

ATTACHMENT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
 Plaintiff)
)
 v.)
)
 DISTRICT OF COLUMBIA, et al.,)
)
 Defendants)

Civil Action No. 88-2897

FILED

DEC 16 1988

IMPLEMENTATION ORDER

Clerk, U.S. District Court
District of Columbia

Upon consideration of the District's Motion to Alter or Amend Judgment and for Clarification, the Government's Motion to Implement Order of November 10, 1988, and the District's Response to Plaintiff's Motion for Bi-weekly Reporting, and in accordance with the Court's Bench Opinion of November 23, 1988, and the Memorandum Opinion issued herewith, it is this 16th day of December, 1988,

ORDERED that the Court hereby

(1) denies the District's request that the Court establish population limits on facilities that are currently without Court-ordered caps;

(2) grants the District's request to clarify paragraph three of the Court's November 10, 1988 Order with respect to the Attorney General's designation of the District of Columbia Department of Corrections as a whole; paragraph three will now read:

FURTHER ORDERED that the District of Columbia is hereby enjoined from refusing to accept into the District of Columbia Department of Corrections facilities all newly sentenced adult male prisoners whom the

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Attorney General duly designates to the District of Columbia Department of Corrections pursuant to his authority under D.C. Code § 24-425, provided that such designation would not cause the District, through its subsequent designation of specific facilities, to violate existing court decrees or the Constitutional rights of affected prisoners.

(3) denies the District's request to vacate paragraph four of the Court's November 10, 1988 Order;

(4) grants the Government's request to add a reporting requirement to the initial Order; the parties shall file with the Court a jointly-proposed report format by December 22, 1988; if agreement is not reached as to the report's format, the District shall file its proposed report format on December 22, 1988, and the Court will consider whether or not the format is appropriate after comment by the parties; in either event, beginning on January 3, 1989, the District shall file on the first business day of each month a report detailing:

a. Current population figures in the D.C. correctional system, including figures on D.C. prisoners housed in other jurisdictions under contracts or under other arrangements; the figures shall be organized by categories of prisoners (i.e. misdemeanants, pretrial detainees, etc.);

b. Projected weekly population figures for the upcoming month in the D.C. correctional system, including figures on D.C. prisoners expected to be housed in other jurisdictions under contracts or under other arrangements, and projected 60 day and 90 day figures, including net population gains and losses and plans for housing any net increase in population over the next 60 to 90 days;

c. The current status of, and a detailed proposed construction schedule for, the treatment facility to be constructed at the site of the old D.C. Jail, including

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any explanation for current delays in planning or construction of that facility;

d. The status of all renovations or other construction at Central, Occoquan or other facilities, including detailed schedules of all construction currently under way or planned and a detailed description of any additional proposed construction or renovation;

e. All measures taken by the District to date to identify sites in the District of Columbia for the construction of additional permanent prison facilities, including a detailed explanation of why any particular proposed sites have been rejected;

f. A list of all vacant or abandoned property owned by the District government within the District of Columbia of 10 acres or more, and a list of any vacant or abandoned federal property the District has been offered or has determined would be appropriate for prison facilities, including, inter alia, military or national guard properties;

g. All steps taken to contact state or local jurisdictions to house D.C. prisoners, including the number of D.C. prisoners housed in each jurisdiction with whom the District currently has an agreement, the identity of each additional jurisdiction with whom the District has had discussions within the past year, the current status of all such discussions, and a specific explanation of why any state with whom such discussions were unsuccessful was not willing to accept D.C. prisoners;

h. All steps taken to contact private entities in an attempt to enter into agreements to house D.C. prisoners, including the identity of all such private entities with whom the District has had contact or discussions, the current status of all such discussions, and a specific explanation of why any private entity with whom such discussion were unsuccessful was not willing to contract with the District;

i. The status of the District's use of the Prison Overcrowding Emergency Powers Act, including the dates of each emergency declaration under the Act since January 1, 1987, and the number of prisoners released under each declaration, and the current status of any contemplated expansion or contraction of the Act, including any proposed legislation relating to it;

