

FILED

UNITED STATES DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT ALBUQUERQUE, NEW MEXICO

FOR THE DISTRICT OF NEW MEXICO

JUL 10 2023



JIMMY (BILLY) McCLENDON, et al.,

MITCHELL R. ELFERS
CLERK

Plaintiffs,

vs.

No. CIV 95-0024 JB/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 other similarly situated,

Plaintiff-Intervenors.

ORDER
AND STIPULATED SETTLEMENT AGREEMENT RESOLVING DOC. 1599

This matter comes before the Court by agreement of Defendant Bernalillo County, Plaintiffs, and Plaintiff-Intervenors (“the parties”) regarding the resolution of Plaintiff and Plaintiff-Intervenors' *Emergency Joint Motion for Order to Show Cause* (Doc. 1599). Based on the stipulations of the parties, and the reports of the Court's experts, the Court finds as follows pursuant to 18 U.S.C. § 3626(a)(1):

1. This Order resolves Plaintiff and Plaintiff-Intervenors' *Emergency Motion for Order to Show Cause Why Defendant Should not Pay Monetary Penalties for Violating the Court's Consent Decree Regarding Medical Care* (Doc. 1599).

2. County Defendant stipulates it is not in compliance with some of the requirements of the corrective action plan contemplated by this Court's Order (Doc. 1589 and 1585-2).

3. County Defendant has already begun steps to remedy the problems alleged in the Plaintiffs' motion and the parties have determined that the terms of this agreement are the most efficient manner to resolve this Motion.

4. It is in the best interests of Defendant Bernalillo County, the Plaintiffs, the Plaintiff Intervenors, and the public for this settlement agreement to be entered at this time, without the expense and distraction of further litigation; and

5. the settlement agreement is proper and all of the relief described in this settlement agreement:

- a. is narrowly drawn;
- b. extends no further than necessary to correct the violations of the federal rights of class and subclass members;
- c. is the least intrusive means necessary to correct the violations of the federal rights of class and subclass members; and
- d. will have no adverse impact on public safety or the operation of the criminal justice system.

It is hereby ordered that Defendant Bernalillo County, Plaintiffs, and Plaintiff Intervenors will implement the following settlement agreement forthwith.

**SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS,
PLAINTIFF INTERVENORS, AND DEFENDANT BERNALILLO COUNTY**

On April 28, 2023, counsel for the class and subclass filed the *Emergency Motion for Order to Show Cause Why Defendant Should not Pay Monetary Penalties for Violating the Court's Consent Decree Regarding Medical Care* (Doc. 1599). Counsel for the parties have determined that it is in their mutual interests to resolve that motion on the following terms. This settlement agreement resolves that motion. It is not intended to

resolve all issues between the parties and it does not preclude future litigation regarding alleged noncompliance with *Check-Out Audit Agreement No. 1* (Doc. 1222-2) or the Stipulated Settlement Agreement and Corrective Action Plan (Docs. 1589 and 1585-2). Plaintiffs and Plaintiff-Intervenors may refer to issues preceding this Agreement regarding compliance with Medical CAP in future requests for relief to demonstrate a pattern, however, Plaintiffs and Plaintiff-Intervenors may not seek any remedy for alleged non-compliance with the Medical CAP preceding the entry of this Agreement.

TERMS

1. In consideration for this Stipulated Settlement Agreement:

Plaintiffs and Plaintiff Intervenors agree to withdraw their *Emergency Motion for Order to Show Cause Why Defendant Should not Pay Monetary Penalties for Violating the Court's Consent Decree Regarding Medical Care* (Doc. 1599).

2. County Defendant will employ Catherine Knox to oversee implementation of the Medical CAP, i.e. a "project manager," who will remain in this role until County Defendant has come into compliance with the Medical CAP. If at any point, Ms. Knox is unable or unwilling to perform this role, the parties will confer to find a suitable replacement. If the parties cannot agree on a replacement, the parties shall bring their proposed candidates to the Court and the Court will decide who should fulfill this role.

3. County Defendant will allocate \$800,000.00 to implement the Medical CAP. This fund will be created and available as soon as it is approved by the Board of County Commissioners who are expected to vote on this item at the June 20, 2023 meeting. The project manager and the Court's medical expert shall make recommendations regarding expenditure of this fund to improve medical care at MDC.

