

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

JIMMY (BILLY) McCLENDON, et al.,

Plaintiffs,

vs.

CIV 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 BETWEEN
THE CITY DEFENDANTS, THE PLAINTIFF
CLASS, AND THE PLAINTIFF INTERVENOR SUB CLASS

The Plaintiff class, the Plaintiff Intervenor sub class, and the City Defendants have met and conferred regarding the matters raised in Plaintiffs and Plaintiff Intervenors' *Amended Motion For An Order To Show Cause And For Further Remedial Relief Regarding City Defendants* (Doc. 1233). In the interest of resolving these issues without further litigation, the parties hereby enter into this Settlement Agreement ("this Agreement" or "the Agreement"):

1. The Chief of the Albuquerque Police Department will, within 45 days from the signing of this Agreement, (a) issue a special order and a member of the command staff will issue a corresponding video and (b) initiate revision to the Arrests, Arrest Warrants and Booking Procedure Standard Operating Procedure, specifically 2-80. Both the Special Order and revised SOP 2-80 will include a clear written directive to police officers regarding the Court's order in

McClendon with respect to issuing citations whenever appropriate, as established by operative policies, including an explanation that persons alleged to have committed non-violent misdemeanor offenses (not to include DWIs) will not be arrested when there are no circumstances necessitating an arrest. (“Provide direction to law enforcement officials under the control of the City and/or the County to issue citations where appropriate and to use the ‘walk through procedures,’ rather than incarcerating individuals, where appropriate.” (Doc. 319, p. 5)). The written directives will explain how to use the window at Metropolitan Court to post a bond or pay a fine to resolve or quash a warrant, without being taken to the Prisoner Transport Unit or the jail. The written directives will also specify that whether a person has a permanent address may not be the sole factor in determining whether to arrest rather than issue a citation. The Special Order will remain in effect until the approval of the revised SOP.

2. The City has been informed that the State will soon be issuing a revised Uniform Traffic Citation form that includes fields for telephone number and email address, and has so informed counsel for Plaintiffs and Plaintiff-Interveners. In reliance on this expectation, Plaintiff and Plaintiff Interveners have agreed that the Chief of the Albuquerque Police Department will, within 30 days after the State issues the revised Uniform Traffic Citation form that includes fields for telephone number and email address, issue a Standard Operating Procedure requiring all officers to, whenever possible, obtain and record telephone numbers and email addresses whenever they issue a citation.

3. The City Defendants will also initiate revisions to the following SOP’s:

a. Field Services Standard Operating Procedure 1-14 entitled “Biased Based Policing/Profiling.”

- b. Field Services Standard Operating Procedure 2-80 entitled “Arrests, Arrest Warrants and Booking Procedures;”
- c. Field Services Standard Operating Procedure 2-71 entitled “Search and Seizure without a Warrant;” and
- d. Former Field Services Standard Operating Procedure 3-12 entitled “Domestic Violence.”¹

It is the City’s position that the above-referenced standard operating procedures in their current form are consistent with the subjects which follow. However, the revised standard operating procedures will include, to the extent that such provisions are not already sufficiently clear, provisions that: (a) require officers to have reasonable suspicion before stopping, searching, asking for identification from, frisking, or searching people who appear to have a mental disability, and/or to be homeless; and (b) state that officers may seize or dispose of property or personal identification only when authorized by law to do so. The City will provide the above referenced SOPs in their current forms within 10 days of signing the Agreement to counsel for Plaintiffs and Plaintiff Intervenors. Counsel for Plaintiffs and Plaintiff Intervenors will have 30 days to provide suggested revisions. Thereafter, counsel for Plaintiffs and Plaintiff Intervenors will have opportunity to present their suggested revisions to the Office of Policy Analysis (OPA); the City will schedule an OPA meeting within 30 days of receiving their suggestions. The policies will then go through the Department’s policy development process, within 90 days. Following the Policy Procedure Review Board, counsel for Plaintiff and Plaintiff Intervenors will be presented with the final revisions. They will have fourteen (14) days to

¹ The Parties acknowledge that Standard Operating Procedures may be renumbered or recompiled from time to time. The Parties agree that if there is any future discrepancy between the title and the numbering of any of the specific policies referenced herein, the title and content (rather than the numbering) will control in determining the Parties’ obligations under this Agreement.

provide written objection with respect to any of their original suggestions not fully incorporated into the revisions. The Chief will have ultimate approval authority.

