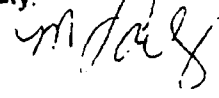


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

SEP 25 1989

Jesse E. Clark, Clerk
By Deputy:



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FREDDIE MORGAN AND TOMMY MAE §
FLAKES AMES, INDIVIDUALLY AND §
ON BEHALF OF ALL OTHERS §
SIMILARLY SITUATED, §
Plaintiffs §

VS. §

THE CITY OF HOUSTON, §
Defendant §

CIVIL ACTION NOS.
H-76-0629 AND H-80-1546
(CONSOLIDATED)

CONSENT DECREE

COME NOW the Plaintiffs, Freddie Morgan and Tommie Mae Flakes Ames, as representatives of a Fed. R. Civ. P. 23(b)(2) class, together with the class of those persons similarly situated, Co-Plaintiffs in the above styled and numbered cause of action, and Defendant City of Houston, all appearing by and through their respective counsel of record, and enter into this Consent Decree, in a good faith effort to terminate this litigation and to preclude the necessity of an appeal in this cause, resolving all factual matters at issue in this cause of action to the parties' satisfaction.

Plaintiffs and Defendant expressly reserve the right to withdraw their consent to any part of this Decree which is not incorporated in the form hereinafter set forth in the Final Order of the Court to be entered for the purpose of effectuating said agreement.

The parties further agree that neither this Decree, nor their consent thereto, shall in any way limit the rights of either Plaintiffs or Defendant which are enumerated in Fed. R. Civ. P. 60(b), as the same may apply to relief they might hereafter seek pursuant to such Rule.

The parties, by agreement, incorporate by reference the findings and reports of the four experts, Brown, Hoover, Kamka and Silver, which were provided the parties pursuant to the 1983 Settlement Agreement they entered into for the final resolution of factual matters pending in this cause of action, together with the City's final response thereto dated September 1, 1989, attached hereto as Exhibits "A" through "E".

The parties agree, and the Court recognizes, that during the pendency of this suit from 1976 to the present, Defendant has voluntarily undertaken, without any Order from the Court, certain procedural, structural and other changes to its jail/lockup facilities, and certain procedural, due process and other changes with regard to its treatment of detainees and inmates therein, which such changes have substantially improved upon the conditions originally alleged in Plaintiffs' original pleadings. Among these are the construction by Defendant of new jail/lockup facilities at the West Side Command Station, the awarding of a construction contract on the South East Command Station, and the acquisition of land for other Command Stations, which will include comparable jail/lockup facilities to those at West Side, the structural

renovation and improvement of existing facilities, and the upgrading of medical facilities and treatment, increased staffing, and decreased time for processing and releasing detainees at Defendant's jail/lockup facilities.

The parties agree, and the Court recognizes, that wherever in this Decree the term "applicable jail inmate housing standards" is used, the same shall be construed to mean and include, by reference, Texas Jail Standards and National Corrections Standards as they apply to short term detention facilities, and such Texas Jail Commission Municipal Jail Standards, as now exist.

Accordingly, Defendant (and its officers, agents and assigns, which are all hereinafter collectively called "Defendant"), is hereby ENJOINED as follows:

I.

With regard to the services provided within the various jail/lockup facilities operated by Defendant, it is ORDERED that:

1. Medical protocol and procedures shall be implemented whereby persons with specific medical problems which require special attention, including ileostomies and colostomies, will receive appropriate treatment by Defendant's jail attendants and jail health personnel. Such treatment shall be provided in accord with the protocols listed in the attached Exhibit "F".

2. The City shall privatize all food service to inmates and detainees at such facilities, and shall have such privatization completed not later than the end of Calendar Year 1990.
3. Defendant's Health Department will have on staff, not later than the end of calendar year 1990, two (2) Class D (or Class C, at Defendant's option) pharmacists with jurisdiction of jail/lockup facilities and command stations, as well as other City health facilities, and will keep its pharmacists on a 24-hour per day call basis to respond to such facilities as needed.
4. Defendant will provide, not later than the end of calendar year 1990, 24-hour per day intake medical screening by jail health attendants for all inmates and detainees entering said facilities.
5. Defendant's Health Department will provide, not later than the end of calendar year 1990, at least one (1) physician who will respond on a 24-hour per day call basis to respond to inmates' medical needs at the City's jail/lockup facilities.
6. Defendant will institute, not later than July 1, 1990, a continuing, rotational in-service training program for its jail attendants and jail health personnel such that each individual working in the City's jail/lockup facilities will receive a minimum of approximately forty (40) hours of education per year in appropriate fields, including operational

and procedural changes, medical developments and legal precedents.

