

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
96 NOV -5 PM 2:00
Robert M. [unclear]
CLERK-SANTA FE

JIMMY (BILLY) MCCLENDON,
et. al.,

Plaintiffs,

v.

CIV-95-0024 MV/DJS

CITY OF ALBUQUERQUE, et. al.,

Defendants,

v.

E.M. et al.,

Plaintiff-Intervenors.

ORDER CERTIFYING A CLASS

In accordance with the Pre-Trial Order, the findings and conclusions contained in the Order filed on August 23, 1995, the Order filed on October 26, 1995 granting Plaintiff-Intervenors' Motion to Intervene, and the Order filed on August 15, 1996 granting certification of a subclass, it is hereby ORDERED:

1. CLASS CERTIFICATION. Part I (allegations of overcrowding) contained in the original Complaint, Civil Action No. 95-0024, styled McClendon et al. v. City of Albuquerque et al. shall be maintained as a class action on behalf of the following class of plaintiffs:

"All persons presently confined in the Bernalillo County Detention Center, Albuquerque, New Mexico ("BCDC") or who may/will be so confined in the future," with respect to the following cause(s) of action:

Any claims for injunctive relief under 42 U.S.C. § 1983 or any other federal

statute for deprivation of rights under the United States and New Mexico Constitutions allegedly caused by overcrowding at BCDC.

It is to be understood that the class of "all persons presently confined" includes all persons so confined when the Complaint was filed on January 10, 1995 and thereafter during the pendency of this action.

It is also to be understood that, with respect to the causes of action particularized above, the class so certified includes Plaintiff-Intervenors and the subclass of "all persons with mental and/or developmental disabilities who are now, or in the future may be, detained at BCDC" they represent. However, Plaintiff-Intervenors are and will henceforth be represented by separate counsel of record.

2. CLASS REPRESENTATIVES; CLASS COUNSEL. The named original Plaintiffs and Plaintiff-Intervenors are designated as class representatives and Mary Y.C. Han, Shannon Oliver and Joseph Kennedy are counsel for the original Plaintiffs, and Peter Cubra Esq., Elizabeth Simpson Esq., and Nancy Koenigsberg Esq., are counsel for Plaintiff-Intervenors, and are designated as counsel for the subclass.

3. PROPOSED SETTLEMENTS The proposed settlements between the plaintiff class, the plaintiff intervenor subclass and counsel for Defendants appear, upon preliminary review, to be within the range of reasonableness and accordingly shall be submitted to the class members for their consideration and for an approval hearing under Fed.R. Civ.P. Rule 23(e).

4. HEARING. A hearing shall be held in the Courthouse of the United States District Court for the District of New Mexico in Santa Fe, New Mexico at 1:30 p.m. on January 10, 1997, to consider whether the settlements should be given final approval.

(a) Objections by class members and subclass members to the proposed settlements will be considered if filed in writing with the Court or in any manner with counsel for the class or subclass on or before December ~~13~~¹³, 1996. MW

(b) Any objection communicated to counsel for the class or subclass, other than objections filed in writing with the Court, which counsel for the class or subclass intend to present to the Court at the hearing, shall be reduced to writing by counsel for the class or subclass with copies provided to the Court and to counsel for Defendants no later than December 13, 1996.

(c) Counsel for the class and subclass and for Defendants should be prepared at the hearing to respond to objections filed by such class members and to provide other information, as appropriate, bearing on whether or not the settlements should be approved.

5. NOTICE.

(a) Class Counsel/Subclass counsel and counsel for Defendants shall by November 8, 1996 cause to be delivered to all class and subclass representatives and all present class and subclass members who can be identified and/or located through

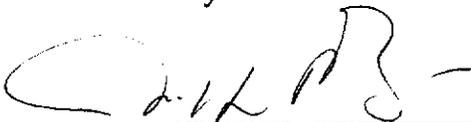
reasonable efforts a notice in substantially the same form as Attachment A hereto.

(b) Class Counsel/Subclass counsel and counsel for Defendants shall cause to be published a notice in substantially the same form as Attachment A hereto by delivering a copy to each current resident and by posting a copy of the same on all levels in all the facilities of BCDC and in the booking area.