After the Chief issues the SOP regarding the issuance of citations, issues the SOP regarding the collection of phone numbers and email addresses, and gives ultimate approval to the SOPs (specifically SOPs 1-14, 2-19, 2-80, 2-71 and 3-12), APD will ensure that all officers are adequately trained on the revised SOPs.

With regard to training methods on these policy changes for the SOPs referenced (specifically SOP 1-14, 2-19, 2-80, 2-71 and 3-12), APD will develop, following the finalization of the revisions, a training plan within 60 days of the Chief approving the revised policy. Counsel for plaintiff and plaintiff intervenors will be given the opportunity to review the training plan and materials and make comments and recommendations within two weeks of receipt of same. The Chief will make the final determination on training materials and methods.

4. The City Defendants will also initiate revisions to Field Services Standard Operating Procedure 2-19 entitled “Response to Behavioral Health Issues.” The City will provide the current SOP within 10 days of signing the Agreement to counsel for Plaintiffs and Plaintiff Intervenors. Counsel for Plaintiffs and Plaintiff Intervenors will have 30 days to provide suggested revisions. Plaintiff and Plaintiff Intervenors may also participate in the review of this policy with Mental Health Response Advisory Committee (MHRAC) or Office of Policy Analysis (OPA) if they choose to do so. The City will schedule an OPA meeting within 30 days of receiving Plaintiffs’ and Plaintiff-Intervenors’ suggestions. The policies will then go through the Department’s policy development process, within 90 days. Following the Policy Procedure Review Board, counsel for Plaintiff and Plaintiff Intervenors will be presented with the final revisions. They will have fourteen (14) days to provide written objection with respect to any of

their original suggestions not fully incorporated into the revisions. The Chief has ultimate approval of SOP contents. After the Department's internal review process is complete, the City will send this SOP to the parties and the Monitor in USA v. City, 1:14-CV-1025-RB-SMV, where it is subject to objection by the parties and approval of the Monitor. City will implement the SOP within 30 days of Monitor approval.

5. The City Defendants will implement the special order and SOPs described above. The obligations with respect to policies and training in this Settlement Agreement apply only to city personnel who are subject to the applicable SOPs as identified herein. Sworn commissioned law enforcement officers are subject to the above SOPs and will receive the above referenced training. Mental health clinicians employed by APD are also subject to SOP 2-19 and will receive training relevant to that SOP.

6. The City Defendants will create course of business records documenting the following: (a) the notation of phone numbers and email addresses on the Uniform Traffic Citation form, beginning at the time the City is in possession of the new form (b) bookings on citable non-violent misdemeanor offenses, not to include DWIs; (c) disposition data for individuals involved in CIT related incidents; and (d) arrests arising from calls for service involving domestic violence. Beginning 30 days from the signing of this Agreement, the City Defendants will compile the above referenced documents for a period of one year. Within three months thereafter, City Defendants will publicly issue a written report summarizing the above referenced records and any follow-up measures taken. The report will identify the period of time the revised Uniform Traffic Citation form was available, if any. The City's issuance of this report constitutes compliance with the requirements of this paragraph.

7. The City Defendants will continue to collaborate in good faith with Bernalillo County to develop jail diversion programs and will collaborate in good faith with Bernalillo County and other partners in the establishment of such programs and the allocation of resources to implement those programs. The City Defendants will utilize current third-party behavioral health response programs and services, including current locations available during a behavioral health crisis and will utilize other appropriate third-party providers as they become available in the community. The details and timing of these programs are fully within the discretion of the City and the County. To the extent appropriations are required, notwithstanding any other provisions in this Agreement, the terms of this paragraph of the Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement.

