

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

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DWIGHT DURAN, et al.

Plaintiffs,

vs.

No. CIV-77-0721-JB

BRUCE KING, et al.,

Defendants.

FIRST STIPULATION ON INMATE ACTIVITY

The Thirty-fourth Report of the Special Master--Report on Inmate Activity at the Penitentiary of New Mexico ("34th Report") reflected continuing shortcomings in Defendants' compliance with the inmate activity provisions of the Modified Decree. In its November 30, 1993 order confirming the 34th Report, the Court reiterated its concern about those shortcomings and its insistence that Defendants immediately develop mechanisms that will lead to prompt compliance.

The parties, their counsel, and the Special Master met on November 29 and 30, 1993, and again on January 6, 1994, to discuss inmate activity issues. Those discussions focussed on the current status of Defendants' actions in this area, Defendants' plans for further action, and the remedies that Plaintiffs might seek under the present circumstances. The result of these meetings is an agreement between the parties that is set forth in this stipulation.

Accordingly, the parties hereby stipulate to the following:

1. No later than April 1, 1994, the parties jointly will develop an inmate activity plan ("Plan") to permit Defendants to achieve compliance with the inmate activity provisions of the Modified Decree.
2. No later than April 1, 1994, the parties will negotiate and file a stipulation (the "Second Stipulation on Inmate Activity") for the implementation of the jointly-drafted Plan, and for compliance with the Modified Decree.
3. The Second Stipulation on Inmate Activity will address the following areas and contain the following provisions:
 - a. Beginning no later than May 1, 1994 all inmates newly assigned to the Penitentiary of New Mexico will be given the opportunity to be assessed by appropriate staff, using appropriate instruments, techniques, a review of existing RDC data and the inmates' interest, to determine their educational, vocational education and work-related needs, interests and goals in connection with the development and implementation of the Inmate Activity Plan as outlined below:
 - i. All inmates newly assigned to the Penitentiary of New Mexico will have been given the opportunity to take the WRAT and TABE at RDC.

- ii. Newly assigned inmates will be given a presentation concerning educational, vocational educational and work offerings and processes during the intake orientation at PNM.
 - iii. All ILP eligible inmates will be interviewed and given interest surveys; the educational file will be reviewed. Further testing will be conducted if there is a referral or functional need demonstrated.
 - iv. Non-ILP inmates who express an interest in educational programming will be interviewed and given interest surveys; the educational file will be reviewed. Further testing will be conducted if there is a referral or functional need demonstrated.
 - v. Inmates will not be required to participate in ILP if they are exempt due to a medical, developmental or learning disability as determined pursuant to Correction Department policies CD-102000 and 102001 and Sec. 33-11-1 et seq. NMSA.
- b. In addition, by September 15, 1994, a sample of the current population necessary to promulgate the filed inmate activity plan will be assessed

using the same model as that for newly assigned inmates.

- c. time lines for compliance with each paragraph of the Modified Decree (Inmate Activity), and standards for the measurement of compliance, will be established; compliance will be audited quarterly and will be determined based on the percentage of prisoners who are engaged in inmate activity as required by the policy statement on inmate activity of the Modified Decree; the Second Stipulation will establish target percentages for each calendar quarter by facility beginning with the quarter ending June 30, 1994;
- d. in auditing compliance the Special Master will consider the extent to which programs and work assignments are meaningful as required by the inmate activity policy statement of the modified decree;
- e. Defendants will warrant that they have the financial resources available to accomplish the Plan and to meet the time lines and compliance guidelines of the Stipulation; if defendants are unable to do so, the parties are free to pursue such legal remedies as they deem appropriate;
- f. compliance with the Plan will be achieved without any substantial deprivation of existing rights to

which members of plaintiffs class are entitled under the modified decree at the PNM complex;

g. inmates who are assigned to the Inmate Literacy Program ("ILP") in conjunction with implementation of the Plan will not be required to relinquish their job assignments as a result of assignment to the ILP, but instead will be assigned to an ILP class during non-working hours with the following exceptions:

- i. Any inmate who has been assigned to a job for less than 6 months.
- ii. Any inmate who has voluntarily left a job assignment.
- iii. Any inmate who has been removed for misconduct or failure to perform a job satisfactorily.
- iv. Any inmate who has been transferred from one facility to another so long as the transfer is not for the purposes of placement in ILP.
- v. Any inmate who has been placed in disciplinary segregation.

