

[Signature]
Keys for Plaintiffs

[Signature]
Keys for Defendants

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

DWIGHT DURAN, LONNIE DURAN,
and SHARON TOWERS, and all
others similarly situated,

Plaintiffs,

vs.

No. Civil 77-721-C

JERRY APODACA, Governor of the
State of New Mexico, et al.,

Defendants.

AGREEMENT

COME NOW the parties and stipulate and agree as follows:

1. The parties have reached agreement on several areas of policy and procedure for operation of the Penitentiary of New Mexico and any other State correctional facility which will house class Plaintiffs, except for minimum security facilities. These areas of agreement are more fully set forth in partial consent decrees on file herein and in various policy statements which are attached to this agreement as Exhibits A through H. These policy statements will be adopted by the Defendants within seven (7) days from the date the Court Order approving this agreement becomes final.

2. These policy statements and the partial consent decrees on file herein may include specific requirements and procedures beyond what is required by the Constitution of the United States, the Constitution of the State of New Mexico, the Federal Civil Rights Act, the New Mexico Tort Claims Act, or any other constitutional, statutory, or common law requirement. This agreement and the policies attached hereto and the partial consent decrees on file herein are not to be construed to establish or change the standard of culpability for civil or criminal liability of

Duran v. Apodaca



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any official, employee, agent, or representative of the State of New Mexico other than for the sole and limited purpose of enforcement of this agreement and the policies attached hereto and the partial consent decrees on file herein.

3. This agreement and the policies attached hereto and the partial consent decrees on file herein were voluntarily and mutually agreed upon by the Defendants and Plaintiffs as a compromised settlement of disputes between the parties and neither the partial consent decrees, nor this agreement and the policies attached hereto constitute admissions that any previous or existing condition, policy, procedure, or acts or omissions of the Department of Corrections and the Penitentiary of New Mexico or any state official, employee, or agent was, or is, in any way improper, negligent, unconstitutional, or in violation of any rights of the Plaintiff class. Nothing in this agreement or the partial consent decrees on file herein constitute findings of fact or law with respect to the claims or defenses of the parties in Duran v. Apodaca.

4. This agreement should not be admissible in evidence in any proceedings or trials other than for the sole and limited purpose of enforcement of this agreement and the policies attached hereto and the partial consent decrees on file herein. Specifically, it is understood and agreed that Rules 407 and 408 of the Federal Rules of Evidence and the Advisory Committee's notes to Rule 407 and 408 and of Rules 407 and 408 of the New Mexico Rules of Evidence are applicable to this agreement and the policies attached hereto and the partial consent decrees on file herein.

5. In the event of an emergency caused by a riot, fire, or other events at the facility not caused by the Defendants, their agents, employees, successors in office, and those acting in concert with them which make compliance with the terms of this agreement and the policies

attached hereto and the partial consent decrees on file herein impossible. It may be necessary to temporarily suspend certain provisions of this agreement and the policies attached hereto and the partial consent decrees on file herein. In such event, the Defendants must formally declare a state of emergency, and, as soon as practical, but no later than five (5) days after such declaration, notify the Plaintiffs and their counsel of the reasons which necessitated the suspension of such suspended provisions. The Defendants will also notify counsel for Plaintiffs of the expected duration of such suspension and the plan of the Defendants to restore said provisions. If the Plaintiffs or their counsel believe those suspensions and/or their duration are unjustified, unreasonable, or taken in bad faith, then they may request appropriate relief from this court.

6. Other than in times of emergency, changed circumstances may, in the future, justify some changes in this agreement and the policies attached hereto and the partial consent decrees on file herein. No change or changes may be made which will lessen the benefits provided by the agreement and the policies attached hereto and the partial consent decrees on file herein. Notice will be given to the lawyers for the Plaintiffs at least thirty (30) days prior to the proposed implementation date. Said notice will contain the proposed change or changes and the reasons therefore. Counsel for the Plaintiffs will ascertain whether, in their opinion, the proposed change or changes in any way lessen the benefits provided by this agreement or the policies attached hereto and the partial consent decrees on file herein. If so, they will notify Defendants of their objections and the reasons therefore within fifteen (15) days. Efforts will be made to informally resolve the matter. If the dispute cannot be resolved, it will be submitted to the court. The burden will then be on the Defendants to justify that the change or changes should be made and will not lessen the benefits provided by the agreement and the

policies attached hereto and the partial consent decrees on file herein before the change or changes will be allowed.

7. Noncompliance with the agreement and the policies attached hereto and the partial consent decrees on file herein shall result in disciplinary action against any noncomplying state employee(s). This provision in no way limits remedies otherwise available to the parties to enforce this agreement and the policies attached hereto and the partial consent decrees on file herein.

8. The parties further agree that as of the date of this agreement, the Plaintiff class in Duran v. Apodaca shall be defined as "all persons who are now, or in the future may be, incarcerated in the Penitentiary of New Mexico at Santa Fe or at any maximum, close or medium security facility opened for operation by the State of New Mexico after June 12, 1980." All provisions of this agreement will be followed at those institutions except those provisions which are not generally applicable and which are required by unique conditions at the Penitentiary of New Mexico at Santa Fe.

