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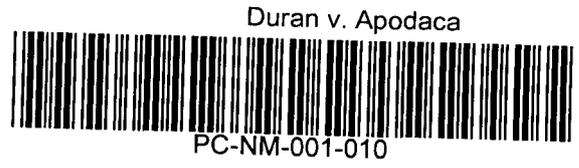
FILED
AT ALBUQUERQUE

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

MAR 15 1984

JESSE CASAUS
CLERK

DWIGHT DURAN, et al.,
Plaintiffs,
v.
TONEY ANAYA, et al.,
Defendants.



Civil No. 77-0721-JB

ENTERED ON DOCKET
March 15, 1984

ORDER

In 1978, the inmates of the Penitentiary of New Mexico brought this civil action as a class action on behalf of all persons so confined, challenging the conditions of their confinement as violative of the United States Constitution. In 1980, an injunctive order in the form of a Consent Decree was entered, granting wide-ranging relief to the plaintiff class in a variety of areas. In its order approving and adopting the Consent Decree as an injunctive order, the Court noted that the action was a "class action proceeding pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure." Additionally, the Court redefined the plaintiff class to include "all those inmates who are now, or in the future may be, incarcerated in the Penitentiary of New Mexico at Santa Fe or at any maximum, close, or medium security facility open for operation by the State of New Mexico after June 12, 1980." The specific injunctive orders

approved by the Court in its order of July 14, 1980, have remained in effect without interruption at all times since that order. On June 3, 1983, a Special Master was appointed by the Court "to monitor the state of the defendants' compliance with all remedial orders that have been entered or that may be entered in this cause." Order of June 3, p. 1.

A judgment entered in a class action certified pursuant to Rule 23, Fed. R. Civ. P. , is binding on all members of the class, and bars subsequent collateral actions by members of the class, provided the requirements of class definition, notice and adequacy of representation are met. Sam Fox Publishing Co. v. United States, 366 U.S. 683, 691 (1961); Advisory Committee Notes, Proposed Rules of Civil Procedure, 39 F.R.D. 69, 105. The finality of class action judgments is fundamental to the policy undergirding class actions of facilitating the unified determination of numerous claims in one suit. Garcia v. Board of Education, School District No. 1, 573 F.2d 676, 679 (10th Cir. 1978).

There has been no allegation, nor is there a colorable claim, that the procedural requisites of Rule 23 relating to definition, notice or adequacy of representation have not been met in this action. The scope of the class affected by the judgment entered in this cause is plainly defined and is set forth in the order approving and adopting the Consent Decree, as required by Rule 23(c)(3). Additionally, the third decretal paragraph of the Order of July 14, 1980, directed notice be given to all members of the plaintiff class and established a procedure for class comment on the terms of the decree, as required by Rule

23(e). Finally, the Court is satisfied the plaintiff class received adequate representation from counsel in the proceedings leading to entry of judgment. Accordingly, a post-judgment collateral action relating to issues covered by the judgment is impermissible. Hansberry v. Lee, 311 U.S. 32, 40-41 (1940).

The foregoing discussion raises the question as to the procedural mechanism by which members of the plaintiff class may present to the Court allegations that they have been deprived of rights protected by the decree entered in this action. The proper remedy for such noncompliance, available to individual members of the plaintiff class, is a motion, filed through counsel for the Duran class, to show cause why defendants should not be held in contempt of court for failure to comply with the Court's injunctive order. A motion of this kind would place such allegations in their proper posture for resolution. In such a proceeding, the standard for defendants' conduct would be that set forth in the Court's decree and the factual issues would be addressed specifically to the question of defendants' compliance with those provisions.

As noted previously, on June 3, 1983, the Court entered an Order of Reference appointing a Special Master to assist the Court in monitoring the state of defendants' compliance with all remedial orders entered in this cause. That order specifically provides that "[t]he duties of the Special Master shall be to observe, monitor, find facts, report or testify as to his findings, and make recommendations to the Court concerning steps that should be taken to achieve compliance." Order of June 3,

p. 1. Among the duties assigned by the Court to the Special Master is the task of investigating allegations of noncompliance to determine the factual basis of such allegations. The Order of Reference specifies the powers granted to the Special Master to facilitate that process of factual investigation. In view of those prescribed powers, the Office of the Special Master is the most effective available means of resolving the factual allegations of noncompliance.

Accordingly, the Court will forward to the Office of the Special Master all documents filed by members of the plaintiff class in this civil action seeking equitable relief pursuant to 42 U.S.C. § 1983 for claims relating to matters addressed in the Court's remedial orders in the cause. The Special Master will be directed to take the action he deems appropriate under the Order of Reference with respect to factual investigation of the matters raised therein. As is made clear by the Order of Reference, however, "the sole power to direct compliance and to punish noncompliance remains with [the] Court." Order of June 3, p. 3.

Wherefore,

IT IS ORDERED, ADJUDGED AND DECREED that all suits filed by members of the plaintiff class in the above-captioned civil action, seeking equitable relief for claims relating to matters addressed in the Court's remedial orders in this cause, shall be dismissed.

IT IS FURTHER ORDERED that the Clerk of this Court shall forward forthwith all documents filed by plaintiff(s) in such civil actions to the Office of the Special Master for appropriate action as described herein.

DATED this 15th day of March, 1984.


United States District Judge