UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 76-6086-CV-Middlebrooks/Brannon

OLLIE CARRUTHERS, *et al.*,

Plaintiffs,

v.

SCOTT ISRAEL, *et al.*,.

Defendants.

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ORDER DISSOLVING CONSENT DECREE AS TO COUNTY

On October 13, 2016, the Court held an Evidentiary Hearing on whether the Consent Decree should be terminated as to Defendant Broward County's ("County") obligations. The Evidentiary Hearing stemmed from the Court's August 5, 2015 Order to Show Cause why the Consent Decree should not be dissolved due to the passage of time. (DE 894). In response to the Order to Show Cause, Broward County requested that the Court dissolve the Consent Decree as to Broward County and requested a hearing on the matter, which the Court held on March 31, 2016 ("March Hearing"). (DE 899). During the March Hearing, Plaintiffs argued that they were entitled to an evidentiary hearing under section 3626(b)(3) of the Prison Litigation Reform Act ("PLRA") before the Court could dissolve the Consent Decree. Plaintiffs asked for six months to conduct discovery and attempt to settle the dispute, and accordingly, the Court scheduled an Evidentiary Hearing for October 2016.

On July 28, 2016, Defendant Sheriff Scott Israel of Broward County ("Sheriff") and Plaintiffs requested preliminary approval of a proposed Settlement (DE 930-1) between them, which the County did not join. (DE 929). The Settlement addresses Plaintiffs' contentions of

overcrowding, excessive use of force, inmate violence, inadequate mental health care and facilities, and burdens upon religious exercise. The Settlement also provides a process for designated experts to evaluate the jail conditions at issue. The experts have begun site visits, and Plaintiffs submitted the report of one such expert, Michael A. Berger, in the Evidentiary Hearing. The Settlement provides that the experts' findings as to whether there are current and ongoing violations of federal rights and their recommendations for PLRA-compliant remedies are to be filed with the Court, which will determine whether to enter prospective relief based on the experts' recommendations or alternatively to dissolve the Consent Decree as to the Sheriff. If the Court approves prospective relief, the experts will assess the Sheriff's compliance every six months and file their reports with the Court. Based on the reports, the Court will determine if the Sheriff is in substantial compliance with the approved prospective relief. Once the Court finds that the Sheriff is in compliance with all approved provisions for one year, the Court will dissolve the Consent Decree as to the Sheriff. The Court preliminarily approved the Settlement and scheduled a fairness hearing for final approval for December 1, 2016. (DE 935).

The Parties agreed that the Evidentiary Hearing held on October 13, 2016 would address: (1) the scope of the County's continued obligations, if any, under the Consent Decree and subsequent stipulations and orders, and (2) whether the Consent Decree should be dissolved as to the County, in whole or in part. (DE 940). The Parties stipulated to the admission of two expert reports: (1) an updated report from Dr. James Austin ("2016 Austin Report") (DE 941-1), the Court-appointed Population Management Expert, and (2) a report from Michael A. Berg ("Berg Report") (DE 941-2), the expert selected by Plaintiffs and the Sheriff to review jail conditions

pursuant to the proposed Settlement. (DE 941). The Parties declined to introduce any other evidence at the Evidentiary Hearing.[1]

STANDARD

Consent decrees "are not intended to operate in perpetuity." *Board of Educ. v. Dowell*, 498 U.S. 237, 248 (1991). The legal justification for displacement of local authority is a violation of the Constitution; a federal court decree exceeds appropriate limits if it extends beyond the time necessary to remedy that conduct. *Id.*; *see also Millihen v. Bradley*, 433 U.S. 267, 282 (1977); *NAACP v. Serbecks*, 31 F.3d 1548, 1574 (11th Cir. 1994) (explaining indefinite federal oversight of state institutions is disfavored and a federal court should eliminate supervision once defendant comes into compliance with the law.). The Supreme Court has also emphasized that "involvement of federal courts in the day-to-day management of prisons [has led to] squandering judicial resources with little offsetting benefit to anyone . . . . Federal courts ought to afford appropriate deference and flexibility to state officials trying to manage a volatile environment." *Sandin v. Connor*, 515 U.S. 472, 482 (1995).