Honorable Martha Vazquez
United States District Court Judge

Submitted by:



Jeffrey L. Baker
Counsel for Defendants

Approved:

APPROVED BY PHONE 11-1-96
Mary Y. C. Han
Counsel for Plaintiffs 

APPROVED BY PHONE 11-1-96
Peter Cubra
Counsel for Plaintiff-Intervenors 

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NOTICE OF CLASS ACTION & PROPOSED SETTLEMENT

**This notice may affect your rights.
Please read carefully.**

TO: All persons presently confined in the Bernalillo County Detention Center, Albuquerque, New Mexico ("BCDC") or who may/will be so confined in the future

Your rights may be affected by a lawsuit pending in this Court, Civil Action No. 95-0024 MV/DJS.

A lawsuit addressing conditions of confinement at BCDC was brought on January 10, 1995 by Plaintiffs Jimmy (Billy) McClendon et al., individually and on behalf of a class of all persons presently confined in BCDC and who may/will be so confined in the future. On October 26, 1995, the Court granted the motion of Plaintiff-Intervenors E.M. et al. to intervene in the lawsuit to provide separate representation for both themselves and the specific interests of a subclass within the original class of all people housed in BCDC who have a form of mental and/or developmental disability. Hereinafter, both the original Plaintiffs and the Plaintiff-Intervenors are referred to as "the Plaintiffs".

Attachment 'A'

To assist in the management of the complex issues raised by the lawsuit, the Court ordered that the lawsuit be divided into three (3) parts. Part I of the lawsuit charges that Defendants, the City of Albuquerque et al., by reason of overcrowding at BCDC, have deprived Plaintiffs and the class of their right to be free from punishment as guaranteed to them by the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the New Mexico Constitution. Part II of the lawsuit charges that Defendants have violated the Constitution in various other ways. Plaintiff Intervenor's complaint charges that BCDC does not reasonably accommodate the disabilities of residents with mental and/or developmental disabilities and that minimum standards regarding mental health, medical care, access to court, disciplinary procedures and protection from harm are violated. In Part III of the lawsuit, some thirty (30) individual named Plaintiffs assert individual claims of violations of federal and state law affecting them individually. This notice relates only to Parts I and II of the lawsuit and Plaintiff Intervenor's claims.

The Defendants deny the claims and charges made by the Plaintiffs, except those admitted in the Settlement Agreements.

The Court has not finally ruled on the merits of the Plaintiffs' charges or on the denials and other defenses made by the Defendants. However, some matters have arisen during the preparation of this case for trial that affect persons presently confined in BCDC who were not previously parties to the lawsuit.

This notice is not to be understood as an expression of any opinion by the Court as to the merits of any claims or defenses asserted by any party in this litigation. The sole purpose of this notice is to advise you (who have been identified as a person presently confined in BCDC) of the pendency of this litigation and certain events, including the certification of a class and of a subclass and the terms of proposed settlements, and their potential effect on your rights, so that you may notify the Court and the lawyers in this case of your opinions about the proposed settlements.

CLASS ACTION RULING

The Court has ruled that the claims of overcrowding at BCDC in this lawsuit may be maintained as a claim for declaratory and injunctive relief and attorneys' fees not only by the named Plaintiffs but also on behalf of a class consisting of all persons presently confined in BCDC or who may/will be so confined in the future. The Court has named the named Plaintiffs as representatives of the class and their attorneys,

Mary Y. C. Han, Shannon Oliver, and Joseph Kennedy, counsel for the original Plaintiffs, and Peter Cubra Esq., Elizabeth Simpson Esq., and Nancy Koenigsberg Esq., Counsel for Plaintiff-Intervenors, as counsel for the class and subclass respectively. The class consists of all persons presently confined in BCDC or who may/will be so confined in the future.

Establishment by the Court of the class and subclass means that the declaratory or injunctive relief regarding overcrowding at BCDC and regarding services for people with mental or developmental disabilities granted by this Court to persons presently or in the future confined in BCDC will apply to all class members; that is, to all persons presently confined in BCDC or who may/will be so confined in the future. Future claims by class members regarding overcrowding at BCDC or regarding services for people with mental or developmental disabilities will be controlled by these settlements.

