

ORIGINAL

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

JIMMY (BILLY) McCLENDON, et al.,

Plaintiffs,

vs.

No. 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 other similarly situated,**

Plaintiff-Intervenors.

ORDER RESOLVING TWO MOTIONS AND ORDER TO SHOW CAUSE

This matter comes before the Court regarding the resolution of two motions: (1) *Plaintiffs And Plaintiff-Intervenors' Joint Motion For A Temporary Restraining Order And For Injunctive Relief* [Doc. 1133] and (2) *County Defendant's Motion To Terminate Certain Prior Orders Granting Prospective Relief Based On The Prison Litigation Reform Act* [Doc. 1135]; and the Court's *Order to Show Cause* [Doc. 1015]. Based on the evidence provided at the April 29, 2014 hearing and the agreement of the parties, the Court finds as follows pursuant to 18 U.S.C. § 3626(a)(1):

1. One or more violations of the federal rights of class and sub-class members alleged in the Court's *Order to Show Cause* [Doc. 1015] and *Plaintiffs And Plaintiff Intervenors'*

Joint Motion For A Temporary Restraining Order And For Injunctive Relief [Doc. 1133] have occurred at the MDC;

2. Defendant Bernalillo County has already begun steps to remedy the problems alleged in the Plaintiffs and Plaintiff-Intervenors' motion and the Court's *Order to Show Cause* [Doc. 1015];

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

4. The Order is proper and all of the relief described in this Order:

- a. is narrowly drawn;
- b. extends no further than necessary to correct the violations of the federal rights of class and sub-class members;
- c. is the least intrusive means necessary to correct the violations of the federal rights of class and sub-class 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.

RESOLUTION OF PENDING MOTIONS

On July 24, 2013, the Court entered its *Order to Show Cause* [Doc. 1015]. On April 23, 2014, counsel for the class and sub-class filed *Plaintiffs And Plaintiff-Intervenors' Joint Motion For A Temporary Restraining Order And For Injunctive Relief* [Doc. 1133]. On April 25, 2014,

counsel for Defendant Bernalillo County filed *County Defendant's Motion To Terminate Certain Prior Orders Granting Prospective Relief Based On The Prison Litigation Reform Act* [Doc. 1135]. The Court has received a report from Special Master Alan C. Torgerson that it is in the mutual interests of the parties to resolve these two motions and the Court's order to show cause on the following terms. This Order resolves only these two motions and the order to show cause. It is not intended to resolve all issues between the parties.

TERMS

1. The parties to this Order agree as follows:
 - a. Plaintiffs and Plaintiff-Intervenors agree to withdraw *Plaintiffs And Plaintiff-Intervenors' Joint Motion For A Temporary Restraining Order And For Injunctive Relief* [Doc. 1133];
 - b. Plaintiffs and Plaintiff-Intervenors agree that this Order resolves all matters which the Court's *Order to Show Cause* [Doc. 1015] seeks to enforce and compensate; and
 - c. Defendant Bernalillo County agrees to (i) withdraw *County Defendant's Motion To Terminate Certain Prior Orders Granting Prospective Relief Based On The Prison Litigation Reform Act* [Doc. 1135] and (ii) not file another motion based upon the Prison Litigation Reform Act within eighteen months after the Court enters this Order.
2. Defendant Bernalillo County, counsel for Plaintiffs, and counsel for Plaintiff-Intervenors will work with the Court's jail operations expert, Manuel Romero, to address the practices alleged in *Plaintiffs And Plaintiff-Intervenors' Joint Motion For A Temporary Restraining Order And For Injunctive Relief* [Doc. 1133] and in the Court's *Order to Show*

Cause [Doc. 1015] by modifying policies and procedures which Defendant Bernalillo County will effectively implement to:

a. In consultation with Manuel Romero, ensure that no individual class or sub-class member housed in the segregation unit is deprived of the daily hour of out of cell time required by the Court's orders of March 20, 2013 [Doc. 989] and May 22, 2013 [Doc. 1004], except in the case of a lockdown or discipline which is administered in conformity with the due process clause of the United States Constitution.

b. In consultation with Manuel Romero, develop and implement a consistent method of ensuring that there is adequate, accessible, and verifiable documentation of denial of out of cell time.

