

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITED STATES OF AMERICA,
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Plaintiff,

vs.

Civil Action No.

STATE OF TEXAS
P.O. Box 12428
Austin, Texas 78711-2428
County of Residence:
Travis;

AGREED ORDER

TEXAS YOUTH COMMISSION
4900 N. Lamar Blvd
Austin, TX 78765
County of Residence:
Travis;

RICHARD NEDELKOFF,
Conservator
Texas Youth Commission
4900 N. Lamar Blvd
Austin, TX 78765
County of Residence:
Travis;

DIMITRIA D. POPE,)
Acting Executive Director)
Texas Youth Commission)
4900 N. Lamar Blvd)
Austin, TX 78765)
County of Residence:)
Travis;)
)
MELODY VIDAURRI,)
Superintendent)
Evins Regional Juvenile Center)
3801 East Monte Cristo Road)
Edinburg, TX 78541)
County of Residence:)
Hidalgo,)
)
)
)
)
)
)
Defendants.)

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I. INTRODUCTION

- (A) On June 9, 2006, the United States notified State of Texas officials of its intent to investigate conditions of confinement at the Evins Regional Juvenile Center ("Evins"), located in Edinburg, Texas, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141").
- (B) Between September 11 and September 15, 2006, the United States toured Evins with a consultant in the juvenile justice field.
- (C) The State of Texas has cooperated and negotiated in good faith with the United States regarding the investigation of Evins, provided the United States and its consultants full access to the facility and documents, and was receptive to the on-site recommendations of the Department of Justice's consultants.
- (D) On March 15, 2007, the United States issued a findings letter pursuant to 42 U.S.C. § 1997(a)(1), which concluded that certain conditions at Evins violated the constitutional rights of juveniles confined at Evins. The United States recognizes that its letter notifying the State of Texas of the results of its investigation focused, by virtue of statutory requirements, on conditions the United States believed to violate federal law and, therefore, did not discuss positive aspects of Evins nor the many changes made at Evins since the United States toured the Evins facility.
- (E) The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 42 U.S.C. § 14141. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b).
- (F) Defendants in this action are the State, Governor Rick Perry, the Texas Youth Commission ("TYC"), Richard Nedelkoff, Conservator of TYC, Dimitria D. Pope, Acting Executive Director of TYC, Melody Vidaurri, Evins Superintendent, and their successors, contractors and agents. The State of Texas shall reasonably ensure that all State agencies take any actions necessary to comply with the provisions of this Agreed Order.

- (G) For purposes of this lawsuit only and in order to settle this matter, the State of Texas agrees to the entry of a finding that the conditions at Evins necessitate the remedial measures contained in this Agreed Order. The State is firmly committed to providing legally adequate conditions by instituting the remedial measures required by this Agreed Order.
- (H) The United States and the State of Texas stipulate and agree that all of the prospective relief in this Agreed Order is narrowly drawn, extends no further than necessary to correct violations of federal rights, is the least intrusive means necessary to correct these violations, and will aid public safety and the operation of Evins.
- (I) The parties to this Agreed Order agree and represent to the Court that this Agreed Order complies in all respects with the provisions of 18 U.S.C. § 3626(a), and may serve as the factual and legal basis for a Court order issued pursuant to those provisions.
- (J) The issue of liability has not been litigated. The parties ask the Court to approve this Agreed Order without a full hearing on the merits, on the basis of the United States' Complaint and the above stipulations.
- (K) This Agreed Order is not intended to have any preclusive effect except between the parties. Should the issue of the preclusive effect of this Agreed Order be raised in any proceeding other than this civil action, the parties agree to certify that this Agreed Order was intended to have no such preclusive effect.
- (L) This Agreed Order shall not be used against the State in any proceeding other than a proceeding between the United States and the State of Texas. This Agreed Order is intended to enhance the conditions at Evins. This Agreed Order is not intended to be used to prove deficiencies in the level of care provided by the State at the facility in any proceeding other than an enforcement action between the parties.
- (M) Nothing in this Agreed Order shall prevent the State from modifying or closing Evins, or developing alternative community placements for the youth currently at Evins.
- (N) No person or entity is intended to be a third-party beneficiary of the provisions of this Agreed Order for

purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreed Order. This Agreed Order is not intended to impair or expand the right of any person or organization to seek relief against the State or its officials, employees, or agents for their conduct; accordingly, it does not alter legal standards governing any such claims, including those under Texas law.

