



PC-NM-001-007

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.

O R D E R

THIS MATTER having come on before the Court on the agreement of the parties and the Court being advised that this is a class action proceeding pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure and the class was previously certified as all inmates who are now, or in the future may be incarcerated in the Penitentiary of New Mexico at Santa Fe. By agreement of the parties and because of changed circumstances, the class is hereby amended to include all those inmates 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 open for operation by the State of New Mexico after June 12, 1980; and the Court having examined the agreement finds:

1) that the agreement represents a compromised settlement of disputes between the parties;

2) that the agreement and the policy statements attached thereto 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. The agreement and the policies attached thereto 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 any official, employee, agent, or representative of the State of New Mexico other than for the sole and limited purpose of enforcement of the agreement and the policies attached thereto and, the partial consent decrees on file herein.

3) that the agreement and policy statements attached thereto 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 the agreement and the policy statements attached thereto 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 Order or in the agreement and policy statements attached thereto or the partial consent decree on file herein constitute findings of fact or law with respect to the claims or defenses of the parties in Duran v. Apodaca.

4) that the 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 thereto 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 are applicable to this agreement and the policies attached hereto and the partial consent decrees on file herein.

5) that the agreement is fair and appropriate and should be confirmed and adopted by the Court.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1) The agreement of the parties is approved and adopted in all particulars.

2) The Defendants, their agents, employees, successors in office, and those acting in concert with them, are hereby ordered to comply in full with the terms of the agreement and the policies attached thereto and the prior partial consent decrees of this Court.

3) Pursuant to Rule 23(g) F.R.C.P., the Defendants are ordered to provide notice of this Order and settlement to all inmates presently confined at the Penitentiary of New Mexico. The notice will include a statement that the Order and settlement are provisional until fifteen (15) days after said notice during which time class members may submit written objections to the Order and settlement to the Clerk of this Court. Any such objections will be considered fully by the Court. This Order will become final if not rejected or modified by agreement of the parties based upon said objections within thirty (30) days.

4) If this Order and settlement becomes final, the Court will maintain jurisdiction for such time as is necessary to enforce or modify this Order and settlement with, if necessary, all appropriate orders including contempt sanctions.

Signed this 14th day of July, 1980.

Antonio E. Campos
UNITED STATES DISTRICT JUDGE

APPROVED BY:

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