c. In consultation with Manuel Romero, terminate the "Inmate Segregation Behavior Restriction Program" and implement a policy which properly achieves inmate behavior modification and conforms with the requirements of the Americans with Disabilities Act as set forth in the Court's November 5, 1996 Order [Doc. 256], and conforms with the requirements of the United States Constitution;

d. In consultation with Manuel Romero, ensure that all MDC-wide or unit-wide behavior modification programs are instituted only pursuant to a written MDC policy approved by MDC administrator(s) and the County Legal Department;

e. Ensure that Defendant Bernalillo County only subjects class and sub-class members to discipline or punishment in conformance with the due process clause of the United States Constitution;

f. In consultation with Manuel Romero, discontinue reliance on the reactive control model (“RCM”) for use of force training, policies, and practices, or modify the RCM as appropriate to ensure that MDC training, policies, and practices regarding the use of force conform to the requirements of the Americans with Disabilities Act as set forth in the Court’s November 5, 1996 Order [Doc. 256], and with the requirements of the United States Constitution;

g. In consultation with Manuel Romero, develop and implement a use of force policy which sets the criteria under which all corrections officers are authorized to use force of any type, including but not limited to OC spray and the Taser;

h. Ensure that every MDC employee who uses physical force, including but not limited to OC spray or a Taser, prepares and submits a written report explaining the circumstances of the incident to his or her supervisor. The report will be prepared on the date of the incident and prior to leaving the MDC;

i. Ensure that for a period of six months after the Court’s entry of this Order, MDC provides copies of all reports created pursuant to paragraph 2(h) to counsel for Plaintiffs and Plaintiff-Intervenors at the end of each month without the need for a request by counsel;

j. Ensure that all MDC staff receives documented training on all changes to be implemented to the policies regarding out of cell time, the use of force and inmate security, and inmate discipline and grievances, with particular attention to training MDC staff on the chain of command and compliance with MDC policy directives;

k. Ensure that no fewer than two separate housing units are used for female inmates requiring segregation. However, when the population of the MDC allows, MDC may

house female inmates of different classifications in one unit so long as MDC separates women with different classifications using security barriers. However, Defendants may only reduce the number of segregation units for female inmates pursuant to a plan approved by Manuel Romero.

l. Ensure that inmates are not triple celled;

m. Ensure that inmates requiring segregation who are high risk, security threats, seriously mentally ill, disciplinary, or reclassification are not double celled, unless those inmates have been determined to be compatible using a reliable objective classification tool. Segregation inmates who are in protective custody or new inmates may be double celled if they have been determined to be low risk and compatible using a reliable classification tool;

n. Ensure that inmates who have committed acts of violence are not housed with inmates who have not committed such acts by using a pre-classification triage system as recommended by the Department of Justice NIC;

o. Ensure that inmates who have not yet been classified are not housed in the same pod as inmates who require segregation, as recommended by the NIC;

p. Promptly consult with Manuel Romero regarding a staffing plan for the MDC and, after the consultation, submit to the Court no later than November 1, 2014 a written staffing plan which Defendant Bernalillo County will implement to ensure that staffing at the MDC is adequate to comply with the Court's orders, to comply with the Americans with Disabilities Act as set forth in the Court's November 5, 1996 Order [Doc. 256], and to comply with the United States Constitution; and

q. Defendant Bernalillo County will create an Emergency Population Management Plan in cooperation with Criminal Justice Review Commission (CJRC) to ensure

that the population at MDC remains at or under 1950. The County will have ninety days from the date of the entry of this Order to agree with the CJRC on a Plan and have the agreement accepted by the Court, after input by the parties. If the County does not meet the ninety-day deadline or the Court does not adopt the Plan, the Court will enter an Order imposing a population cap of 1950.

3. In the event that Defendant Bernalillo County, counsel for Plaintiffs, and counsel for Plaintiff-Intervenors do not agree about how to accomplish the requirements identified in paragraphs 2(a)-(q) of this Order, Mr. Romero will resolve the disagreements and issue binding, written decisions regarding the content of applicable policies and procedures as well as the effective implementation of those policies and procedures about which the parties did not reach agreement.

