

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

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

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JIMMY (BILLY) McCLENDON et al.,  
on behalf of themselves and all others  
similarly situated

*Robert M. Marshall*  
CLERK-SANTA FE

Plaintiffs,

vs.

CIV.No. 95-0024 MV/DJS

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 others  
similarly situated

Plaintiff-Intervenors.

ORDER APPROVING COMPROMISE & SETTLEMENT AGREEMENT  
& FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE

The above captioned lawsuit having been brought in this Court by Plaintiffs, McClendon et al., against Defendants, City of Albuquerque et al., and the Court having granted leave to Plaintiff-Intervenors, E.M. et al., to intervene therein, and the parties having appeared by their respective counsel; and

An Order having been entered by this Court on August 15, 1996 certifying pursuant to Fed.R. Civ.P. Rule 23(b)(2) a subclass of all persons with mental and/or

developmental disabilities who are, or in the future may be, detained at the Bernalillo County Detention Center, Albuquerque, New Mexico ("BCDC") and ordering that the said subclass shall be represented by Plaintiff-Intervenors; and

An Order Certifying A Class having been entered by this Court on November 5, 1996 certifying pursuant to Fed.R. Civ.P. Rule 23(b)(2) a class of all persons presently confined in BCDC or who may/will be so confined in the future and ordering that the said class shall be represented by Plaintiffs and Plaintiff-Intervenors so that the above-captioned lawsuit should henceforth be maintained as a class action with respect to any claims for injunctive relief under 42 U.S.C. § 1983, § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Americans with Disabilities Act, 42 U.S.C. § 12101 for deprivation of rights under the United States and New Mexico Constitutions allegedly caused by overcrowding at BCDC; and

The parties having executed, by and through their respective counsel, a proposed settlement agreement in the form of two (2) Orders entitled respectively "Order Regarding the Prison Litigation Reform Act" and "Order," Plaintiffs and Plaintiff-Intervenors on behalf of the said class and subclass respectively having thereby indicated their acceptance of the proposed settlement and having requested the Court's approval of the proposed settlement; and

The Court having approved as within the range of reasonableness and entered on November 5, 1996 both the Order Regarding the Prison Litigation Reform Act and the

Order containing the proposed settlement agreement regarding Plaintiff-Intervenors' claims; and

The Court in the Order Certifying A Class entered on November 5, 1996 having directed that notice of the pendency of the action and a statement of the proposed settlement be delivered, posted and published, the form of the said notice having been approved by this Court in the said Order; and

Such notice having been duly delivered, posted and published as ordered by this Court; and

A hearing on the fairness of the said proposed settlement agreement having been duly scheduled and held on January 10, 1997 to determine whether the proposed settlement should be finally approved; and

An opportunity to be heard thereon having been given to all desiring to be heard and the parties having appeared and having been heard by their respective counsel, counsel for the class and subclass reporting regarding the comments by class members regarding the proposed settlement agreement, including the comments of those opposed to the said proposed settlement agreement, and

The Court being otherwise fully advised in the premises,

**FINDS AND CONCLUDES:**

1. This action was instituted by Plaintiffs in the United States District Court for the District of New Mexico on January 10, 1995. Plaintiffs filed the Complaint on

behalf of themselves and a proposed class consisting of all persons presently confined in BCDC or who may/will be so confined in the future. Plaintiffs' complaint alleged that the physical conditions, practices and policies at BCDC violated the civil rights of persons incarcerated therein. Pursuant to Defendants' motion, the complaint was divided into three parts, namely, I) overcrowding, II) other alleged constitutional violations, and III) individual damage claims of 30 named Plaintiffs. A hearing on plaintiffs' motion for a preliminary injunction was held on August 11, 1995 and a preliminary injunction was entered on August 23, 1995. A settlement agreement was reached between the named Plaintiffs and Defendants on September 7, 1995. On October 26, 1995, the Court gave leave to Plaintiff-Intervenors to intervene on behalf of themselves and a proposed subclass of all persons with mental and/or developmental disabilities who are, or in the future may be, detained at BCDC. Plaintiff-Intervenors filed an Amended Complaint in Intervention on November 22, 1995. Plaintiff-Intervenors' Amended Complaint in Intervention alleged that the practices and policies at BCDC violated the civil rights of the proposed subclass protected by both the United States Constitution, and § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Americans with Disabilities Act, 42 U.S.C. § 12101. The action was certified as a Fed.R. Civ.P. Rule 23(b)(2) class action on August 15, 1996 and November 5, 1996 respectively, on behalf of a subclass of all persons with mental and/or developmental disabilities who are, or in the future may be, detained at BCDC, represented by Plaintiff-

Intervenors, and, with respect to overcrowding only, a class of all persons presently confined in BCDC or who may/will be so confined in the future represented by Plaintiffs.

2. Based on the Court's inspections of the jail on August 10, 1995 and January 19, 1996; the evidence presented at the hearing on August 11, 1995; the Court's findings of March 22, 1996 and March 25, 1996; other information obtained by the Court in status conferences and from Defendants' formal reports to the Court; the stipulations of the parties and the entire record of this case, the violations of one or more federal rights of class and subclass members have occurred at BCDC.

3. Plaintiffs, Plaintiff-Intervenors and Defendants have entered into a settlement agreement, contained within both the Order Regarding the Prison Litigation Reform Act and the Order entered by the Court on November 5, 1996 (hereinafter "the agreement"). The agreement provides, subject to approval by this Court, for the settlement of all claims for declaratory and injunctive relief by the Plaintiff class and Plaintiff-Intervenor subclass, except Plaintiff-Intervenors' equal protection claim on behalf of the female members of the subclass, and limited portions of their access to court claims. Pursuant to Fed.R. Civ.P. Rule 23(e), the Court scheduled a hearing for January 10, 1996 to consider whether to approve the proposed settlement as set forth in the agreement, and directed that notice of the certification, settlement and hearing be published and posted.