A court may modify a final judgment, such as the judgment embodied in the Consent Decree at issue, where the court finds that "it is no longer equitable that the judgment should have prospective application." *See* Fed. R. Civ. P. 60(b)(5). In *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 393 (1992), the Supreme Court adopted a "flexible standard" which allows a decree to be modified if the party seeking modification shows "a significant change in circumstances," either of fact or law. The Eleventh Circuit has held that the *Rufo* standard

[1] Although the Court pressed Plaintiffs on whether they wished to introduce additional evidence, Plaintiffs maintained that the County had not met its burden of demonstrating compliance with the Consent Decree's requirements as to excessive force, inmate violence, mental health, and religious burdens, and that therefore Plaintiffs need not present contrary evidence.

applies to requests to terminate consent decrees and has further stated that when the remedy prescribed in the consent decree has been accomplished a district court is authorized to consider *sua sponte* whether termination of the consent decree is appropriate. *United States v. City of Miami*, 2 F.3d 1497, 1505-06 (11th Cir. 1993); *see also Johnson v. Florida*, 348 F.3d 1334 (11th Cir. 2003).

Moreover, subsequent to entry of the Consent Decree at issue here, Congress enacted the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626. Beyond the federalism and prudential requirements outlined above, the PLRA changed prison reform litigation in two primary respects. First, it prescribed limits on the scope of prospective relief a court may enter, mandating that prospective relief may not be ordered "unless the court finds that such relief is narrowly drawn, extends no further than necessary . . . and is the least intrusive means necessary to correct the violations of the Federal right." *See* 18 U.S.C. § 3626(a)(1). Second, the PLRA limits enforcement of previously entered prospective relief. Section 3626(b)(1)(A) establishes specified time frames under which prospective relief is terminable upon motion of a party. Section 3626(b)(2) additionally provides that a defendant shall be entitled to immediate termination of any prospective relief that was entered without the required findings that "the relief is narrowly drawn, extends no further than necessary to correct the violation . . . and is the least intrusive means necessary to correct the violation . . . ." Both subsections (b)(1)(A) and (b)(2) are limited by § 3626(b)(3), which provides that prospective relief shall not be terminated if the court determines that the relief remains necessary to "correct a current and ongoing violation of [federal rights], extends no further than necessary to correct the violation . . . and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation." *See id.* § 3626(b)(3).

DISCUSSION

A. The Scope of the County's Obligations under the Consent Decree and Subsequent Orders

Plaintiffs argue that the Consent Decree obligates the County to address constitutional violations caused by the Sheriff's operation of the jails, including excessive force, inmate violence, mental health issues, and burdens on religious exercise, because the Consent Decree requires "Defendants" to "plan for the actions necessary to achieve the objectives of this Agreement" and "implement the schedule set forth herein." (DE 913-1 ¶ 12, 13). The Sheriff argues that the County must remain bound by the Consent Decree to fund the Sheriff's compliance with its provisions. The County counters that its only obligation was to make capital improvements to address unconstitutional overcrowding because state and local law grant the Sheriff, not the County, authority over prison operations.

Despite the Consent Decree's reference to "Defendants," the Court finds that state and local law limit the extent to which the County can take action related to prison operations by placing primary responsibility for operations on the Sheriff. In Broward County, Florida, the Sheriff, and not the County, has statutory authority to make operational decisions for county jails. Under the Florida Constitution, a sheriff is an independent county officer, elected by, and therefore responsive to, the electors. Fla. Const. Art. VIII § 1(d). State law authorizes a county to designate the sheriff as chief correctional officer, responsible for "enforc[ing] all existing state law concerning the operation and maintenance of county jails." Fla. Stat. § 951.061. Accordingly, Broward County passed responsibility for the operation and maintenance of the jail facilities to the Sheriff in 1987. *See* Broward County Code of Ordinances § 18.01. The County