4. Defendant Bernalillo County, counsel for Plaintiffs, and counsel for Plaintiff-Intervenors will work with the Court's mental health care expert, Dr. Jeffrey Metzner, to address the practices alleged in *Plaintiffs And Plaintiff Intervenors' Joint Motion For A Temporary Restraining Order And For Injunctive Relief* [Doc. 1133] by modifying policies and procedures which Defendant Bernalillo County will effectively implement to:

a. Ensure that Defendant Bernalillo County does not place a class member or sub-class member in a dry (no toilet) cell, unless a medical professional and, as appropriate, a mental health professional has approved the inmate's placement in that cell.

b. Ensure that Defendant Bernalillo County does not place a class member or sub-class member in a strip (with a toilet) cell, unless a mental health professional has approved the inmate's placement in that cell.

c. Ensure that sub-class members with Serious Mental Illness who are held in segregation receive the mental health treatment which comports with the requirements of the Americans with Disabilities Act as set forth in the Court's November 5, 1996 Order [Doc. 256], and with the requirements of the United States Constitution;

d. Ensure that all MDC staff receives documented training on all changes to be implemented to policies related to inmate mental health care, with particular attention to training MDC staff on the chain of command and compliance with MDC policy directives.

5. In the event that Defendant Bernalillo County, counsel for Plaintiffs, and counsel for Plaintiff-Intervenors do not agree about how to accomplish the requirements identified in paragraphs 4(a)-(d) of this Order, Dr. Metzner will resolve the disagreements and issue binding, written decisions regarding the content of applicable policies and procedures as well as the effective implementation of those policies and procedures about which the parties did not reach agreement.

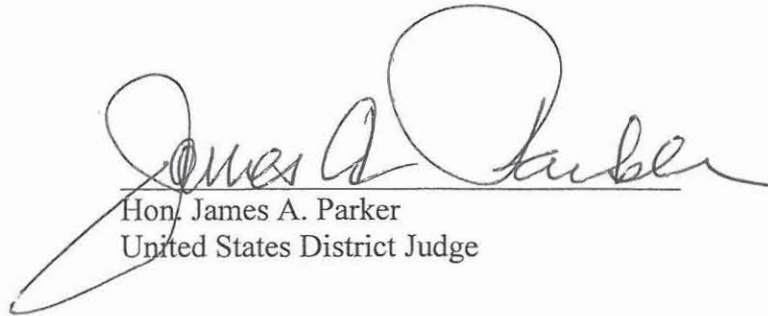
6. The Plaintiffs, Plaintiff-Intervenors, and Defendant Bernalillo County do not intend to create in any non-party the status of third-party beneficiary. This Order will not be construed so as to create a private right of action to any non-party against the defendants. The rights, duties and obligations contained in this Order will only bind the parties to this Agreement.

7. Eighteen months after the Court enters this Order, the County Defendants reacquire the right to file motions under the Prison Litigation Reform Act.

8. Any request for a modification of this Order will be mediated by the Special Master before it is submitted to the District Court for consideration.

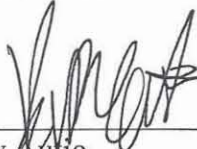
9. Any claimed breach of this Order will be mediated by the Special Master before it is submitted to the District Court for consideration.

It is so ordered.

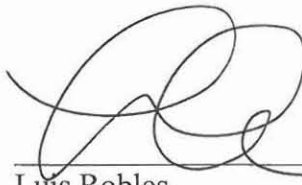


Hon. James A. Parker
United States District Judge

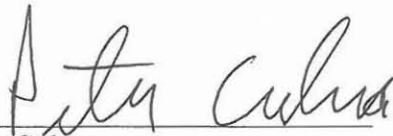
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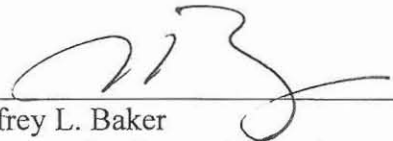
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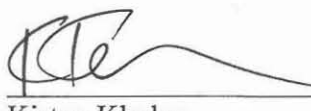
Peter Cubra
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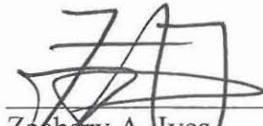
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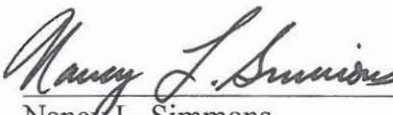
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