An inmate previously removed from work assignment for placement in ILP will be given an opportunity to be reinstated in such work positions or a job with comparable pay as well as an opportunity to complete ILP requirements at a time that does not

interfere with the work assignment subject to the above listed exceptions;

- h. Defendants' failure to meet any of their obligations under the Second Stipulation on Inmate Activity will not be construed automatically as evidence of contempt of the Modified Decree;
- i. the Second Stipulation on Inmate Activity shall include a provision protecting Defendants from intentional actions of members of the Plaintiff class which impede or are intended to impede or prohibit compliance with the Stipulation;
- j. the Second Stipulation on Inmate Activity shall contain provisions concerning actions to be taken by the Special Master and the parties in the event target percentages are not met and shall give the Defendants an opportunity to meet the target percentages in a reasonable period of time; and
- k. the term of the Second Stipulation on Inmate Activity shall extend until July 1, 1995, at which time Defendants shall be required to achieve substantial compliance with the policy statement on Inmate Activity of the modified decree. Plaintiffs will agree not to seek a show cause order with reference to the policy

statement on inmate activity during the term of the Second Stipulation. The parties shall include language in the Second Stipulation allowing Plaintiffs to seek such a show cause order prior to July 1, 1995 only in the event of a substantial breach of the Stipulation.

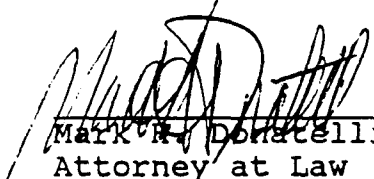
1. Neither this Stipulation nor the Second Stipulation on Inmate Activity to be developed pursuant to the terms hereof are to be construed as a modification of the Modified Decree.
4. The instant stipulation shall be effective upon its approval and entry by the Court.

So STIPULATED AND APPROVED:

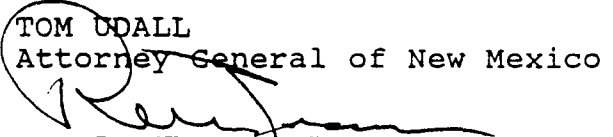
APPROVED:

For the Plaintiffs

For the Defendants



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

DWIGHT DURAN, et al.,
Plaintiffs,

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vs.

CIVIL NO. 77-0721-JB

BRUCE KING, et al.,
Defendants.

JOINT MOTION TO APPROVE FIRST STIPULATION ON INMATE ACTIVITY

COME NOW the parties to the above-captioned action and jointly move this Honorable Court to approve the First Stipulation on Inmate Activity and as grounds therefor state as follows:

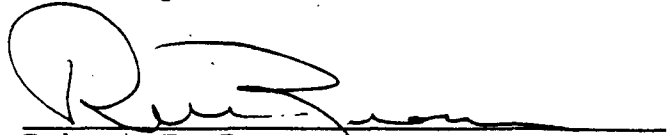
1. The parties have agreed upon a process to address the court's concerns about Defendants' compliance with the inmate activity provisions of the Modified Decree.

2. As a result of discussions between the parties, their counsel and the Special Master, the parties have agreed upon a document captioned "First Stipulation on Inmate Activity" which is filed contemporaneously herewith.

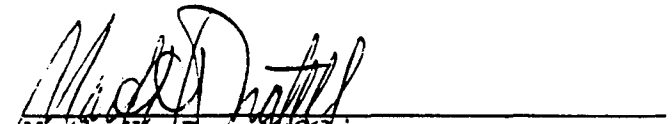
WHEREFORE, the parties respectfully request that this Court order that the said Stipulation be approved and made an order of this Court.

Respectfully submitted:

TOM UDALL
Attorney General of New Mexico



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Attorney for Plaintiffs

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

DWIGHT DURAN, et al.,

Plaintiffs,

vs.

No. CIV-77-0721-JB

BRUCE KING, et al.,

Defendants.

ORDER

The Court previously addressed compliance with the Modified Decree in this cause at the New Mexico Women's Correctional Facility ("NMWCF") in the areas of inmate discipline, visiting, classification, inmate correspondence, access to Courts, food service, staffing, and living conditions (See orders of January 29, 1992 and January 25, 1993). Compliance in the only two additional areas of institutional concern that remain applicable to NMWCF, administrative segregation and inmate activity, have not been the subject of previous Court order.

Nevertheless, the parties have now stipulated that NMWCF is in substantial compliance with the inmate activity and administrative segregation provisions of the Modified Decree. Their stipulation to that effect, included within their joint motion to vacate the Modified Decree at NMWCF, is attached to the Special Master's Recommendations Concerning Joint Motion to Vacate Modified Decree As To The New Mexico Women's Correctional Facility.