- (O) The State will not transfer youth out of Evins in order to attempt to avoid compliance with this Agreed Order or any constitutional requirements.

II. DEFINITIONS

In this Agreed Order, the following definitions apply:

- (P) "Evins" means the Evins Regional Juvenile Center located at 3801 East Monte Cristo Road, Edinburg, Texas, and any facility that is built to replace or supplement Evins.
- (Q) "TYC" means the Texas Youth Commission that oversees the safety, treatment, and rehabilitation of juveniles residing at Evins.
- (R) "DOJ" means the United States Department of Justice, which represents the United States in this matter.
- (S) "Effective Date" means the date this Agreed Order is entered by the Court.
- (T) "Implement" means to give practical effect and reasonably ensure actual fulfillment by concrete measures, including appropriate training of relevant staff.
- (U) "Include" or "including" means "include, but not be limited to" or "including, but not limited to."
- (V) "Restraints" means any physical, chemical, or mechanical device, including oleoresin capsicum spray, used to control the behavior of a youth.
- (W) "Qualified medical professional" means a physician, nurse or other medical provider licensed and sufficiently trained to provide the services he or she undertakes to provide.

- (X) "Performance-based accountability system" means a system designed to collect data necessary to assess and reasonably ensure the effective implementation and operation of all remedies instituted pursuant to this Agreed Order.
- (Y) "State" means the Defendants as described in paragraph F above.
- (Z) "Train" means sufficiently instruct in the skills addressed, including ongoing assessment of mastery of instructional material.
- (AA) "Youth" means any juvenile or juveniles committed by a court to and residing at Evins during the operation of this Agreed Order.

III. CONSTITUTIONALLY REQUIRED CARE

The purpose of this Agreed Order is to protect certain constitutional rights of youths committed to Evins. The terms and requirements of this Agreed Order shall be interpreted to be consistent with the remedial measures necessary to protect the constitutional rights of the youths.

IV. SUBSTANTIVE REMEDIAL MEASURES

A. PROTECTION FROM HARM

- (1) Protection from Harm The State shall, at all times, provide youth at Evins with reasonably safe living conditions, and shall implement policies, procedures, and practices to reasonably ensure that youth are protected from harm by staff (e.g., improper restraint and excessive use of force) and harm from other youth.
- (2) Protection from Undue Restraints The State shall develop and implement policies, procedures, and practices to reasonably ensure that only safe methods of restraint are used at Evins, and only in those circumstances necessary for safety and security, and that restraints are never used to punish youth.
- (3) Reporting of Staff Misconduct and Other Serious Incidents The State shall develop and implement appropriate policies and procedures which contain definitions approved by DOJ after review and comment by the DOJ for the terms "use of force," "staff-on-youth assault," "youth-on-youth assault,"

and "inappropriate staff relationships with youth," and will develop and implement such policies, procedures, and practices so that:

- (a) appropriate Evins staff report all incidents of use of force, staff-on-youth and youth-on-youth assault, inappropriate staff relationships with youth, and sexual misconduct between youth, to appropriate individuals at the facility;
 - (b) appropriate Evins staff notify appropriate supervising officials and document in writing all incidents involving mechanical restraints to control youth; incidents resulting in bodily injury to youth and/or staff; inappropriate staff relationships with youth; sexual misconduct between youth;
 - (c) reporting may be done without fear of retaliation; and
 - (d) all such incidents are appropriately documented and reported, including the facts of the incident, any injury that occurred as a result of the incident, and in a way that permits review.
- (4) Review of Incidents by Senior Management The State shall develop and implement policies, procedures, and practices so that senior management review all incidents involving mechanical restraints to control youth, incidents resulting in bodily injury to youth and/or staff, inappropriate staff relationships with youth, and sexual misconduct between youth.
- (5) Health Care Inquiries Regarding Injury If, in the course of the youth's infirmary visit, a health care provider suspects staff-on-youth abuse, that health care provider shall:
- (a) report the suspected abuse to the appropriate officials, the Office of Inspector General, law enforcement and social service agencies;
 - (b) adequately document the matter in the youth's medical record; and
 - (c) complete an incident report.
- (6) Uses of Force The State shall develop and implement comprehensive policies, procedures, and practices governing uses of force, ensuring that the least amount of force

necessary for the safety of staff, youth residents, and visitors is used on youth.