retained responsibility to fund construction of jail facilities. *See* Fla. Stat. § 30.49(2)(d) ("The sheriff shall submit to the board of county commissioners for consideration and inclusion in the county budget, as deemed appropriate by the county, requests for construction, repair, or capital improvement of county buildings operated or occupied by the sheriff."). As to funding the Sheriff's operation of the jails, the County may modify the Sheriff's budget proposal, but the Sheriff can appeal the County's action to the Executive Office of the Governor. Fla. Stat. § 30.49(4). In addition, the County can only modify monies for broad category designations, such as "salary" or "equipment," because "the allocation of appropriated monies within the six items of the budget is a function which belongs uniquely to the sheriff as the chief law enforcement officer of the county." *Weitzenfeld v. Dierks*, 312 So. 2d 194, 196 (1975).

It is against the limitations imposed by state and local law that the Court determines the scope of the County's obligations under the Consent Decree.[2] The primary source of the Parties' duties is the July 1994 Stipulation for the Entry of Consent Decree.[3] (DE 913-1). The Stipulation for Entry of Consent Decree requires Defendants to ensure that "all Broward County correctional facilities [are] operated and maintained, at a minimum, in compliance with applicable federal and Florida law, and the following standards: (a) Chapter 33.8 of the Florida Administrative Code; (b) American Correctional Association ("ACA") Standards for Adult Local Detention Facilities (currently 3rd Edition); (and) (c) National Commission on Correctional

[2] Although the Court finds that the County's obligations under the Consent Decree are limited by the Sheriff's responsibility for prison obligations, this is not to say that the County cannot continue to play a constructive role in facilitating the Sheriff's compliance with his duties under the Consent Decree.

[3] The Court entered the Stipulation for the Entry of Consent Decree on January 31, 1995 by its Order Approving Settlement Agreement and Dismissing the Case (DE 913-2). That Order was vacated and superseded on June 8, 1995 by the Order Granting Plaintiffs' Motion to Amend and Vacating Order Approving Settlement Agreement and Dismissing Case. (DE 913-4).

Health Care Standards of medical, dental, and mental health services." (DE 913-1 ¶ 10). All obligations regarding ACA compliance "terminate upon [D]efendants' achieving ACA accreditation." (*Id.* at ¶ 26).

The Stipulation for Entry of Consent Decree also contains process requirements. Defendants must develop a plan to project demand for beds and a plan for physical and operational standards that meet the standards set forth in the agreement. In addition, the County must develop a plan to renovate and construct additional facilities. All other process requirements are expressly the responsibility of the Sheriff.

The Stipulation for Entry of Consent Decree contains specific jail population requirements. Each inmate is entitled to a bed and the authorized capacity of the jails is determined by the number of beds, subject to the standards set forth in Chapter 33-8 of the Florida Administrative Code. When the population reaches 88% of authorized capacity, the Sheriff and Director of the Broward County Department of Corrections and Rehabilitation are required to exercise every internal mechanism within their legal authority to speed administrative decisions and control the growth of the population. When the population reaches 100% of authorized capacity, no further admissions are permitted except upon extreme circumstances created by disaster, insurrection, riot or similar emergency or catastrophe.

In 2005, two subsequent settlements narrowed the provisions of the Stipulation for Entry of Consent Decree.[4] The later-enacted Second Stipulation for Settlement narrows Plaintiffs' claims to mental health services, inmate discipline, inmate security, capacity, and religious services and legal access. (DE 913-9). It appoints an expert, paid for by the County, to investigate current and ongoing violations of federal law and make PLRA-compliant

[4] This settlement ended litigation that arose from Defendants' motion to terminate the Consent Decree under the PLRA.

recommendations to address them. If there are current and ongoing violations, the court may direct the Parties to implement the expert's recommendations if it finds that they meet the need-narrowness requirements of the PLRA. However, it is unclear whether the court ever made any such findings under the PLRA. At the Evidentiary Hearing, Plaintiffs stated that the last time the Court approved specific provisions in the Consent Decree was in 1995. As a result, the Court is unaware of any substantive change that the Second Stipulation made to the 1994 Stipulation besides narrowing Plaintiffs' claims and obligating the County to pay for expert and attorney fees.

