) calling this toll free number: (866) 854-8632; (2) visiting the website, www.santafestripsearch.com; or (3) writing the Claims Administrator at **Leyba, et al. Strip Search Class Action, c/o Claims Administrator, Post Office Box 670, Tallahassee, FL 32302-0670.**

You have until November 6, 2006, to submit a claim or to opt-out of the Settlement.

Mail your completed Claim Form to Claims Administrator at **Leyba, et al. Strip Search Class Action, c/o Claims Administrator, Post Office Box 670, Tallahassee, FL 32302-0670.**

Remember, if you do not submit a Claim Form, you cannot get a payment. If you submit a Claim Form, you will be bound by the Settlement and receive money (if you are a class member and all other conditions are met). If you do not submit a Claim Form but do not exclude yourself from the class (as explained in the next numbered paragraph), you will still be bound by the terms of the Settlement and dismissal entered in this case, but you will not receive any money.

By participating in this Settlement, or by doing nothing in response to this Notice, you will be waiving all your rights to all claims up to and including July 6, 2006, related to strip searches at the Santa Fe County Detention Facility.

2. You May Choose to Exclude Yourself From the Class.

You do not have to take part in the Settlement or be a member of the class. This is called “excluding” yourself. If you exclude yourself, you cannot get a payment and you cannot object to the Settlement. Any Court orders will not apply to you. To exclude yourself, you must sign an “Opt-Out Form” that states that you want to be excluded from *Leyba, et al. v. Santa Fe County Board of Commissioners, et al.*, United States District Court, District of New Mexico, Case No. CIV-5-0036 BB/ACT. Opt-Out Forms are available from the Claims Administrator at **Leyba, et al. Strip Search Class Action, c/o Claims Administrator, Post Office Box 670, Tallahassee, FL 32302-0670, toll-free (866) 854-8632, www.santafestripsearch.com.** Your Opt-Out Form must be mailed and postmarked before November 6, 2006 to the Claims Administrator at **Leyba, et al. Strip Search Class Action, c/o Claims Administrator, Post Office Box 670, Tallahassee, FL 32302-0670.**

If you do not follow these instructions properly, you will lose your right to exclude yourself. If you exclude yourself, you cannot get any money from the Settlement of this case and you cannot tell the Court you do not like the Settlement (which is called “objecting”). If you exclude yourself, you are no longer part of the class or the Settlement. But you can sue or be part of a different lawsuit about the claims in this case.

E. Fairness Hearing and Process for Objections.

A Fairness Hearing will be held on December 8, 2006, at 10 a.m., at the United States District Court, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd. NW Suite 270, Albuquerque, New Mexico. If you are a class member and do not exclude yourself, you can tell the Court you do not like the Settlement or some part of it at this hearing. This is called objecting to the Settlement. For example, you can say you do not think that the Settlement is fair or adequate. The Court will consider your views.

To object, you must file with the Court a document that contains all of the following:

1. The name and title of the lawsuit (*Leyba, et al. v. Santa Fe County Board of Commissioners, et al.*, United States District Court, District of New Mexico, Case No. CIV-5-0036 BB/ACT);
2. A statement of each objection you have and the facts that support the objections;
3. A description of any law or case supporting the objections;
4. A statement on whether or not you or your lawyer will ask to appear at the Fairness Hearing to talk about your objections, and, if so, how long you will need to present your objections; and
5. Copies of any documents you or your lawyer will present at the Fairness Hearing.

At the hearing on the proposed Settlement, the Court may schedule further hearings without further notice to the class. The matters considered at such future hearings may include, but shall not be limited to, further consideration of the fairness and adequacy of the proposed Settlement, consideration of the request for attorneys’ fees and reimbursement of costs and expenses to Class Counsel, and the form and entry of the final judgment of dismissal in the event the proposed Settlement is approved by the Court.

Individually, or through counsel, any class member has the right to object to the proposed Settlement as a whole, to the amount of attorneys’ fees and costs to Class counsel, or to any portion of either. ANY SUCH OBJECTIONS MUST BE FILED IN WRITING ON OR BEFORE NOVEMBER 6, 2006, IN THE UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO, PETE V. DOMENICI U.S. COURTHOUSE, 333 LOMAS BLVD. NW

SUITE 270, ALBUQUERQUE, NEW MEXICO, ATTENTION: CLERK, RE LEBYA, ET AL V. SANTA FE COUNTY BOARD OF COMMISSIONERS, ET AL, UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO, CASE NO. CIV-05-0036 BB/ACT).

If you wish to appear and present your objections at the Fairness Hearing, you must also submit a Notice of Intention to Appear that identifies the case, contains your name and address, and explains the reason the appearance is desired. The Notice of Intention to Appear and any objections must be filed with the Court on or before November 6, 2006. You may be represented by your own attorney. If you are represented by an attorney at the hearing, his or her name, address and telephone number must be included in the Notice of Intention to Appear as well. A copy of the Statement of Objection and/or Notice of Intention to Appear must also be mailed to: Leyba Class Counsel, Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, LLP, P.O. Box 8180, Santa Fe, NM 87504-8180; P. Scott Eaton, Eaton Law Office, P.O. Box 25305, Albuquerque, NM 87125-5305; Kurt Wihl/Gary J. Van Luchene, Keleher & McLeod, P.A., P.O. Box AA, Albuquerque, NM 87103; and Michael Dickman, P.O. Box 549, Santa Fe, NM 87504.

F. How to Obtain Further Information.

DO NOT TELEPHONE OR WRITE TO THE COURT OR COURT CLERK FOR INFORMATION REGARDING THE PROPOSED CLASS SETTLEMENT. For additional information regarding the Settlement and Claim Form, or to request a copy of the Settlement Agreement, Claim Form or Opt-Out Form, you should contact the Claims Administrator at **Leyba, et al. Strip Search Class Action, c/o Claims Administrator, Post Office Box 670, Tallahassee, FL 32302-0670.** You may also check the Claims Administrator's website at www.santafestripsearch.com, or call toll-free (866) 854-8632. You may also obtain detailed information about the case by examining the court file located in the office of the Clerk of the United States District Court, District of New Mexico, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd. NW Suite 270, Albuquerque, New Mexico.

G. Court Approval.

Although the Court has reviewed the proposed Settlement and granted preliminary approval, no decision as to final approval has been, or will be, reached by the Court until the Fairness Hearing. This Notice does not indicate that the Court has given final approval to the Settlement.

Dated: July 24, 2006

The Honorable Bruce D. Black
United States District Judge