8. City Defendants agree to meet with Bernalillo County through Albuquerque Bernalillo County Government Commission, one of its sub-committees or another collaborative effort at least one time each quarter beginning July 1, 2017 through June 30, 2018 to explore whether it is feasible to establish teams comprised of mental health professionals who are not employees of the police department who will provide mental health follow up and case management services similar to the activities of the COAST team.

9. The City Defendants will continue to collaborate in good faith with Bernalillo County in the development of and funding for mobile crisis teams to respond to mental health crisis calls, including alleged threats of suicide, self-harm or welfare checks, where appropriate. The details and timing of the implementation of these mobile crisis teams are fully within the discretion of the City and the County. Notwithstanding any other provisions in this Agreement, the terms of this paragraph of the Agreement are contingent upon the City Council of the City of

Albuquerque making the appropriations necessary for the performance of this paragraph of the Agreement.

10. City Defendants will continue to provide approximately 700 supportive housing slots for people, including those with mental illness or mental disability, who have been booked into the Metropolitan Detention Center. The housing slots are either transitional supportive housing or permanent housing with wrap-around case management and other behavioral health services. In providing these services, the City will keep, subject to applicable grant funding and appropriations by City Council, the programs that include individuals with mental disabilities who have been booked into the Metropolitan Detention Center, where not prohibited by other funding sources. City Defendants will collaborate in good faith with Bernalillo County regarding opportunities for additional supportive housing slots and the allocation of resources for same. Notwithstanding any other provisions in the Agreement, the terms of this paragraph of the Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this paragraph of the Agreement.

11. Where obligations in the Agreement are subject to appropriations, the failure to appropriate sufficient amounts in whole or in part shall not constitute a default of this Agreement.

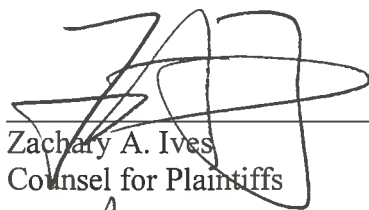
12. In the event that any dispute arises regarding whether or not the terms of this Agreement are being properly fulfilled, mediation before the Court's Special Master or another mediator agreed to by the parties or selected by the Court is required before any motion can be filed with the Court.

13. For purposes of deadlines under this Agreement, this Agreement will be considered "signed" upon the signature of all parties.

13. This Agreement does not require the engagement of an independent monitor and does not obligate the City Defendants to pay counsel for Plaintiff and Plaintiff Intervenors for time spent suggesting revisions to and objecting to SOPs, training plans, and training materials, as described herein. City Defendants agree to pay \$80,000.00 in full settlement of Plaintiff and Plaintiff Intervenors claims for attorney's fees. This amount is to be divided among Plaintiff and Plaintiff Intervenors at their discretion.

14. This Agreement satisfies all claims made or claims that could have been made by the Plaintiff class and the Plaintiff Intervenor sub class against the City Defendants in this action and will result in dismissal of City Defendants from this action after the City Defendants have substantially complied with the provisions set forth herein. City Defendants may file motions with the Court to find substantial compliance in whole or in part with individual paragraphs of this Agreement. After publishing the report required by Paragraph 6, City Defendants may file a motion for dismissal from the case, upon showing of substantial compliance with this Agreement.


AGREED this 28th day of March 2017.



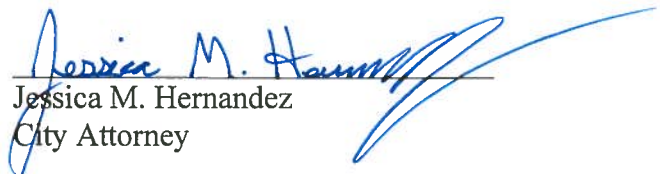
Zachary A. Ives
Counsel for Plaintiffs



Peter Cubra
Counsel for Plaintiff Intervenors



Debra Moulton
Counsel for City Defendants



Jessica M. Hernandez
City Attorney

APPROVED AND SO ORDERED

JAMES A. PARKER
SENIOR U.S. DISTRICT COURT JUDGE