

SETTLEMENT AGREEMENT

I. INTRODUCTION

- A. On April 11, 2006, the United States notified Wilson County Officials of its intention to investigate conditions at Wilson County Jail ("Wilson" or the "Jail"), pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997.
- B. Between June 27 and 29, 2006, the United States conducted an on-site inspection of Wilson with consultants in the fields of medical care and correctional management.
- C. On August 30, 2007, the United States issued a findings letter pursuant to 42 U.S.C. § 1997 that concluded that certain conditions at Wilson violate the constitutional rights of individuals confined at the Jail.
- D. Defendants cooperated throughout the course of the investigation and indicated a willingness to voluntarily undertake measures to improve conditions at Wilson. Consequently, the Parties enter into this Settlement Agreement ("Agreement") for the purpose of avoiding the risks and burdens of litigation.
- E. Defendants in this action are Wilson County, Tennessee; Wilson County Mayor, in his official capacity; Wilson County, Tennessee Sheriff, in his official capacity; County Commissioners, in their official capacities; and their successors, contractors, and agents (collectively, the "County"). The County shall ensure that all County agencies or departments or offices under its control take any actions necessary to comply with the provisions of this Agreement.
- F. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the County or their officials, employees, or agents for their conduct. This Agreement does not alter legal standards governing any such claims, including those standards established by Tennessee law.

- G. This Agreement is not intended to have any preclusive effect except between the Parties. Should the issue of the preclusive effect of this Agreement be raised, the Parties agree to certify that this Agreement was intended to have no such preclusive effect.

II. DEFINITIONS

- A. "DOJ" shall refer to the United States Department of Justice, which represents the United States in this matter.
- B. "Effective date" shall be the date the Agreement is signed by all Parties.
- C. Consistent with, or in accordance with, the term "generally accepted professional standards of care" shall mean a decision by a qualified professional that is substantially aligned with contemporary, accepted professional judgment, practice, or standards as to demonstrate that the person responsible based the decision on such accepted professional judgment.
- D. "Include" or "including" shall mean "include, but not be limited to" or "including, but not limited to."
- E. "Inmate" or "inmates" shall be construed broadly to refer to one or more individuals detained at, or otherwise housed, held, in the custody of, or confined at either the existing Jail or any institution that is built or used to replace the Jail or any part of the Jail.
- F. "Wilson" or "the Jail" shall refer to the Wilson County Correctional Facility as well as any facility that is built, leased, or otherwise used, to replace or supplement the Jail.
- G. "Security staff" means all employees, irrespective of job title, whose regular duties include the supervision of inmates at Wilson.
- H. "Quality Assurance" means a system of self-audit and improvement to assess the implementation and effectiveness of all remedies instituted pursuant to this Agreement, to identify deficits that may exist, and to effectuate new measures to cure deficits identified.
- I. "Suicide Watch" means any level of watch, observation, or measures to prevent self-harm.

- J. "Train" means to instruct in the skills addressed to a level that the trainee has the demonstrated proficiency to implement those skills. "Trained" means to have achieved such proficiency.
- K. Throughout this Agreement, the following terms are used when discussing compliance: substantial compliance, partial compliance, and non-compliance: "Substantial compliance" indicates that the Jail has achieved compliance with most or all components of the relevant provision of the Agreement. "Partial compliance" indicates that compliance has been achieved on some of the components of the relevant provision of the Agreement, but significant work remains. "Non-compliance" indicates that most or all of the components of the Agreement provision have not yet been met.

III. SUBSTANTIVE PROVISIONS

A. MEDICAL CARE

- 1. The County shall designate a health authority who is a qualified, licensed, and trained medical professional. The health authority shall be in charge of medical care at the Jail, and will perform or oversee the following tasks required by this Agreement, including:
 - a) supervising all medical care rendered to inmates;
 - b) monitoring care of serious and/or chronic conditions;
 - c) ensuring that all inmates receive a health assessment within fourteen (14) days of intake;
 - d) conducting clinical encounters with inmates as appropriate;
 - e) reviewing and approving all prescription medication dispensed at the Jail;
 - f) approving revised medical intake screening forms and processes, including confiscated medications upon arrival;
 - g) and annually reviewing all policies and procedures concerning medical or mental health screening and/or the provision of care.

