

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 76-6086-CIV-MIDDLEBROOKS

OLLIE CARRUTHERS, et al.,

Plaintiffs,

v.

SCOTT J. ISRAEL, as Sheriff of
Broward County, Florida, et al.,

Defendants.

DEFENDANT, SCOTT J. ISRAEL, SHERIFF OF BROWARD COUNTY, FLORIDA,
RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW, Defendants, SCOTT J. ISRAEL, Sheriff of Broward County, Florida, by and through undersigned counsel, pursuant to this Court's Order dated August 5, 2015 to show cause why the Consent Decree should not be dissolved or amended (DE 894), hereby files this Response, and states as follows:

1. Pursuant to 18 U.S.C. §3626(b)(1), in any civil action with respect to prison conditions, a defendant shall be entitled to the immediate termination of all prospective relief unless the court makes written findings that such relief:

- a) Is necessary to correct a current and ongoing violation of a federal right;
- b) Extends no further than is necessary to correct a current and ongoing violation of the federal right; and,
- c) Is narrowly drawn and is the least intrusive means to correct the violation.

2. Based upon discussions with Plaintiffs' counsel, Defendant Israel understands that the Plaintiff class believes that the following conditions of confinement continue to be problematic:

- a) Facility capacity;
- b) Mental health care;
- c) Violence / use of force; and
- d) Religious services.

3. With the possible exception of facility capacity, Defendant Israel does not agree that the above areas of concern warrant prospective relief under the PLRA. However, Defendant Israel understands that the best way to address Plaintiff's continuing concerns is through dialogue. The parties have engaged in multiple discussions —also involving Special Master Messing—which have been amicable and productive and are intended to lead to an agreement that will resolve this case.

4. Accordingly, Defendant Israel does not object to a proposal by Plaintiff's counsel for an additional 60 days to continue their negotiations for the purpose of addressing any remaining concerns and agreeing on a timetable and mechanism to wind down the lawsuit to conclusion, and then report to the Court.

5. Notwithstanding Defendant's Israel's desire to address Plaintiff's continuing concerns and formulate a mutually agreeable plan to terminate the Consent Decree, Defendant Israel asserts that, at a minimum, the Consent Decree should be amended to terminate all compliance monitoring required under its terms.

6. Further, to the extent that the Consent Decree should be continued into the future, it should be limited solely to facility capacity.

Compliance Monitoring

7. The Consent Decree requires that the Broward County Jail facilities be operated and maintained in compliance with federal law, Chapter 33-8 of the Florida

Administrative Code¹, and the standards of the American Correctional Association (ACA) and the National Commission on Correctional Health Care (NCCHC).

8. To ensure that Defendants comply with the terms of the Consent Decree, it provides for "Compliance Monitoring". Under the Compliance Monitoring section of the Consent Decree, Defendants are required to provide inmates with free telephone access to Plaintiff's counsel "for reporting complaints of conditions of confinement," and that such free telephone access shall continue "during the monitoring period."

9. The conditions that existed at the time the Consent Decree was finalized, which may have required compliance monitoring at that time, no longer exist and should therefore be terminated.

10. Pursuant to the terms of the Consent Decree, the Broward County jail facilities obtained ACA accreditation in 1995. The Broward County jail facilities have obtained reaccreditation through ACA every year since, and currently maintain ACA accreditation through November 2016.

11. The Broward County jail facilities have also obtained and maintained accreditation through several additional accrediting bodies, including:

- a) National Commission on Correctional Health Care (NCCHC): Initial accreditation in 1995, and reaccredited every three years thereafter through present. In October 2009, the Broward County jail facilities were recognized by NCCHC and awarded the "Facility of the Year", the most prestigious honor bestowed by that accrediting agency for excellence in inmate health care.
- b) Florida Corrections Accreditation Commission (FCAC): Initial accreditation in 2000, and reaccredited every three years thereafter through present.

¹ The Florida Model Jail Standards replaced Chapter 33-8 of the Florida Administrative in 1996.

12. In addition to these accreditations, the Broward County jail facilities are subject to an annual inspection for compliance with the FMJS, promulgated under the authority of Section 951.23(4), Florida Statutes. The Broward County jail facilities have maintained compliance with the FMJS since compliance inspections began in the mid-1990's.

13. The Consent Decree provides, in pertinent part, that Compliance monitoring shall continue "until ACA accreditation or order of the Court."

14. The Broward County jail facilities have obtained and maintained accreditation through ACA, NCCHC, and FCAC, and have maintained annual compliance with the FMJS.

15. Furthermore, the Broward County jail facilities have implemented and maintained an inmate grievance system as required under the terms of the Consent Decree, affording all inmates the opportunity to obtain redress for their complaints.

16. The Broward County jail facilities have also provided inmates with access to free telephone calls to an "ombudsperson" pursuant to the terms of the First Stipulation for Settlement. The role of the ombudsperson is to receive, review, and address inmate concerns and grievances.

17. The grievance system and the free telephone access to an ombudsperson provide all the resources necessary for inmates to raise any concerns with facility staff, and have those concerns reviewed and addressed by jail staff.

18. Free phone calls to Plaintiff's counsel to monitor jail conditions are not only unnecessary, but they are also counter-productive. On many occasions, inmates circumvent the grievance process entirely by contacting Plaintiff's counsel without first filing a grievance. On many other occasions, inmates file a grievance and immediately contact

Plaintiff's counsel to complain of the same matter before giving jail staff the opportunity to address the complaint.

19. Circumventing the grievance process and failing to afford staff the opportunity to review and address an inmate complaint undermines the entire grievance system as it encourages inmates to go outside the grievance process based upon the perceived belief that they will obtain a greater remedy by contacting Plaintiff's counsel.