- (7) Documentation and Tracking of Investigations The State shall develop policies, practices, and procedures for documenting all incidents of use of force, staff-on-youth assault, youth-on-youth assault, inappropriate staff relationships with youth, sexual misconduct between youth, and for documenting and tracking the status and outcome of all investigations. Where there is evidence of staff misconduct, the State shall initiate appropriate personnel actions and systemic remedies, where appropriate.
- (8) Investigations The State shall develop and implement policies, procedures, and practices to reasonably ensure an effective system for investigation of uses of force, physical restraint, alleged child abuse, youth-on-youth assault, and alleged sexual contacts.
- (9) Reporting Possible Criminal Violations The State shall develop and implement policies, practices, and procedures governing when possible criminal violations must be reported to the appropriate law enforcement authorities.
- (10) Behavior Management Program The State shall develop and implement an evidence-based behavior management program. The behavior management program shall be implemented throughout the day, including during school time. The State shall develop and implement policies, procedures, and practices to reasonably ensure that mental health staff provide regular consultation regarding behavior management to custody and other staff involved in the behavior management program, and shall develop and implement a mechanism to assess the effectiveness of interventions utilized.
- (11) Staffing The State shall provide sufficient numbers of adequately trained direct care and supervisory staff to
 - (a) supervise youth safely,
 - (b) protect youth from harm,
 - (c) allow youth reasonable access to medical and mental health services, and
 - (d) provide youth with adequate time spent in out-of-cell activities.The State shall establish mandatory minimum staffing requirements, including a determination of all direct supervision posts that must be filled on each shift. In establishing mandatory post coverage, the State shall include provisions for coverage

for all required staff training as well as authorized leave time.

- (12) Employment Practices The State shall continue to conduct a criminal record check for all current employees at Evins, taking appropriate actions where new information is obtained. At least as often as every year thereafter, the State shall update such criminal record checks for all employees who come into contact with youth. The Evins administration shall develop and implement policies and procedures to require that applicants and all current staff immediately report to it any arrest other than a minor traffic violation and also report the issuance of a restraining order entered against the staff member due to alleged abusive behavior.
- (13) Due Process The State shall implement policies, procedures, and practices to reasonably ensure that youths confined to the Security Unit for disciplinary reasons for more than 24 hours receive an appropriate due process hearing by an impartial supervisory staff member to determine whether cause exists for continued disciplinary confinement.
- (14) Youth Grievances The State shall develop and implement policies, procedures, and practices to reasonably ensure that there is a functional and responsive youth grievance system.
- (15) Admissions Intake and Orientation The State shall develop and implement policies, procedures, and practices to establish a consistent, orderly admissions intake system conducive to gathering necessary information about youth, disseminating information to staff providing services and care for youth, and maintaining youth safety. Each youth entering Evins shall receive an effective orientation that shall include simple directions for reporting abuse, and assure youth of their right to be protected from harm and from retaliation for reporting allegations of abuse. Orientation shall also clearly set forth the rules youth must follow at the facility, explain how to access medical and mental health care and the grievance system, and provide other information pertinent to the youth's participation in facility programs.
- (16) Classification The State shall develop and implement a classification system that considers factors including youth age, committing offense, gang affiliation, delinquent

history and treatment needs to reasonably ensure that youth are safely placed within Evins, and provides for reclassification in appropriate circumstances.

B. TRAINING

- (17) Training The State shall develop and implement policies, procedures, and practices to provide staff, volunteers and contractual employees of Evins with training regarding their responsibilities. These policies, practices, and procedures shall include:
- (a) a comprehensive training plan for all Evins employees, reviewed and updated annually;
 - (b) requirements by job category;
 - (c) standards for qualification of trainers;
 - (d) processes for approval of the training curriculum;
 - (e) schedules for staff training;
 - (f) criteria for determining whether Evins staff, volunteers, and contractual employees have mastered the instructional materials and methods being taught; and
 - (g) specific requirements by professional discipline for any continuing education credits established by licensure, certification, or recognized professional academies and organizations.
- (18) Physical Restraint Training The State shall train direct care staff on its approved method for physical restraint that minimizes the risk of injury to youth. The State shall only use instructors who are appropriately qualified to teach the approved physical restraint method. All training shall include each staff member demonstrating the approved techniques and meeting the minimum standards for competency established by the method. Direct care staff skills in employing the method shall be periodically re-evaluated. Staff who demonstrate deficiencies in technique or method shall be removed from direct contact with youth until they meet minimum standards for competency established by the method. Juvenile Correctional Officer Supervisory staff shall be trained to evaluate their subordinates' use of the approved restraint methods and must provide evaluation of

these methods in their reports addressing use of force incidents.