9. The Defendants will appoint a responsible person to report on compliance with the agreement and the policies attached hereto and the partial consent decrees filed herein. Such reports will be sent quarterly to counsel for Plaintiffs.

10. The parties shall submit this agreement to the Court in full settlement of all remaining issues in this case, except costs and attorney's fees and the parties shall request that the Court retain jurisdiction for such time as the Court deems necessary to enforce compliance with this agreement and the policies attached hereto and the partial consent decrees on file herein.

II. Any modification of the Order of the Court which may be made in the future shall modify this agreement and the policy statements to be consistent with this Order, as so modified.

Ralph L. Knowler, Jr.
Attorneys for Plaintiffs

Paul H. Stahl
Attorneys for Plaintiffs

Charles Daniel Cook
Attorneys for Plaintiffs

Walter M. Workman
Attorneys for Defendants

John M. Davis
Attorneys for Defendants

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

FILED
UNITED STATES DISTRICT COURT
SANTA FE, NEW MEXICO

APR 18 1979

[Signature]

DWIGHT DURAN, et al.,
Plaintiffs,

vs.

JERRY APODACA, et al.,
Defendants.

Civil Action No. 77-721-C

JOINT REQUEST FOR PARTIAL CONSENT DECREE

Come now the parties in the above styled case and jointly request that the Court enter a partial consent decree in settlement of those allegations made in the Amended Complaint in paragraph 28 relating to correspondence policies and practices. The provisions which the parties have agreed to and which this Court is asked to approve and adopt as its order are as follows:

1. Policy Statement FNM-77-IM-60101.1, 07-27-77, Subject: Correspondence Regulations, will be replaced by the Policy Statement attached to this motion as Exhibit A. The new policy statement will be provided to all prisoners as soon as is practical after this order is entered but in any event no later than 21 days after the entry of said order.
2. There will be no requirement that prisoners sign a waiver of their right to object to the opening of their mail or to take legal action to assure continuing adherence to constitutional standards in correspondence policies and practices.
3. The defendants will maintain records for at least one year after the signing of this order indicating any documents rejected by the three member Publication Review Panel along with the reasons for the rejection. In addition, the documents rejected will be retained. The described records and documents will be made available to counsel for the plaintiffs to examine at any time upon reasonable notice. In the event counsel for the plaintiffs subsequently determine that the policy statement is being executed

in such a manner as to apparently violate constitutional rights of prisoners, they may by appropriate motion with the Court raise the issues presented for a determination by the Court and appropriate relief, if any.

4. If the Court adopts §§1, 2 and 3 above then it should also dismiss the allegations of paragraph 28 of the Amended Complaint from the trial of this case except for its retention of jurisdiction to enforce said order.

Submitted by,

[Signature]
For the Plaintiffs

[Signature]
For the Defendants

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FOR THE DISTRICT OF NEW MEXICO

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Civil Action No. 77-721-C

ORDER

The parties to the above styled litigation have presented the Court with a Joint Request For Partial Consent Decree which would result in a settlement of the issues raised by the allegations in Paragraph 28 of the Amended Complaint relating to correspondence policies and practices. The Court has considered the said Joint Request and the terms of the proposed settlement and has determined that the proposed Partial Consent Decree would be in the interest of justice to the parties and should be entered.

Wherefore, premises considered, the defendants, individually and in their official capacities, their agents, employees, successors in office and any others acting in concert with them, are hereby enjoined from failing to implement fully and within the times prescribed each of the following requirements:

1. Policy Statement PHM-77-IM-40001.1, 07-27-77, Subject: Correspondence Regulations, will be replaced by the Policy Statement attached to this order as Exhibit A. The new policy statement will be provided to all prisoners and will be operational as soon as is practical after this order is entered but in no event later than 31 days after the entry of said order.

2. There will be no requirement that prisoners sign a waiver of their right to object to the opening of their mail or to take legal action to assure continuing adherence to constitutional standards in correspondence policies and practices.

3. Records will be maintained for at least one year after the signing of this order indicating any documents rejected by the three member Publication Review Panel along with the reasons for the rejection. In addition, the documents rejected will be retained. The described records and documents will be made available to counsel for the plaintiffs for examination and copying at any time upon reasonable notice. In the event counsel for the plaintiffs subsequently determine that the policy statement is being executed in such a manner as to apparently violate constitutional rights of prisoners, they may by appropriate motion with the Court raise the issues presented for a determination by the Court as to what relief, if any, should be granted.

4. The allegations of Paragraph 28 of the Amended Complaint relating to correspondence policies and practices are dismissed from the trial of this case. The Court retains jurisdiction to enforce this order.

Done this 18TH day of APRIL, 1979.

[Signature]
Santiago E. Campos
United States District Judge