On October 4, 2010, after a spike in the prison population, the Court appointed a Population Management Expert, Dr. Austin, to forecast the prison population and develop strategies to reduce it, with a focus on criminal justice policies. (DE 913-11). The Court's Order does not require Defendants to implement Dr. Austin's recommendations.

In sum, the Court finds that the Consent Decree and subsequent orders obligated the County to implement the following procedures to reduce overcrowding: (1) obtain ACA accreditation, (2) develop a plan to project demand for beds, to develop physical standards, and to renovate and construct additional facilities, (3) obtain compliance with the capacity requirements set forth in Chapter 33-8 of the Florida Administrative Code, (4) exercise every internal mechanism within its authority to reduce the population when it reaches 88% of capacity, and (5) pay expert and attorneys' fees.

B. Whether the Consent Decree Should be Dissolved as to the County

Based on the evidence submitted at the Evidentiary Hearing and in connection with the Parties' Responses to the Court's Order to Show Cause, and for the reasons stated below, the

Court finds that both the PLRA and Rule 60(b) require dissolution of the Consent Decree as to the County.[5]

1. Prison Litigation Reform Act

The party seeking termination of a consent decree bears the burden of showing that the decree does not comply with the PLRA. *See Tyler v. Murphy*, 135 F.3d 594, 597-98 (8th Cir. 1998). The PLRA requires that prospective relief "extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. § 3626(1)(A). Such relief will not terminate if it "remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation . . . and is narrowly drawn and the least intrusive means to correct the violation." *See id.* § 3626(b)(3). Under § 3626(b)(3), the party opposing termination must be "afforded an opportunity to prove that there are 'current and ongoing' violations of class members' federal rights." *Cason v. Seckinger*, 231 F.3d 777, 783 (2000).

"[A] 'current and ongoing' violation is a violation that exists at the time the district court conducts the § 3626(b)(3) inquiry, and not a potential future violation." *Cason v. Seckinger*, 231 F.3d 777, 784 (11th Cir. 2000). In fact, Congress changed the phrase "current or ongoing" to "current and ongoing" "to ensure that court orders do not remain in place on the basis of a claim

[5] At the Evidentiary Hearing, Plaintiffs argued that Fed. R. Civ. P. 60(b), and not the PLRA, governs the Court's decision because the County has not filed a motion to terminate under the PLRA. However, the Court interprets the County's Response to the Court's Order to Show Cause as a request for termination of the Consent Decree to which § 3626(b)(1)(A) applies. In addition, at the March Hearing, the Parties agreed that the PLRA required this Evidentiary Hearing before dissolution of the Consent Decree. Therefore, the Court finds that the PLRA applies to its decision to dissolve the Consent Decree. However, in the alternative, the Court finds that dissolution is proper under Rule 60(b).

that a current condition that does not violate a prisoner's Federal rights nevertheless requires a court decree to address it, because . . . government officials are 'poised' to resume a prior violation of federal rights." *Id.* at 783-84 (citing H.R. Conf. Rep. No. 105-405, at 133 (1997)).[6]

Finally, even if there is a "current and ongoing" violation of federal rights, a court may not allow a consent decree to remain in effect unless it makes:

> particularized findings . . . that each requirement imposed by the consent decrees satisfies the need-narrowness criteria . . . it is not enough to simply state in conclusory fashion that the requirements of the consent decrees satisfy those criteria. Particularized findings, analysis, and explanations should be made as to the application of each criteri[on] to each requirement imposed by the consent decrees.

Id. at 785; *see also United States v. Florida Dept. of Corr.*, 778 F.3d 1223, 1228 (11th Cir. 2015). A court must find that the relief "*currently* complies with the need-narrowness-intrusiveness criteria" laid out in § 3626(b)(3), and not merely that the consent decree was sufficiently narrow when entered. *See Cason*, 231 F.3d at 784-85 (emphasis in original).

