

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

DWIGHT DURAN, et al.,

Plaintiffs,

v.

1:77-cv-00721-KG-KK

SUSANA MARTINEZ, Governor, et al.,

Defendants.

SETTLEMENT AGREEMENT

The parties to this action held Settlement Conferences before Chief Magistrate Judge Karen B. Molzen on May 27, 2016 and August 5, 2016 in an effort to resolve the issues raised by Plaintiffs' *Motion for Emergency Declaratory and Injunctive Relief, for a Finding of Contempt and for Orders Imposing Coercive and Compensatory Remedial Relief* [ECF Dkt. #2727] (hereafter "Plaintiffs' Motion for Emergency Relief"). At the Settlement Conference, the parties reached an agreement which they now, through their undersigned respective attorneys, have reduced to writing, and have executed this 5th day of August, 2016.

I. DEFENDANTS' COMMITMENT REGARDING HOUSING OF INMATES AT EXISTING FACILITIES; MEET-AND-CONFER PROCESS

A. Defendants represent that inmates at all Existing Facilities, as that term is defined in the June 10, 1991 Settlement Agreement entered in this action (the "1991 Settlement Agreement"), are housed in accordance with originally designed occupancy.

B. In the event Defendants encounter, in the future, increases in the prison population such that they need to consider housing any inmates at Existing Facilities two per cell ("double-celling") in single-occupancy cells, Defendants

will first notify Plaintiffs' counsel and Judge Molzen of such plans at least ten (10) days prior to taking any such action. The parties agree to meet and confer in good faith regarding efforts that may be undertaken to avoid double-celling. If those discussions do not lead to an agreement between the parties, Either party may request mediation with Judge Molzen. If the parties do not reach an agreement, Plaintiffs may seek relief through a motion filed before the presiding Court.

C. No later than October 1, 2016, the Defendants will remove from all cells at WNMCF all additional bunks that were bolted onto the walls in any cell at WNMCF after the entry of the 1991 settlement agreement.

II. PROCESS FOR REVIEWING LOSS/RESTORATION OF GOOD-TIME CREDITS FOR DOUBLE-CELLED INMATES

A. Within thirty (30) days of the complete execution of this settlement agreement, Defendants shall retrieve and review their records and determine which inmates (1) were double-celled in a single occupancy cell at WNMCF and (2) remain in Defendants' custody.

B. For each inmate meeting both of the criteria identified in II(A) above, Defendants shall within an additional thirty (30) days review that inmate's classification file to determine whether the inmate lost any good-time credits that had previously been awarded to the inmate. For any inmate who meets both of the criteria identified in II(A) and who lost any good-time credits for actions that occurred during the time he was double-celled, Defendants shall then determine whether that loss of good time was reasonably related to that inmate being placed in double-cell housing in a single occupancy cell. If there

is a reasonable relation between an inmate's loss of good time and that inmate having been assigned to a double cell, Defendants agree to restore all such good time to that individual inmate, within thirty (30) days of completing the above-described file review.

- C. If Defendants determine that an inmate (1) was double-celled, (2) remains in Defendants' custody and (3) lost good-time credit for actions that occurred during the time he was double-celled in a single occupancy cell, but Defendants nonetheless determine that there is not a reasonable relationship between that inmate's loss of good-time credit and having been assigned to double-cell housing, Defendants agree to inform Plaintiffs' counsel within ten (10) days of each such determination and to provide Plaintiffs' counsel with all relevant file materials relating to that determination.
- D. Plaintiffs and Defendants, through their respective counsel, will meet and confer in good faith about any inmates whose entitlement to restoration of good-time credits under this Settlement Agreement remains in dispute. If after this conferral the parties remain in disagreement about whether there is a reasonable relation between the loss of an eligible inmate's good-time credit and that inmate having been assigned to a double cell, the parties agree to submit the issue to the Court for determination.

III. GENERAL PROVISIONS

- A. Upon execution by all parties, the parties will file this Settlement Agreement with the Court for the Court's review and approval.

- B. Plaintiffs will withdraw their Motion for Emergency Relief within ten (10) days from the Court's entry of an order approving this Settlement Agreement. Plaintiffs agree that Sections I and II of this Settlement Agreement fully resolve any claims for remedial relief that were raised in Plaintiffs' Motion for Emergency Relief.
- C. This Settlement Agreement was voluntarily and mutually agreed upon by Plaintiffs and Defendants as a compromised settlement of a dispute between the parties. This Settlement Agreement does not constitute an admission that any previous or existing condition, policy, procedure, act or omission of the Defendants or of any official, employee or agent of Defendants was or is improper, negligent, unconstitutional, or otherwise in violation of any right of Plaintiffs.
- D. This Settlement Agreement was the product of negotiations between the parties and their counsel and reflects input from both parties. Neither Plaintiffs nor Defendants shall be deemed to be the drafter of this Settlement Agreement for purposes of construction and interpretation.
- E. By entering into this Settlement Agreement, Plaintiffs do not waive any claim for attorneys' fees incurred in connection with the Motion for Emergency Relief, and Defendants do not waive any objection or opposition to any such claim for attorneys' fees.
- F. The Court shall retain jurisdiction over any dispute that may arise with respect to the interpretation or enforcement of this Settlement Agreement.

Signature Page -- Settlement Agreement -- *Duran v. Martinez et al.*, 77-cv-0021-KG-KK

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D. Zamp

[Signature]

Counsel for Plaintiffs

[Signature]

Counsel for Defendants

Dated: AUGUST 11, 2016

Dated: August 8, 2016

APPROVED, AND SO ORDERED BY THE COURT this 30th day of August, 2016.

[Signature]
United States District Judge