2. The County shall increase the services of a physician and/or physician assistant to an appropriate number of hours per week to ensure adequate clinical contacts and oversight of the medical care and services at the Jail.
3. The County shall increase the nursing staff to ensure that appropriate medical encounters with the inmates are taking place, are documented, and properly referred for secondary level review as appropriate.
4. The County shall develop and implement policies, procedures, protocols for all medical care and services at the Jail, including, but not limited to, documentation and record-keeping, medical triage and physician review, intake screening, infection control, sick-call, chronic illness, comprehensive health assessments, medication administration, mental health, suicide prevention, detoxification, women's health, quality improvement, and emergent response.
5. The County shall develop appropriate job descriptions, including duties and responsibilities, for all relevant medical care providers, including, but not limited to, physicians, nurses, mental health providers, and medical assistants.
6. The County shall develop and implement a program to train all security staff and medical personnel regarding all policies, procedures, protocols, and use of emergency equipment.
7. The County shall develop and implement an appropriate medical intake screening instrument that identifies observable and non-observable medical needs, including infectious diseases, and ensure timely access to the physician when presenting symptoms require such care.
8. The County shall develop and implement a chronic care program that ensures timely identifying, tracking and monitoring of chronic illnesses.
9. The County shall revise the sick-call system to ensure confidentiality, prompt delivery and review by medical staff, and appropriate triage. The County shall remove the disincentives to an inmate's seeking and receiving necessary medical care for chronic, pre-existing and/or life-threatening conditions, such as multiple and

varying levels of payment requirements and charges for necessary follow-up care and services.

10. The County shall develop and implement a formal written plan to prevent exposure of inmates and staff to contagious diseases, including TB and MRSA.
11. The County shall develop and implement a system for monitoring and reviewing the administration and control of medications, including documentation and distribution.

B. MENTAL HEALTH CARE

1. The County shall retain the services of a licensed mental health provider or community mental health clinic whose responsibilities will include supervising and providing mental health care for inmates at the Jail.
2. The County shall develop and implement an appropriate intake screening instrument that identifies inmates' mental health needs and risks of suicide behavior and ensures timely access to the mental health professional when presenting symptoms require such care.
3. The County shall ensure that all staff are regularly trained regarding suicide and suicide prevention and that the shift supervisors take an active role in ensuring that inmates on suicide watch are adequately monitored.

C. PROTECTION FROM HARM

1. The County shall ensure that inmates and trustees are supervised in the pods and the food service area with appropriate and adequate staffing levels.
2. The County shall develop and implement policies and procedures requiring all tools, utensils, equipment, flammable materials, etc., are inventoried and locked securely at all times.
3. The County shall develop and implement a use of force policy, consistent with generally accepted professional standards, including an adequate use of force definition and requirements for all staff involved in a

use of force to write a timely use of force report regarding the incident.

4. The County shall develop and implement policies and procedures to ensure prompt supervisory and/or management review and investigation for all uses of force to determine whether force was appropriately used, whether a referral should be made to a local law enforcement agency or district attorney for possible criminal action, whether remedial training is necessary, or whether facility policies should be revisited. Consistent with generally accepted professional standards, the level of investigation required will be based upon the severity of the force used.
5. The County shall develop a process to track all incidents of use of force that at a minimum includes the following information: the inmate(s) name, housing assignment, date and type of incident, primary and secondary staff directly involved, reviewing supervisor, external reviews and results (if applicable), remedy taken (if appropriate) and administrative sign-off.
6. The County shall ensure that all staff are regularly trained regarding the Jail's use of force policy.
7. The County shall develop and implement policies and procedures for an objective classification system that separates inmates in housing units by classification levels.
8. The County shall establish a procedure to ensure that inmates do not possess or have access to contraband.
9. The County shall develop and implement policies and procedures for the effective and accurate maintenance, inventory, and assignment of chemical and mechanical restraints.
10. The County shall develop and implement policies and procedures to ensure inmates have access to an adequate grievance process.
11. The County shall ensure that inmates placed in lock down status are provided with appropriate due process

that has been developed and implemented in policies and procedures.

D. LIFE SAFETY AND SANITATION

1. The County shall develop and implement adequate policies and procedures regarding fire prevention, including emergency planning and regular and periodic drills.
2. The County shall regularly inspect all fire and life safety equipment to ensure they are in working order.
3. The County shall inventory and store all flammable, toxic, and caustic materials in a well ventilated, but locked compartment.
4. The County shall secure and repair all exposed electrical wires in the Jail and establish a preventive maintenance program to address future repair needs.
5. The County shall ensure that inmates are provided with adequate clean clothing and underclothing.
6. The County shall inspect and replace as often as needed all frayed and cracked mattresses.

E. QUALITY ASSURANCE

1. The County shall develop and implement written quality assurance policies and procedures to regularly assess and take all reasonable measures to assure compliance with the terms of this Agreement.
2. The County shall develop and implement policies and procedures to address problems that are uncovered during the course of quality assurance activities.