II.

With regard to the physical structures of the various jail/lockup systems operated by Defendant, Defendant is hereby ORDERED as follows:

1. The Municipal Prison Farm on Mykawa Road will be closed and will no longer be operated, not later than the date on which a new Central Jail facility is constructed by Defendant and made fully operational; in the alternative, should the necessity for said Prison Farm be eliminated by the earlier opening of the proposed South East Command Station by Defendant, or by the earlier opening of other similar Command Station(s) by Defendant, Defendant shall have the option to close the Prison Farm when the South East Command Station(s) or such other similar Command Stations are constructed and fully operational.
2. Defendant will proceed to implement its current Fiscal Year 1990 (FY90) Capital Improvements Plan (CIP) as it pertains to the construction of police command stations and jail/lockup facilities (Jail CIP), which is attached hereto and incorporated herein by reference as Exhibit "G", for the construction and deployment of its West Side, South East,

North East and North West Command Stations. If, however, for any permissible reason Defendant desires to revise the FY90 Jail CIP, Defendant shall be required to notify Plaintiffs' counsel thereof in writing not less than sixty (60) days prior to taking such action, and shall notify Plaintiff's counsel in writing not less than forty-five (45) days prior to taking such action of the specific proposed action to be taken and state the reason(s) for such action. The parties further agree that the several items set forth in subparts a.-h. hereunder constitute the only permissible reasons for such revision, to-wit:

- a. The number of persons housed in City jail/lockup facilities is reduced, on the basis of the average daily number of prisoners over a continuous six (6) month period, such that there exist facilities which meet all applicable jail inmate housing standards to provide sufficient jail beds and space for all of the City's inmate needs, and additional facilities will not be needed to house City prisoners either temporarily or permanently;
- b. The deployment of completed, fully functional command stations by Defendant in the future obviates the need for construction of new or additional jail/lockup facilities by creating sufficient jail beds and space to accord with applicable jail inmate housing standards;
- c. The City and Harris County arrive at an agreement whereby no persons are to be detained or housed at or in any City-owned or City-operated jail/lockup facilities, or whereby the number of prisoners housed at City jail/lockup facilities is reduced by the operation of such agreement so that subsection a. hereof is applicable;

- d. The City of Houston's Jail CIP debt service obligations require increased funding above current projections, in the amount of \$1,500,000.00 or more per year aggregate, due to fluctuations in interest rates or other economic reasons enumerated herein; (Said current projections are attached hereto and incorporated herein by reference as Exhibit "H".)
- e. The City of Houston's current revenue stream growth projection is negatively impacted, in an amount of \$1,500,000 or more per year; by a decline in the growth of the City's property tax revenue, a decline in the projected growth of the sales tax revenue of the City, or other equivalent reduction of the City's non-tax revenue stream, i.e., fees, fines, franchises, penalties, industrial district contracts, and forfeitures; (said revenue stream growth projection is attached hereto and incorporated herein by reference as Exhibit "I".)
- f. The City of Houston, in order to fulfill its obligations under its Jail CIP, as enumerated hereinabove, is required to increase its property tax or fee collections above their current levels, or reduce its services to the public or its capital improvements projects, in an amount greater than \$1,500,000 in any fiscal year in order to meet the debt service for such construction; (Said tax rates and tax and fee collection projections are attached hereto and incorporated herein by reference as Exhibit "J".)
- g. The City of Houston requires, in the interest of efficient construction and operation of its command stations, a delay of not more than one (1) year, during which Defendant will gain design or operational benefits from the experience of having a command station on line and fully functional, before proceeding with the design or construction of another command station in its Jail CIP;
- h. The City of Houston suffers a loss of population within its corporate limits from its current recognized population of 1,729,720 persons, of at least Five Percent (5%), or a reduction of like percentage in the population in the area(s) to be served by the proposed facilities, it being agreed by and between the parties that the population

figures to be used in the application of this subpart shall be determined by the City in the same manner as it determines the population figures used for the consideration of City Council redistricting.