Prison overcrowding, on its own, is not a violation of federal right.[7] *See Rhodes v. Chapman*, 452 U.S. 337 (1981). However, overcrowding may violate the Eighth Amendment if it leads to inhumane conditions, such as a deprivation of food, proper sanitation, or medical care,

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[6] At the March 2016 hearing, Plaintiffs argued that *Cason*'s definition of "current and ongoing" is contrary to *Helling v. McKinney*, 509 U.S. 25, 33 (1993), which held that "the Eighth Amendment protects against future harm to inmates . . . ." However, the Eleventh Circuit has rejected this argument, explaining that "current and ongoing" applies only to PLRA termination proceedings and does not "amend the well-established law that injunctive relief is available in the first instance to prevent a substantial risk of serious injury from ripening into actual harm, i.e. to prevent future harm." *Thomas v. Bryant*, 614 F.3d 1288, 1320 (11th Cir. 2010).

[7] The Court's analysis is limited by the scope of the County's obligations, which relate solely to overcrowding.

or when it is accompanied by dangerous conditions.[8] *Hamm v. DeKalb Cty.*, 774 F.2d 1567, 1575 (11th Cir. 1985) ("In assessing claims of unconstitutionally overcrowded jails, courts must consider the impact of the alleged overpopulation on the jail's ability to provide such necessities as food, medical care, and sanitation."); *cf. Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (explaining that Eighth Amendment imposes duty to provide humane prison conditions, including adequate food, clothing, shelter, medical care, and "reasonable measures to guarantee the safety of inmates"); *Rodriguez v. Sec'y for Dep't of Corr.*, 508 F.3d 611, 616-17 (11th Cir. 2007) ("The Eighth Amendment imposes a duty on prison officials to protect prisoners from violence at the hands of other prisoners.") (internal quotations and citations omitted).

An Eighth Amendment claim requires a "two-prong showing: an objective showing of a deprivation or injury that is 'sufficiently serious' to constitute a denial of the 'minimal civilized measure of life's necessities' and a subjective showing that the official had a 'sufficiently culpable state of mind.'" *Thomas v. Bryant*, 614 F.3d 1288, 1304 (11th Cir. 2010) (citing *Farmer v. Brennan,* 511 U.S. 825, 834 (1994)). The objective component is both (1) a question of fact as to whether an extreme deprivation exists, and (2) a question of law as to whether the deprivation was "sufficiently serious" to violate "evolving standards of decency" when balanced against prison officials' need to keep a prison safe. *Thomas,* 614 F.3d at 1307. "An unjustified constant and unreasonable exposure to violence" is an extreme deprivation. *LaMarca v. Turner*,

[8] In prison cases, the Eighth Amendment governs whether there is a violation of a federal right. *Thomas v. Bryant*, 614 F.3d 1288, 1303 (11th Cir. 2010). The Broward County jail facilities hold pretrial detainees in addition to convicted inmates. The rights of pretrial detainees are protected by the Due Process provisions of the Fifth and Fourteenth Amendments rather than by the Eighth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). However, for claims based on inadequate necessities, the Eleventh Circuit has held that "the minimum standard allowed by the due process clause is the same as that allowed by the eighth amendment for convicted persons." *Williams v. S. Fulton Reg'l Jail*, 152 F. App'x 862, 863 (11th Cir. 2005) (citing *Hamm v. DeKalb County*, 774 F.2d 1567, 1574 (11th Cir. 1985)).

995 F.2d 1526, 1535 (11th Cir. 1993). In contrast, short periods of unsanitary conditions, *Williams v. Delo*, 49 F.3d 442 (8th Cir. 1995), or temporarily having to sleep on a mattress on the floor or table, *Hamm v. DeKalb County*, 774 F.2d 1567, 1575 (11th Cir. 1985), are not extreme deprivations. The subjective showing requires deliberate indifference, as demonstrated by "(1) subjective knowledge of a risk of serious harm, (2) disregard of that risk, [and] (3) by conduct that is more than gross negligence." *Thomas*, 614 F.3d at 1312.