4. In accordance with the agreement and the Order Certifying a Class, the specified notice was delivered, published and posted in BCDC together with the agreement, and proposed final order of dismissal.

5. The notice described in the preceding paragraph constitutes the best notice practicable given that present inmates can be adequately informed by delivery or posting at BCDC and future inmates cannot presently be identified. When potential future inmates become incarcerated they are and will be informed by direct distribution of the notice on booking and by the posting at BCDC. Those inmates included in the class and subclass by virtue of having been present inmates on or after January 10, 1995 but who have since been released cannot realistically be located. The affidavits and/or declarations of publishing filed with the Court demonstrate that this Court's orders with respect to the notices have been complied with and, further, that the best notice practicable under the circumstances was in fact given and constitutes valid, due, and sufficient notice to all members of the class and subclass, complying fully with Rule 23 of the Federal Rules of Civil Procedure and with the Constitution of the United States.

6. Plaintiffs, Plaintiff-Intervenors and Defendants have applied to the Court for approval of the terms of the agreement and for entry of this Judgment. Pursuant to the settlement notice, and upon notice to all parties, a hearing was held before this Court on January 10, 1997, to consider whether the proposed settlement set forth in the Order Regarding the Prison Litigation Reform Act and the Order entered by the Court on November 5, 1996 should be approved by this Court as fair, reasonable and adequate.

7. The proposed settlement agreement is the product of good faith, arm's length negotiations between the parties thereto, conducted by experienced counsel who are unequivocally recommending approval of the settlement, after sufficient discovery to enable both counsel and the Court to be informed and act intelligently.

8. Counsel for Plaintiffs and Plaintiff-Intervenors have fully reported to the Court the comments of class members regarding the proposed settlement, including any objections, and the Court finds that the settlement is opposed by only two (2) class and/or subclass members which is not a substantial number when compared to the numbers of the class and subclass in their entirety, and further the Court finds that the objections to the settlement are not substantial when compared to the ability of the settlement to serve the best interests of the very substantial majority of the class and subclass.

9. Given the complexity of the issues raised in this action and the probable duration of continued litigation of the said issues, approval of the settlement agreement will result in substantial savings in time and money to the Court and to the litigants.

WHEREFORE NOW, GOOD CAUSE APPEARING THEREFORE,

IT IS ORDERED, ADJUDGED AND DECREED that the Court has certified a class and subclass on August 15, 1996 and November 5, 1996 respectively, consisting of a subclass of all persons with mental and/or developmental disabilities who are, or in the future may be, detained at BCDC, represented by Plaintiff-Intervenors, and a class

of all persons presently confined in BCDC or who may/will be so confined in the future represented by Plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the said settlement agreement is narrowly drawn, extends no further than necessary to correct the violations of the federal rights of class and subclass members, is the least intrusive means necessary to correct the violations of the federal rights of class and subclass members, will have no adverse impact on public safety or the operation of the criminal justice system and is appropriately designed to ensure the provision of reasonable accommodations to subclass members.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the said settlement agreement is fair, adequate and reasonable as to the class and the named Plaintiffs and as to the subclass and the named Plaintiff-Intervenors, and the settlement agreement is hereby finally approved in all respects; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties to the settlement agreement are hereby authorized and directed to accept, consummate and perform the said settlement agreement in accordance with its terms; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all claims which were brought in this class action in the Complaint or Amended Complaint in Intervention, except as to Plaintiff-Intervenors' claims of denial of equal protection for female subclass members and of access to the courts are dismissed with prejudice.



IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all class and subclass members shall be, and hereby are, barred from prosecuting against Defendants any action for declaratory or injunctive relief, whether it be a class action or otherwise, with respect to, based on, or arising from, or for any of the acts, omissions, facts, events, matters, transactions, or occurrences complained of, related to, arising from or referred to in Parts I and III of the Complaint and Plaintiff-Intervenors' Amended Complaint-in-Intervention in this action, including but not limited to the operation, policies or procedures of the Bernalillo County Detention Center, or arising out of the subject matter of this action, which might have been asserted in this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court expressly determines that, pursuant to Fed.R. Civ.P. Rule 54(b), there is no just reason for delay in the entry of this final judgment. Accordingly, the Clerk of the Court is directed to enter this judgment forthwith.

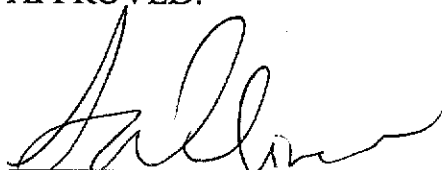
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in accordance with the terms of the said settlement agreement the First Amended Complaint, and the First Amended Complaint in Intervention in the action be and hereby are dismissed on the merits and this judgment be and hereby is in full and final settlement of any and all claims or causes of action or parts thereof against any and all Defendants which are or might be asserted with respect to the matters alleged in the First Amended Complaint, and the First Amended Complaint in Intervention; and


IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall retain jurisdiction for the purpose of enforcing the settlement.

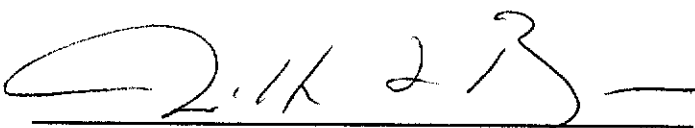
Dated: July 2, 1997

  
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HONORABLE MARTHA VAZQUEZ

APPROVED:

  
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Mary Han  
Shannon Oliver  
*Attorneys for Plaintiffs*

  
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