- (19) Staff Training in Behavior Management, De-Escalation and Crisis Intervention The State shall provide appropriate competency-based training to staff in behavior management, de-escalation techniques, appropriate communication with youth, and crisis intervention before staff may work in direct contact with youth.
- (20) Staff Training in Incident Reporting The State shall develop and implement policies, procedures, and practices so that staff are appropriately trained in incident reporting consistent with the type of incident reporting required under this Agreed Order.

V. COMPLIANCE AND QUALITY ASSURANCE

- (21) Document Development and Revision The State shall maintain, revise, and/or develop and implement policies, procedures, training curricula, and practices to reasonably ensure that they are consistent with, incorporate, address, and implement all provisions of this Agreed Order. The State shall maintain, revise and/or develop as necessary other written documents including assessment instruments, logs, handbooks, manuals, and forms, to effectuate the provisions of this Agreed Order.
- (22) Policy Review and Training The State shall draft policies and procedures to reasonably ensure the effective implementation of the provisions of this Agreed Order in conjunction with comments and discussions with the DOJ and the Monitor. All policies and procedures regarding the following topics shall be submitted to DOJ and the Monitor within ninety (90) calendar days of the execution of this Agreed Order for review and comment: use of restraints and confinement to the Security Unit, use of force, youth grievance system, investigations of alleged staff misconduct, behavior management program, and reporting and review of staff misconduct and other incidents. The State shall provide initial and refresher training to all Evins staff with respect to newly-implemented or revised policies and procedures. The State shall document employee review and training in policies and procedures.
- (23) Performance-Based Accountability System The State shall develop and implement a system designed to collect data

necessary to assess and reasonably ensure the effective implementation and operation of all remedies instituted pursuant to this Agreed Order.

- (24) Corrective Action Plans With regard to the protection from harm and training remedial measures addressed in this Agreed Order, the State shall develop and implement policies and procedures to address problems that are uncovered during the course of performance-based accountability activities. The State shall develop and implement corrective action plans to address these problems in such a manner as to prevent them from occurring again in the future.

VI. MONITORING AND ENFORCEMENT

- (25) The DOJ shall monitor the State's compliance with this Agreed Order. Until this matter is dismissed, the DOJ shall have unrestricted access to, and shall, upon request, receive copies of any documents, records, and information relating to the implementation of this Agreed Order. The State shall provide any requested documents, records, and information to the DOJ as soon as possible, but no later than 30 days from the date of the request. The DOJ shall have reasonable access to Evins, including any newly constructed, renovated and/or designated buildings and facilities; staff and youth, including private interviews with staff; and youth records, documentation, and information relating to the issues addressed in this Agreed Order. The State shall instruct all employees to cooperate fully with the DOJ. The DOJ agrees to provide the State with reasonable notice of any visit or inspection, although the DOJ and the State agree that no notice is required in an emergency situation where the life, health, or immediate safety of youth is at issue. The DOJ shall regularly report its assessment of the State's compliance with the provisions of this Agreed Order to the State and the Court.

VII. IMPLEMENTATION AND TERMINATION

- (26) Information to Employees The State shall reasonably ensure that all current and future relevant State employees understand the terms of this Agreed Order (to the extent necessary to carry out their job duties and responsibilities) and implement the terms of this Agreed Order.