In that document, the Special Master recommends that the Court approve the parties' stipulations within their joint motion that (1) defendants have achieved substantial compliance at NMWCF in the

areas of administrative segregation and inmate activity and, (2) no further self-monitoring is required in those two areas. In addition, the Special Master recommends that the Court enter an order vacating the Modified Decree at NMWCF as provided for in §III.D.ii of the Modified Decree.

The Court has carefully reviewed and considered both the Special Master's recommendations and the parties' joint motion. The Court finds that, despite the absence of a formal report by the Special Master finding that defendants have achieved substantial compliance at NMWCF in the areas of administrative segregation and inmate activity, the parties' stipulation in their joint motion that substantial compliance has been achieved, together with their report of the underlying activities that permitted them to reach that conclusion and the Special Master's recommendations in this regard, reflect that substantial compliance with the Modified Decree has been achieved in these two areas at NMWCF. The Court further finds that, despite the absence of a specified period of formal self-monitoring of compliance in these two areas at NMWCF, the parties' stipulation in their joint motion that informal self-monitoring has confirmed that the substantial compliance that has been achieved has been maintained, together with their explanation of the informal self-monitoring activities that occurred and the Special Master's recommendations in this regard, reflect that no further self-monitoring requirements ought be imposed in these two areas at NMWCF. Finally, the Court finds that the substantive principles and purposes undergirding the process established in

§III.D.ii of the Modified Decree have been met in connection with administrative segregation and inmate activity at NMWCF.

Accordingly, the Court being fully advised in the premises and for good cause shown,

IT IS HEREBY ORDERED that the Special Master's Recommendations Concerning Joint Motion to Vacate Modified Decree As To The New Mexico Women's Correctional Facility be and hereby is accepted and approved.

IT IS FURTHER ORDERED that the parties' stipulation within their joint motion regarding NMWCF be and hereby is approved.

IT IS FURTHER ORDERED that the Modified Decree is vacated at NMWCF in all respects and as to all areas, except as otherwise provided in §III.D.ii of the Modified Decree.

JUAN G. BURCIAGA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

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

DWIGHT DURAN, et al.

Plaintiffs,

vs.

No. CIV-77-0721-JB

BRUCE KING, et al.,

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FIRST STIPULATION ON INMATE ACTIVITY

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Accordingly, the parties hereby stipulate to the following:

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3. The Second Stipulation on Inmate Activity will address the following areas and contain the following provisions:
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 - v. Inmates will not be required to participate in ILP if they are exempt due to a medical, developmental or learning disability as determined pursuant to Correction Department policies CD-102000 and 102001 and Sec. 33-11-1 et seq. NMSA.
- b. In addition, by September 15, 1994, a sample of the current population necessary to promulgate the filed inmate activity plan will be assessed

using the same model as that for newly assigned inmates.

- c. time lines for compliance with each paragraph of the Modified Decree (Inmate Activity), and standards for the measurement of compliance, will be established; compliance will be audited quarterly and will be determined based on the percentage of prisoners who are engaged in inmate activity as required by the policy statement on inmate activity of the Modified Decree; the Second Stipulation will establish target percentages for each calendar quarter by facility beginning with the quarter ending June 30, 1994;
- d. in auditing compliance the Special Master will consider the extent to which programs and work assignments are meaningful as required by the inmate activity policy statement of the modified decree;
- e. Defendants will warrant that they have the financial resources available to accomplish the Plan and to meet the time lines and compliance guidelines of the Stipulation; if defendants are unable to do so, the parties are free to pursue such legal remedies as they deem appropriate;
- f. compliance with the Plan will be achieved without any substantial deprivation of existing rights to

which members of plaintiffs class are entitled under the modified decree at the PNM complex;

g. inmates who are assigned to the Inmate Literacy Program ("ILP") in conjunction with implementation of the Plan will not be required to relinquish their job assignments as a result of assignment to the ILP, but instead will be assigned to an ILP class during non-working hours with the following exceptions:

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ii. Any inmate who has voluntarily left a job assignment.

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v. Any inmate who has been placed in disciplinary segregation.

An inmate previously removed from work assignment for placement in ILP will be given an opportunity to be reinstated in such work positions or a job with comparable pay as well as an opportunity to complete ILP requirements at a time that does not

interfere with the work assignment subject to the above listed exceptions;

- h. Defendants' failure to meet any of their obligations under the Second Stipulation on Inmate Activity will not be construed automatically as evidence of contempt of the Modified Decree;
- i. the Second Stipulation on Inmate Activity shall include a provision protecting Defendants from intentional actions of members of the Plaintiff class which impede or are intended to impede or prohibit compliance with the Stipulation;
- j. the Second Stipulation on Inmate Activity shall contain provisions concerning actions to be taken by the Special Master and the parties in the event target percentages are not met and shall give the Defendants an opportunity to meet the target percentages in a reasonable period of time; and
- k. the term of the Second Stipulation on Inmate Activity shall extend until July 1, 1995, at which time Defendants shall be required to achieve substantial compliance with the policy statement on Inmate Activity of the modified decree. Plaintiffs will agree not to seek a show cause order with reference to the policy

statement on inmate activity during the term of the Second Stipulation. The parties shall include language in the Second Stipulation allowing Plaintiffs to seek such a show cause order prior to July 1, 1995 only in the event of a substantial breach of the Stipulation.