TERMS OF PROPOSED SETTLEMENT

It has been proposed by the Plaintiffs and Defendants, through their respective counsel of record, that Parts I and II of this lawsuit be settled, and that, if the Court approves the terms of the settlement, an Order would be entered by the Court, which, in summary, would provide that:

1. Until May 31, 1997 the average daily population at BCDC would not exceed 700. Beginning June 1, 1997 the average daily population would not exceed 643, and beginning August 1, 1997 the average daily population would not exceed 586. These numbers include the people in R & D (the booking area).
2. No residents will be housed overnight in the holding cells under the district courthouse.
3. Within 90 days the Defendants will open a 25 bed detox facility at BCDC, and a 100 bed alcohol treatment facility at the Westside jail.
4. the Defendants make available to the Court and plaintiffs' counsel the audit report findings of the American Corrections Association;
5. Plaintiffs' counsel may apply to the Court for attorneys' fees and costs as provided by statute and Defendants may respond, the Court determining what fees and costs, if any, will be awarded;

6. All allegations in Part I (unconstitutional overcrowding) of the Plaintiffs' Complaint will be dismissed with prejudice as to the class certified; and all allegations in Part II (other constitutional violations) of the Plaintiffs' Complaint will be dismissed with prejudice as to only the original named Plaintiffs;

7. Services and treatment for people with mental or developmental disabilities will be improved and subclass members will be reasonably accommodated in various operations at the jail. The University of New Mexico will take over operation of mental health services. Disciplinary procedures, medical care, abuse investigations and access to court will be improved.

8. The parties will attempt to mediate any disputes before resorting to court. The Defendants admit violating one or more federal rights of some class members or subclass members and the proposed settlement with them is a compromise of Plaintiffs' claims. If approved, the settlement and compliance with its terms will discharge the Defendants from any further liability to the class members for the overcrowding alleged by the plaintiffs in Part I of the lawsuit and to only the Plaintiffs named in the original complaint for certain alleged constitutional violations in Part II of the lawsuit. The claims raised by Plaintiff Intervenors regarding discrimination against people with mental or developmental disabilities and minimally adequate conditions and services provided to people with disabilities at the jail will be dismissed. If the proposed settlements are not approved, the proposed settlements will be deemed withdrawn and the lawsuit will continue as if it had not been made.

9. The Court will retain jurisdiction to enforce, review and modify its Order with respect to these settlements.

SETTLEMENT HEARING

The Court will hold a hearing in the Courthouse of the United States District Court for the District of New Mexico in Santa Fe, New Mexico at 1:30 p.m. on January 10, 1997, to consider whether, as recommended by both class counsel and the class representatives, it should approve the proposed settlements.

If you are satisfied with the proposed settlements, you do not need to take any other action to indicate your approval.

If you object to the proposed settlements, you should take the following steps:

Objections to the proposed settlements by class members and subclass members will be considered by the Court if:

- (i) a written statement of such objections, together with any other papers you propose to submit to the Court, is filed with the Clerk by mail [or deposited in the specially marked box on your level by December 2, 1996]; or
- (ii) you otherwise communicate any objection to one of the class counsel by December 2, 1996.

Any objection must be postmarked or received on or before December 2, 1996.

If you believe that the relief provided for you under the terms of the proposed settlements is inadequate or you deem yourself or other class members entitled to additional or different relief, you must object in this manner to the proposed settlement. If you do not follow these procedures you will be presumed to agree with the proposed settlements.

Attendance at the hearing is not necessary as you and your objections will be represented by counsel for the class and subclass.

FURTHER PROCEEDINGS

If the settlements are not approved, the case will continue to be prepared for trial or other judicial resolution of the claims and defenses. The case is not expected to be ready for trial before August, 1997 as substantial discovery remains to be conducted. Depending upon the results of the trial, further proceedings may be necessary before the case is finally resolved.

ADDITIONAL INFORMATION

Any questions you have about the matters contained in this notice (and any corrections or changes of name or address) should NOT be made to the Court but should be directed in writing to:

Mary Y.C. Han, Esquire
1122 Central Ave. SW
Albuquerque, NM 87102

or if you have or think you have a mental or developmental disability, to:

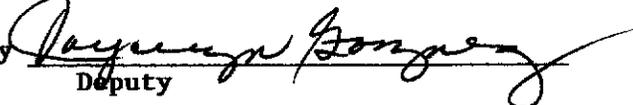
Peter Cubra, Esquire
122 Tulane SE
Albuquerque, NM 87106

You may, of course, seek the advice and guidance of your own attorney if you desire. The pleadings and other records in this litigation, including a complete copy of the proposed settlement agreements, may be examined during regular office hours at the office of the Clerk, :

South Federal Place, Santa Fe
New Mexico; COPIES MAY BE REQUESTED AT THE ABOVE ADDRESS AND UPON THE PAYMENT OF THE STANDARD REPRODUCTION FEE.
Dated November 4, 1996

ROBERT M. MARCH, Clerk

Clerk
United States District Court

By 
Deputy