20. Processing complaints sent to the jail through class counsel also creates a duplication of efforts by staff as they must respond not only to an inmate's grievance, but also to correspondence received from class counsel.

21. In sum, compliance monitoring through free phone calls to Plaintiff's counsel is not necessary to correct a current and ongoing violation of a federal right; extends further than is necessary to correct any violations of federal rights that may have existed in the past; and, is not narrowly drawn or the least intrusive means to correct any violations of federal rights that may have existed in the past. Accordingly, this Court should amend the terms of the Consent Decree by terminating any continued compliance monitoring.

Facility Capacity

22. To the extent that the Consent Decree should be continued at all, it should be limited to addressing facility capacity concerns.

23. When the Consent Decree was ratified in 1994, the authorized capacity of the Broward County jail facilities was 3,656 inmates.

24. Since that time, Broward County has added two additional facilities, increasing the bed capacity an additional 2,496 beds:

- a) Joseph V. Conte Facility: 1999 – 1,328 beds
- b) Paul Rein Facility: 2001 – 1,068 beds.

25. In September 2009, the Stockade Facility was officially closed for housing of jail inmates, resulting in a reduction of 712 beds.

26. The current rated jail capacity for all four (4) jail facilities is 5,144 beds.

27. The current jail population as of August 31, 2015 is 4,752 inmates, which is 92.4% of capacity. The jail population per facility is as follows:

FACILITY	IM POP. TODAY	% CAPACITY	AVAILABLE BEDS
MAIN	1,414	91.7	1,542
CONTE	1,290	97.1	1,328
NBB ²	1,034	85.7	1,206
REIN	1,014	94.9	1,068

28. Because of inmate classification criteria and the need for continuing maintenance in the facilities, the Broward County jail facilities have had to employ the use of “temporary beds.”

29. The Broward County jail facilities have employed the use of temporary beds to address facility capacity issues in various numbers for at least the previous twelve (12) years.

30. In the last year, temporary bed usage facility-wide has ranged from a low of approximately 61 in July 2014, to a high of 232 beds on August 15, 2015.

31. One of the most significant factors affecting the jail population is the average length of stay (ALOS) of inmates booked into the jail facilities. Dr. James Austin, an expert hired to examine the jail population, is in the process of completing his final report. In his

² The North Broward Bureau houses and treats the mentally ill population and in many instances requires single occupancy cell housing. The number of usable beds in the facility is therefore less than the actual bed capacity. The percentage capacity based on usable beds at NBB is 92.7%. Factoring the usable beds at NBB

June 11, 2014 report, Dr. Austin highlights the effect of the ALOS on the jail population. See Exhibit A, Evaluation of Broward County Jail Population, Current Trends and Recommended Options – Updated Report, Dr. James Austin, June 11, 2014, pgs. 2-6.

32. By way of example, in 2010 the total number of individuals booked into the Broward County jail was approximately 60,000. During that same year, the ALOS for those individuals was 27.40 days in custody. This resulted in an average daily population (ADP) in 2010 of 4,498 inmates.

33. In 2014, the total number of individuals booked into the Broward County jail was approximately 45,000 inmates, a 25% decline in annual bookings as compared to 2010. Had the ALOS stayed the same, the Broward County jail population could have expected a significant decrease in the population. However, between 2010 and 2014, the ALOS rose to 35.82 days in custody, an average increase of more than 4 days in custody per inmate. Instead of a decrease in the ADP as a result of a decreased bookings in 2014, the ADP over this time period increased slightly to 4,503 inmates.

34. Highlighting the concern about the effect this has on the current inmate population, the ALOS from January 1, 2015 through July 31, 2015 has increased by approximately 2.5 days over the 2014 ALOS, and is now at 38.32 days in custody. New booking during this time period were approximately 25,000, which is down slightly over the same time period the previous year.

35. If this trend continues, the Broward County jail facilities will book approximately 44,000 new arrests in 2015. If the ALOS remains at no more than 38.32 through the year, the ADP will be 4605, an increase of over 100 inmates from 2014 despite projected decreased bookings.

over all facilities results in a current population at 94% of capacity.

36. Dr. James Austin has opined that an “85% threshold of available beds is the preferred capacity” of the Broward County jail facilities, and that “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 classifications system.” Exhibit A, p.11.

37. While the parties may disagree on the percentage of available capacity in which the Broward County jail facilities can operate safely and efficiently, the current population of almost 93% is certainly approaching that point. Should the ALOS remain the same and the average bookings per year return to their historic numbers, the Broward County jail facilities can expect further increases in the jail population approaching full capacity.

38. Defendant Israel does have a plan to alleviate crowding in the facilities when the capacity reaches critical levels. While the Stockade facility was closed in 2009, the building and the beds within have been maintained and can accommodate up to 572 inmates.

39. However, the use of such facility would require additional staff resources, supplies, meals, and healthcare to manage the inmate population, and would require the assistance of the Defendant Broward County in supplying the necessary additional funding that would be required to implement this plan.

Conclusion

Defendant Israel submits to the Court that all prospective relief under the Consent Decree should be terminated as such relief is no longer necessary to correct a current and ongoing violation of a federal right; or in the alternative that compliance monitoring be

terminated for the reasons stated herein, and that any future prospective relief be limited to addressing facility capacity concerns.

Respectfully submitted this 31st day of August, 2015.

SCOTT J. ISRAEL
SHERIFF OF BROWARD COUNTY

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Certificate of Service

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and that the foregoing document is being served on this 31st day of August, 2015 on all counsel of record identified in the below Electronic Service List in the manner specified via transmission of Notices or Electronic Filing generated by CM/ECF, and by U.S. Mail to Renard Fleuridor and Greg Jones at the addresses listed on the U.S. Mail Service List below.

/s/ Terrence O. Lynch

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