IV. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

- A. The County shall submit periodic compliance reports to the United States, the first of which shall be filed within 90 days of the effective date of this Agreement, and the second of which shall be filed 180 days after the effective date. Thereafter, the periodic compliance reports shall be provided fifteen (15) days after the termination of each four-month period thereafter until the Agreement is terminated.

- B. Each compliance report shall describe the actions the County has taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented.
- C. The County shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available at all reasonable times for inspection and copying by the United States. In addition, the County shall maintain and submit upon request records or other documents to verify that they have taken such actions as described in their compliance reports (e.g., census summaries, policies, procedures, protocols, training materials, and incident reports) and will also provide all documents reasonably requested by the United States.
- D. The United States and its attorneys, consultants, and agents shall have unrestricted access to the Jail, Jail inmates, Jail staff (including staff at Wilson employed or contracted by Jail Health Services, and documents as reasonably necessary to address issues affected by this Agreement, including the right to conduct confidential interviews with inmates, and to conduct interviews with facility staff outside the presence of other staff or supervisors.
- E. The County, and its agents, agree that they shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement.
- F. The County shall appoint an Agreement coordinator to oversee compliance with this Agreement and to serve as a point of contact.

V. CONSTRUCTION, IMPLEMENTATION, AND TERMINATION

- A. Defendants shall implement all reforms necessary to effectuate this Agreement. The implementation of this Agreement will begin immediately upon its effective date.
- B. Except where otherwise specifically provided, Defendants shall complete implementation of all provisions of this Agreement within 180 days of its effective date.
- C. This Agreement shall terminate four years from its effective date. The Agreement may terminate earlier if Defendants

have substantially complied with each of the provisions of the Agreement and have maintained substantial compliance for at least two years. The burden shall be on Defendants to demonstrate this level of compliance. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained noncompliance shall not constitute substantial compliance. If after four years Defendants have failed to comply with the requirements of this Agreement, the United States has the right to seek relief from the United States District Court of the Middle District of Tennessee.

- D. If, after reasonable notice to Defendants, and a reasonable opportunity to cure any deficiencies identified in writing, the United States determines that Defendants have not substantially complied with this Agreement, the United States may pursue litigation against Defendants. Notwithstanding the foregoing, the United States reserves the right to file an action under CRIPA alleging a pattern or practice of unconstitutional conditions at the Jail at any time if it believes Defendants are not making a good faith effort to substantially comply with this Agreement. The United States shall give Defendants thirty (30) calendar days written notice before the filing of such action.
- E. Failure by either party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Agreement.
- F. If any unforeseen circumstance occurs that causes a failure to timely carry-out any requirements of this Agreement, Defendants shall notify the DOJ in writing within twenty (20) calendar days after Defendants become aware of the unforeseen circumstance and its impact on the Defendant's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. Defendants shall implement all reasonable measures to avoid or minimize any such failure.
- G. This Agreement shall constitute the entire integrated agreement of the Parties. With the exception of DOJ's findings letter referenced in Section (I)(C) herein and any DOJ technical assistance recommendations, no prior or

contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein, in litigation, or in any other proceeding.

- H. The Agreement shall be applicable to, and binding upon, all Parties, their officers, agents, employees, assigns, and their successors in office.
- I. Each party shall bear the cost of their fees and expenses incurred in connection with this Agreement.
- J. In the event that any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.
- K. The standards against which substantial compliance in Section III will be monitored are those that are constitutionally required or mandated by federal statute.

FOR THE UNITED STATES:

/s/ Paul M. O'Brien
PAUL M. O'BRIEN
Acting United States Attorney
Middle District of Tennessee
110 Ninth Avenue, South
Suite A961
Nashville, TN 37203

/s/ Grace Chung Becker
GRACE CHUNG BECKER
Acting Assistant Attorney
General
Civil Rights Division

/s/ Shanetta Y. Cutlar
SHANETTA Y. CUTLAR
Chief
Special Litigation Section

Date: July 21, 2008

/s/ Tammie M. Gregg
TAMMIE M. GREGG
Deputy Chief

/s/ Je Yon Jung
JE YON JUNG
TAMMI R. SIMPSON
SHAHEENA AHMAD SIMONS
Trial Attorneys
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Ave., NW
Washington, D.C. 20530

FOR DEFENDANTS:

/s/ Robert Dedman
ROBERT DEDMAN
Wilson County, Tennessee
Mayor, individually and on
behalf of the Wilson County
Commission

/s/ Terry Ashe
TERRY ASHE
Wilson County, Tennessee
Sheriff

/s/ Mike Jennings, Esq.
MIKE JENNINGS, Esq.
Wilson County, Tennessee
Attorney