The Court finds no evidence of "current and ongoing" violations of prisoners' Eighth Amendment rights caused by overcrowding.[9] More to the point, the Court finds that the jails are not currently overcrowded. Specifically, Dr. Austin's June 11, 2014 Report concludes: "Broward County has made exceptional progress in reducing its jail population problem. Since 2006, it has successfully implemented a number of reforms that have lowered jail population and in turn eliminated the need for future bed capacity." (DE 899-2 at 24). Dr. Austin's 2016 Report finds that the overall average daily capacity for 2016 is below operational capacity of 87%, although the average daily capacity for low security Conte Facility was above its operational capacity.[10] (DE 941-1 at 20-21). The 2016 Report further finds that the use of temporary beds

[9] Because there is no evidence of overcrowding in the record, much less extreme deprivations caused by overcrowding, the Court need not reach the subjective prong of the Eighth Amendment analysis.

[10] According to Dr. Austin, operational capacity is the point at which overcrowding and the use of temporary beds at the jail negatively affect conditions and operations, and can affect the jail's capacity to manage its population safely through its classification system. Dr. Austin recommends that system-wide operational capacity should not exceed 87% for "any extensive period of time," with 90% capacity proposed for the low security facilities of Conte and Rein and 85% capacity for the Main Jail and North Broward facilities. (DE 941-1). Plaintiffs' expert, Mr. Berg, identifies 95% as the operational capacity at which overcrowding would create a "dangerous environment for safe inmate housing." Although Dr. Austin reports that Conte's average daily capacity for 2016 was 94%, capacity above the recommended operational capacity does not automatically result in unconstitutional conditions. Neither expert provided any

has been significantly reduced from 200 to 65 each month. (*Id.* at 21). It states that when 326 additional beds across all facilities, currently being renovated, are restored to operational status, there should be no need for temporary beds if the population remains at its current level, as the Report predicts that it will. (*Id.* at 19). Similarly, Mr. Berg's Report finds that overall capacity is currently at 80% but that some temporary beds are in use. (DE 941-2 at 13).

Mr. Berg's Report warns of foreseeable unconstitutional overcrowding that will occur if "the unseasonable drop in jail population reverses and returns to recent norms, and/or the length of stay increases . . . ." (*Id.* at 17). Mr. Berg also expresses concern that the Relief Housing Plan, which permits the Sheriff to open the Stockade to mitigate overcrowding, does not become operational until the system-wide population reaches 95% capacity for more than 30 consecutive days. (*Id.* at 13-14). However, neither of Mr. Berg's findings evidences a "current and ongoing" violation as opposed to a "potential future violation." *See Cason v. Seckinger*, 231 F.3d 777, 784 (11th Cir. 2000). Even under *Helling*, which is not applicable to PLRA termination proceedings, Mr. Berg's report does not show a "substantial risk of serious injury." First, Mr. Berg provides no evidence supporting his assertion that the "Broward detainee population is at unseasonably low numbers." In contrast, Dr. Austin's projections are that the prison population will not increase in the next two years and are based on an extensive analysis of current prison trends. Second, any *temporarily* dangerous conditions at 95% capacity for 30 consecutive days would not necessarily constitute an Eighth Amendment violation. *See Hamm v. DeKalb County*, 774 F.2d 1567, 1575 (11th Cir. 1985) (finding that temporarily having to sleep on a mattress on the floor or table is not an extreme deprivation); *Williams v. Delo*, 49 F.3d 442 (8th Cir. 1995) (finding that short periods of unsanitary conditions are not an extreme deprivation).

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evidence of extreme deprivations, such as a lack of necessities or an unconstitutionally dangerous environment, at Conte as a result of its average daily capacity.