- (27) Implementation The State shall implement all reforms necessary to effectuate this Agreed Order. Implementation will begin immediately upon the filing of this Agreed Order.
- (28) Integration This Agreed Order shall constitute the entire integrated agreement of the parties with respect to the United States' claims concerning protection from harm. With the exception of DOJ's findings letter referenced in ¶ D hereof, and any DOJ technical assistance recommendations, no prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in this litigation or in any other proceeding.
- (29) Enforcement If DOJ believes that the State has failed to substantially comply with any obligation under this Agreed Order, DOJ will, prior to seeking judicial action to enforce the terms of this Agreed Order, give written notice of the failure to the State. The parties shall conduct good-faith negotiations to attempt to resolve the dispute. These negotiations will last for a maximum of 30 days from the date of DOJ's written notice. DOJ commits to work in good faith with the State to avoid enforcement actions. However, in case of an emergency posing an immediate threat to the health or safety of youth, the United States may omit the notice and negotiation requirements herein, before seeking judicial action.
- (30) Compliance Coordinator The State shall appoint a Compliance Coordinator to coordinate and oversee compliance with this Agreed Order. The Compliance Coordinator shall have no other assigned duties.
- (31) Termination This Agreed Order shall terminate three years from the date it is ordered by the Court. The Agreed Order may also end earlier than three years from the date it is ordered by the Court if the State has substantially complied with each of the provisions of this Agreed Order and has maintained substantial compliance for at least eighteen (18) months. The burden shall be on the State to demonstrate this level of compliance. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained noncompliance shall not constitute substantial compliance.

- (32) Defense of Agreed Order The parties agree to defend the provisions of this Agreed Order. The parties shall notify each other of any court challenge to this Agreed Order. In the event any provision of this Agreed Order is challenged in any local or State court, removal to a federal court shall be sought.
- (33) Successors This Agreed Order shall be binding on all successors, assignees, employees, agents and all those working for or on behalf of the State.
- (34) No Waiver for Failure to Enforce Failure by either party to enforce this entire Agreed Order or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Agreed Order.
- (35) Notice "Notice" under this Agreed Order shall be provided by first class mail, facsimile, electronic mail, or any combination of those communication methods. Notice shall be provided to the Governor of Texas and to the Attorney General of Texas.
- (36) Unforeseen Delay If any unforeseen circumstance occurs which causes a failure to timely carry out any requirements of this Agreed Order, the State shall notify the DOJ in writing within 20 calendar days of the time that the State becomes aware of the unforeseen circumstance and its impact on the State's ability to perform under this Agreed Order. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The State shall implement all reasonable measures to avoid or minimize any such failure.
- (37) Non-Retaliation The State agrees that it shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreed Order.
- (38) Subheadings All subheadings in this Agreed Order are written for the convenience of locating individual provisions. If questions arise as to the meanings of individual provisions, the parties shall follow the text of each provision.

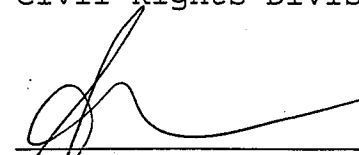
(39) Severability In the event any provision of this Agreed Order is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreed Order.

(40) Attorney's Fees and Expenses Each party shall bear the cost of their fees and expenses incurred in connection with this cause.

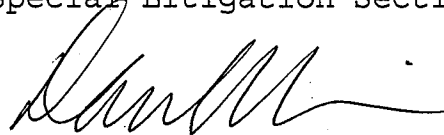
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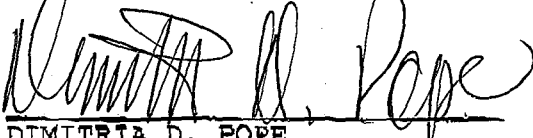
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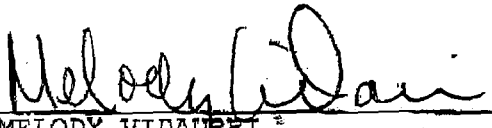



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IX. FINDINGS MADE PURSUANT TO THE PRISON LITIGATION REFORM ACT

Having considered the foregoing, and based on the stipulations of the Parties, the Court hereby finds:

1. The prospective relief in the Agreed Order is necessary to correct the violations of the federal rights of youths at Evins set forth in the Complaint.

2. The Agreed Order is narrowly drawn, extends no further than necessary to correct these violations of federal rights, and is the least intrusive means necessary to correct these violations of federal rights.

3. The Agreed Order will not have an adverse impact on public safety of the operation of a criminal justice system.
(PLRA, 18 U.S.C. § 3626 (a) (1))

Wherefore, it is hereby ORDERED that the Agreed Order be entered as a judgment of the Court. This order is not an adjudication on the merits and therefore shall have no preclusive effect except between the parties to this litigation.

SO ORDERED this _____ day of _____, 200__.

United States District Court
Judge
Southern District of Texas