However, any expenditure must still comply with applicable law and County policy and will not be unreasonably delayed or withheld. If County Defendant objects to a recommendation made regarding use of this fund, it will lodge an objection that will be resolved by the Court. Once this fund is exhausted, County Defendant has no obligation to renew this funding or to continue funding measures originally funded by this account. All proceeds in this fund shall be exhausted to improve the medical care at MDC and none of this fund shall be left unused for this purpose except by agreement of the parties.

4. University of New Mexico Health Services currently offers employees employed to work at MDC hazard pay in the amount of \$6.00 per hour. County Defendant will ensure this provision remains in place during the pendency of this order.

5. No later than June 21, 2023, County Defendant will allow and assist qualified Bernalillo County employees to work overtime at the MDC detoxification Units. County Defendant will expedite training and security clearance for County employees wishing to work overtime at MDC to ensure that any Bernalillo County employees who wish to work overtime at MDC are able to do so within sixty (60) days of notifying the County they would like to work at MDC. However, County Defendant is not obligated to require any other County employee to work shifts at MDC. Further, County Defendant will not be in violation of this agreement if an employee seeking to work overtime is denied security clearance based his/her background check or if the employee is provided with opportunity to complete training but fails to do so within sixty (60) days.

6. Every other month, County Defendant will ensure that individuals in custody at MDC, both those pending trial and those sentenced, are reviewed for

eligibility for the Community Custody Program (“CCP”), and will place eligible individuals in CCP as long as the program has capacity. This review will place an emphasis on individuals with significant medical needs, as well as those on the PSU caseload, and will provide documentation of this review to Plaintiffs and Plaintiff-Intervenors upon request.

7. Noncompliance with any provision of this agreement creates a rebuttable presumption of noncompliance with *COA No.1*. County Defendant may overcome that presumption, but County Defendant bears the burden of proof in any proceeding in which they seek to rebut the presumption using a preponderance of the evidence standard. This Agreement does not modify *COA No.1*.

8. Nothing in this Stipulated Settlement Agreement prevents counsel for Plaintiffs or Plaintiff Intervenors from seeking remedial relief from the Court in the event members of the class or subclass are experiencing irreparable harm, irrespective of whether this agreement is being implemented. This agreement does not otherwise modify the mediation provisions set forth in the parties’ Settlement Agreement (Docs. 1589 and 1585-2).

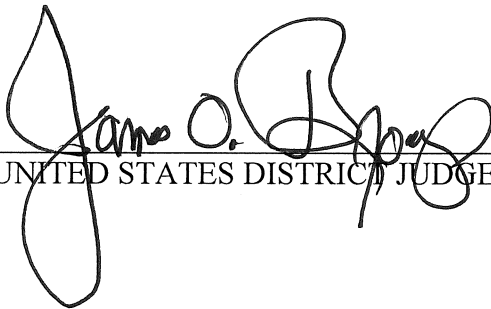
9. If this agreement is not sufficient to ensure compliance with Doc. 1222-2, then the parties hereby agree that the Court has previously entered orders for relief that have failed to remedy the deprivation of Plaintiffs’ federal rights and the County Defendant has had a reasonable amount of time to comply with these previous orders.

10. County Defendant may not file any Prison Litigation Reform Act (PLRA) motion to terminate prospective relief as to this agreement or as to (Doc. 1589) until eighteen (18) months following the date the Court enters this Order.

11. This Order will expire eighteen (18) months following the date the Court enters this Order or when County Defendant achieves compliance with (Doc. 1589), whichever is earlier.

12. This agreement is enforceable only by the parties. No person or entity is intended to be a third-party beneficiary of the provision of this agreement for the purpose of any civil, criminal or administrative action. Accordingly, no person or entity may assert any claim or right of the beneficiary or protected class under this agreement.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Alexandra Freedman
Alexandra Smith
Attorney for Plaintiffs

/s/ Katherine Loewe
Katherine Loewe
Attorney for Plaintiff-Intervenors

/s/ Taylor S. Rahn
Taylor S. Rahn
Attorney for County Defendants