In sum, the Consent Decree must be terminated as to the County based on the absence of any "current and ongoing" violations of a Federal right caused by overcrowding at the Broward County facilities.[11]

2. Federal Rule of Civil Procedure 60(b)

Even under Fed. R. Civ. P. 60(b), the Court's conclusion is the same. Rule 60(b) requires "[t]he party seeking termination of [a consent] decree [to] show that the basic purposes of the decree have been fully achieved and that there is no significant likelihood of recurring violations of federal law once the decree has been lifted." *Allen v. Alabama State Bd. of Educ.*, 164 F.3d 1347, 1350 (11th Cir. 1999) (citing *Bd. of Educ. of Oklahoma City Public Schools v. Dowell*, 498 U.S. 237, 246-50 (1991)). As discussed above, the expert reports show that the Consent Decree's purpose of eliminating overcrowding has been achieved and there is no significant likelihood of future violations in light of Dr. Austin's population projections and the Relief Housing Plan. Furthermore, there has been a "significant change" in Broward County prison facilities since the Consent Decree was first enacted in 1982, and it is "no longer equitable" to hold the County to a Consent Decree with which it has substantially complied.[12]

The County has taken the following steps to comply with its obligations under the Consent Decree and subsequent orders. In 1979, Broward County opened a North Broward

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[11] Plaintiffs argue that the County has not implemented any of Dr. Austin's or Mr. Berg's recommendations for further reducing the population. However, in light of the Court's determination that there are no "current and ongoing" violations, such prospective relief would be beyond what is necessary, narrowly tailored, and the least intrusive means to remedy "current and ongoing" violations of federal rights and would therefore violate the PLRA.

[12] In addition to analyzing termination under Fed. R. Civ. P. 60(b), Plaintiffs argue that the Court should analyze whether the County has fulfilled its obligations under contract law. If the Court applies contract law principles, it reaches the same conclusion. As discussed in this section, the County has substantially complied with its obligations under the Consent Decree.

Bureau jail facility in Pompano to replace an older facility. In 1985, at a cost of $41.6 million, Broward County constructed what is now known as the Main Jail near the Broward County Courthouse in Fort Lauderdale. In 1988, Broward County expanded the capacity of the Main Jail and in 1992 further expanded it.

In the 1990's, Broward County spent $62.1 million on two new jail facilities: the Joseph V. Conte Facility which opened in 1999 and the Paul Rein Detention Facility which opened in 2004. These facilities now house a total capacity of 5,144 beds, as follows: Conte, 1,328; Main Jail, 1,542; North Broward Bureau, 1,206; and Rein, 1,068. When combined with the construction of the Main Jail, which occurred prior to entry of the Consent Decree, Broward County has spent $103.7 million to expand jail capacity since the class action complaint was filed.[13] In addition, although the original Consent Decree assessed fines against the County for exceeding the population caps, since 1992, 24 years ago, no fines have been imposed.

In addition, Broward County jail facilities obtained ACA accreditation in 1995 and have obtained reaccreditation through ACA each year. The Broward facilities were also accredited by the National Commission on Correctional Health Care ("NCCHC") in 1995 and reaccredited every three years thereafter. In October 2009, the Broward County jail facilities were recognized by NCCHC as the "Facility of the Year." The Broward jail facilities were also accredited by the Florida Correction's Accreditation Commission ("FCAC") in 2000 and reaccredited every three years since that time. The Broward facilities are also subject to an annual inspection for compliance with the Florida Model Jail Standards ("FMJS"), promulgated pursuant to section 951.25(4), Florida Statutes, enacted in 1996.

[13] The County continues to devote substantial resources to funding the Sheriff's operation of the jails. The Sheriff's proposed total operating budget for fiscal year 2015/2016 was $796,066,362 with $239,508,736 designated for corrections and detention alternative facilities.

Finally, although both experts offer recommendations for how the jail population could be reduced even further, the County has no court-imposed obligation to implement these recommendations, and many are not even within the scope of the County's statutory authority.

In sum, the Consent Decree must be terminated as to the County because the "basic purposes of the decree have been fully achieved and that there is no significant likelihood of recurring violations of federal law once the decree has been lifted."

ORDERED AND ADJUDGED that the Consent Decree is dissolved as to Broward County.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 17 day of October, 2016.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record