j. The projected number of prisoners that will be released weekly over the upcoming month under the Prison Overcrowding Emergency Powers Act or under other relevant statutory provisions;

k. A description and the status of any other proposed District of Columbia legislation relating to prison overcrowding, including copies of all such legislative proposals or drafts of legislative proposals, and specifically including a detailed description of the current status of the District's consideration of any proposal to post bond for or otherwise effectuate release of prisoners eligible for pretrial release and a detailed report of any actions taken by the City Council since October 4, 1988 to help alleviate overcrowding;

l. A description and the status of any legislative proposal to the United States Congress relating to D.C. prison overcrowding currently under consideration or discussion by the District, including copies of all such legislative proposals or drafts of such legislative proposals;

m. The status of all consideration or construction of community centers or halfway house facilities, including a detailed description of each such facility under consideration or construction (including detailed construction schedules) and the capacity of each facility under consideration or construction;

n. The status of the District's electronic monitoring program(s) including present plans or schedules for such program(s) and the number of prisoners currently in such program(s);

o. The status of any considerations relating to the use of modular or temporary housing at Lorton or elsewhere, including a detailed explanation of why the proposed use of modular housing at or proximate to the D.C. Jail, at Lorton, or at any vacant D.C. property located in the District of Columbia, has not been adopted or effected by the District;

p. The status of any discussion or consideration relating to the construction of a facility to house D.C. prisoners at a site in West Virginia in exchange for the transfer of all or part of the property at Lorton;

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g. The status of any discussion or consideration of utilizing, on a temporary or permanent basis, land or facilities at St. Elizabeths Hospital for housing D.C. prisoners, including a detailed explanation of why any such proposals have been rejected by the District;

(5) grants the Government's request to add to the November 10, 1988 Order a mechanism through which the District may challenge the Attorney General's Designation decisions under the Administrative Procedure Act; the parties will henceforth utilize the following procedure:

a. If the District wishes to contest the decision of the Attorney General to designate D.C. prisoners to the D.C. Department of Corrections, the District shall present such a challenge in a written motion to the Court, served on counsel for plaintiff, ten days prior to the requested hearing;

b. Prior to the Court's ruling on the District's motion, either on a temporary or permanent basis, the District must continue to comply with the Court's November 10, 1988 Order by accepting into the D.C. Department of Corrections all newly sentenced adult male prisoners whom the Attorney General duly designates to the D.C. Department of Corrections pursuant to D.C. Code § 24-425;

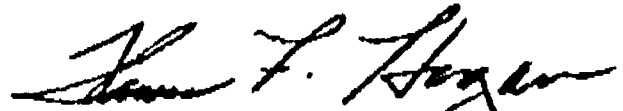
c. In its motion, the District must demonstrate: (1) why it believes that the Attorney General's decision is in violation of the Court's November 10, 1988 Order, (2) why and how such designation will force the District to exceed one or more court-approved population caps at the District's prison facilities, (3) whether the District contends that such designation will result in the violation of any constitutional right, and if so precisely which right and how it allegedly will be violated, (4) why such designation is arbitrary, capricious, or otherwise not in accordance with law under the APA, and (5) that the District has undertaken all feasible measures to provide space for all adult male prisoners sentenced by the Superior Court;

d. In addition, in order to prevent the scheduling of emergency hearings, the District must estimate the projected population of each of its facilities in

advance, and calculate the number of prisoners it can move to other states, release early, release on bond, move to halfway houses, and transfer to other facilities. The District shall include this information in its motion prior to requesting a Court hearing;

e. The United States shall have five days within which to respond to the District's motion, unless that time is modified by the Court upon the motion of either party.

f. Both parties shall include in their pleadings a list of witnesses whom they intend to call at the hearing; the list shall include the expected nature and length of the witnesses' proposed testimony.



Thomas F. Hogan
United States District Judge

U.S. v. D.C.



PC-DC-010-001