1. Neither this Stipulation nor the Second Stipulation on Inmate Activity to be developed pursuant to the terms hereof are to be construed as a modification of the Modified Decree.

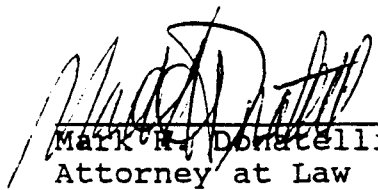
4. The instant stipulation shall be effective upon its approval and entry by the Court.

So STIPULATED AND APPROVED:

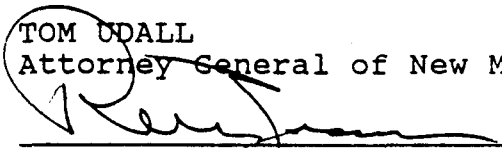
APPROVED:

For the Plaintiffs

For the Defendants



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

LAURA KLATT, et al.,

Plaintiffs,

vs.

No. CIV-80-871-JB

BRUCE KING, et al.,

Defendants.

ORDER

The Special Master in this cause has filed the Special Master's Recommendations Concerning Joint Motion To Dismiss. Attached to that document is a joint motion by the parties stipulating that defendants have achieved substantial compliance with the previous orders in this cause and moving for dismissal of this action.

The Court previously addressed compliance with the orders in this cause at the New Mexico Women's Correctional Facility ("NMWCF") in the areas of inmate discipline, visiting, classification, inmate correspondence, access to Courts, food service, staffing, and living conditions (See orders of January 29, 1992 and January 25, 1993). Compliance in the only two additional areas of institutional concern that remain applicable to NMWCF, administrative segregation and inmate activity, have not been the subject of previous Court order.

Nevertheless, the parties have now stipulated that NMWCF is in substantial compliance with the inmate activity and administrative segregation provisions of the Court's orders in this cause. Their stipulation to that effect, included within their joint motion to

dismiss, is attached to the Special Master's Recommendations Concerning Joint Motion to Dismiss.

In that document, the Special Master recommends that the Court approve the parties' stipulations within their joint motion to dismiss that (1) defendants have achieved substantial compliance at NMWCF in the areas of administrative segregation and inmate activity and, (2) no further self-monitoring is required in those two areas. In addition, the Special Master recommends that the Court enter an order dismissing this action as provided for in §III.D.ii of the Modified Decree.

The Court has carefully reviewed and considered both the Special Master's recommendations and the parties' joint motion to dismiss. The Court finds that, despite the absence of a formal report by the Special Master finding that defendants have achieved substantial compliance at NMWCF in the areas of administrative segregation and inmate activity, the parties' stipulation within their joint motion to dismiss that substantial compliance has been achieved, together with their report of the underlying activities that permitted them to reach that conclusion and the Special Master's recommendations in this regard, reflect that substantial compliance has been achieved in these two areas at NMWCF. The Court further finds that, despite the absence of a specified period of formal self-monitoring of compliance in these two areas at NMWCF, the parties' stipulation within their joint motion to dismiss that informal self-monitoring has confirmed that the substantial compliance that has been achieved has been maintained, together

with their explanation of the informal self-monitoring activities that occurred and the Special Master's recommendations in this regard, reflect that no further self-monitoring requirements ought be imposed in these two areas at NMWCF. Finally, the Court finds that the substantive principles and purposes undergirding the process established in §III.D.ii of the Modified Decree have been met in connection with administrative segregation and inmate activity at NMWCF.

Accordingly, the Court being fully advised in the premises and for good cause shown,

IT IS HEREBY ORDERED that the Special Master's Recommendations Concerning Joint Motion to Dismiss be and hereby is accepted and approved.

IT IS FURTHER ORDERED that the parties' stipulation, contained in their joint motion to dismiss, be and hereby is approved.

IT IS FURTHER ORDERED that this cause is dismissed, except as otherwise provided in §III.D.ii of the Modified Decree.

JUAN G. BURCIAGA
CHIEF JUDGE
UNITED STATES DISTRICT COURT