3. Defendant has notified Plaintiffs that, based on current economic projections by the City Administration, of which Defendant's City Council has been apprised, it appears that the provisions of subsection II.2.f. (and possibly additional subsections of section II.2.) hereinabove will be applicable for its Fiscal Year 1991, and that it is reasonably foreseeable that Defendant will seek a one-year delay in its Jail CIP schedule for the North East and North West Command Stations pursuant to the terms of this Decree in the event that such subsection(s) should so apply. It is understood by and between the parties, however, that such notice does not in any way limit Plaintiffs' remedies hereunder.
4. Defendant will proceed in a timely manner, subject to voter approval of necessary bond funding to complete the project, with a consultant study and partial design for its proposed new Central Jail facility, such study to be commenced not later than the end of Defendant's Fiscal Year 1993.
5. In the event bond funding mentioned in this decree is not timely approved by the voters to complete the project on such schedule, or if for any other reason enumerated in Section II.2.a.-h. hereinabove, Defendant desires to revise the

scheduling of this item on its Jail CIP, Defendant shall be required to notify Plaintiffs' counsel in writing prior to taking such action, enumerating such proposed action at least sixty (60) days prior to taking such action, and shall notify Plaintiff's counsel in writing not less than forty-five (45) days prior to taking such action of the specific proposed action to be taken and state the reason(s) for such action.

6. All new jail/lockup facilities shall be constructed and operated by Defendant in accordance with applicable jail inmate housing standards.
7. After notification of changes in the FY90 jail CIP by the City, Plaintiffs may seek hearing, fact findings, and further orders of this Court requiring partial or total reinstatement of the current FY90 jail CIP schedule.

III.

It is further ORDERED that Defendant shall, in all things, comply with the provisions and rules of law set forth in Tate v. Short, 401 U.S. 395 (1971) and Argersinger v. Hamlin, 407 U.S. 25 (1971).

4. The parties agree that nothing in this decree is intended to prevent defendants from implementing new programs or changes in physical conditions which benefit plaintiffs; nor is the decree intended to, and it shall not, have the effect of decreasing or abrogating the rights, programs, or conditions which existed prior to this decree pursuant to defendants' policies, proceeds, or other lawsuit settlements; nor shall it abrogate any substantive rights or procedural protection plaintiffs may now have or hereafter acquire under state or federal statutes. The defendants shall carry out every provision of this decree in good faith.

5. Until the Court relinquishes jurisdiction in this case, counsel for plaintiffs shall have access to and shall receive copies of documents which effectuate the implementation of this decree. Counsel for plaintiffs shall have access to all plaintiffs at all times under reasonable circumstances. Plaintiffs' counsel shall have access to all staff and inmate detention facilities, upon reasonable notice to defendants' counsel. Defendants' counsel may be present at any meetings between plaintiffs' counsel and defendant's staff.

V.

With regard to the entitlement of Plaintiffs' attorneys for a reasonable fee for the prosecution of this case, Defendant is hereby ORDERED to pay to Plaintiffs and their attorneys in said

cause the sum of \$41,933.04 (Forty-one Thousand, Nine Hundred Thirty-three and 04/100 Dollars), as full payment and reimbursement for all costs of court incurred by Plaintiffs in this suit, and for any reasonable attorney's fees which said Defendant might be found to owe the Plaintiffs and/or their various attorneys. No liability on the part of Defendant shall in any way be implied or considered admitted by such payment. This amount shall be paid as follows: (1) the sum of \$37,783.04 shall be paid to Mandell and Wright, Attorneys at Law, and (2) the sum of \$3,150.00 shall be paid to Richards, Wiseman and Durst, Attorneys at Law. Said sum is intended as full and final compensation dating from the institution of this cause of action, up to and including the final approval of this Decree by the Court, it being understood by and between the parties that Plaintiffs and their attorneys hereby in all things waive any further compensation for costs or attorney's fees therefor.

V.

This action shall be finally DISMISSED WITH PREJUDICE when all terms of this Decree have been fully complied with.

WHEREAS, the parties hereto have, by and through their counsel of record, each of whom representing to the Court thereby that they are in full agreement with the terms and conditions contained in this Consent Decree, and that they possess the authority and legal capacity to bind the parties hereto.