

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

DWIGHT DURAN, et al.,)

Plaintiffs,)

vs.)

Civil Action No. 77-721-JC

GARY JOHNSON, et al.,)

Defendants.

Duran v. Apodaca



PC-NM-001-045

STIPULATION

In order to resolve the issues placed in dispute by plaintiffs' January 29, 1996 Motion for Temporary Restraining Order and Motion For Injunctive and Other Remedial Relief, the undersigned parties, through their respective attorneys, hereby enter into this stipulation on this 29th day of March 1996.

1. Defendants, on a continuing and ongoing basis, will develop and implement all feasible means to maximize the availability and use of all medium security beds in cells within the New Mexico Corrections Department ("NMCD"). Defendants will work closely with the special master^{1/} to accomplish these objectives. The special master will maintain ongoing communication with plaintiffs' counsel to apprise the latter of progress on these matters and will keep plaintiffs' counsel fully informed of all efforts defendants take or decline to take to

^{1/} For the purposes of this stipulation, the term "special master" includes Vincent M. Nathan, W. David Arnold, or both.

maximize the availability and use of all medium security cell beds within the NMCD.

2. In order to provide housing for medium security prisoners^{2/} for whom no cell beds are available in spite of measures taken by defendants pursuant to paragraph 1 of this stipulation, and only upon continued compliance with paragraph 1 of this stipulation, defendants will assign such prisoners to beds in a dayroom ("dayroom beds") only at Central New Mexico Correctional Facility ("CNMCF") and Southern New Mexico Correctional Facility ("SNMCF"). Defendants may assign prisoners to no more than 70 such beds at CNMCF and to no more than 70 such beds at SNMCF, for a total of 140 dayroom beds. In addition, if beds in cells are not available at the Reception & Diagnostic Center ("RDC"), defendants may continue to assign prisoners to no more than 45 dayroom beds at the RDC at Western New Mexico Correctional Facility ("WNMCF").

3. So long as defendants are complying with paragraph 1 of this stipulation, have no available cells for housing medium security prisoners, and have assigned no fewer than 120 but no more than 140 medium security prisoners to dayroom beds at CNMCF and SNMCF pursuant to paragraph 2 of this stipulation, defendants may assign no more than 350 medium security prisoners to the Dallas County Jail or to another jail facility in Texas, hereinafter referred to collectively as "Texas facility" or

^{2/} In the absence of specific language to the contrary, all references to "prisoner," "prisoners," or "medium security prisoners" throughout this stipulation include only male prisoners.

"Texas facilities". The following conditions will apply to the assignment of prisoners to a Texas facility:

A. Defendants will ensure that officials at the Dallas County Jail expand or permit expansion of correspondence privileges (increased availability of writing materials, envelopes, and stamps) and access to legal materials (expansion of the collection of New Mexico legal research materials), as recommended to NMCD officials by the special master.

B. Any Texas jail to which prisoners are transferred, other than the Dallas County Jail, must be of at least comparable quality to the Dallas County Jail in terms of physical plant and the provision of services to prisoners, including correspondence and legal access services described in subparagraph 3(A) of this stipulation. Prior to the transfer of any prisoner to a Texas jail other than the Dallas County Jail, the special master will inspect the proposed facility and certify its comparability to the Dallas County Jail.

C. Defendants may only transfer newly received prisoners to Texas facilities directly from the RDC. All such prisoners must be classified as medium security, and no such prisoner can be under indictment or be in the process of pursuing a direct appeal of his criminal conviction at the time of his transfer.^{3/} Defendants may apply other criteria (e.g.,

^{3/} The exclusion of prisoners under indictment or pursuing a direct appeal does not encompass prisoners who are in the process of making a collateral attack, by writ of habeas corpus or otherwise, on their conviction, plea, or sentence.

chronic medical or mental health condition, unusual hardship) to exclude prisoners from eligibility for transfer to a Texas facility, but the failure to identify a sufficient number of medium security prisoners at the RDC who are eligible for transfer to a Texas facility will not constitute an excuse for noncompliance with any provision of this stipulation.

D. No prisoner assigned to a Texas facility will be assigned to such a facility a second time unless that person's conduct results in his readmission to the NMCD as a new admission to the RDC. "Readmission to the NMCD as a new admission" includes persons returned as parole violators; persons returned as probation violators; violators of conditions of reintegration; and persons who were previously incarcerated, then released, then admitted pursuant to a new or separate conviction.

E. All prisoners assigned to a Texas facility in the future will be returned to and physically housed in a New Mexico penal facility as quickly as possible and in no event later than 120 calendar days from the date the prisoner leaves the RDC.

4. As soon as possible, and in no event later than July 1, 1996, defendants will return to New Mexico penal facilities all New Mexico prisoners presently incarcerated in the Dallas County Jail or the Tarrant County Jail in the State of Texas. Defendants will first return all prisoners currently assigned to the Tarrant County Jail. Defendants will make every reasonable effort to assign any such returning prisoner to a bed in a cell

and will provide the special master with a written explanation of a decision to assign any such prisoner to a dayroom bed.

5. Upon their return to New Mexico, all prisoners currently assigned to a Texas facility and all prisoners assigned to a Texas facility in the future will be transferred directly to an NMCD penal facility other than the RDC.

6. If defendants are in compliance with paragraph 1 of this stipulation, defendants may assign more than 140 prisoners to dayroom beds at CNMCF and SNMCF in order to accomplish in a timely fashion the transfers required by paragraph 4 of this stipulation. If defendants assign more than 140 prisoners to dayroom beds pursuant to the immediately preceding sentence, defendants shall reduce the number of prisoners assigned to such dayroom beds to 140 no later than September 30, 1996.

Thereafter, if defendants are in compliance with paragraphs 1, 2, and 3 of this stipulation and the maximum number of prisoners (350) are assigned to Texas facilities, defendants may assign additional medium security prisoners to dayroom beds at CNMCF and SNMCF in order to provide housing for medium security prisoners for whom no cell is available. In no event, however, will defendants assign more than 300 medium security prisoners to dayroom beds, including such beds at the RDC (wherever it is located) and the New Mexico Women's Correctional Facility.

7. No provisions of the court's orders in this cause relating to conditions of confinement, apart from the provisions

of this stipulation, will apply to prisoners while they are housed in a Texas facility.

8. Because of the lack of work and educational opportunities in Texas facilities, every prisoner currently assigned to a Texas facility and every prisoner assigned to a Texas facility in the future will earn day-for-day good time, regardless of the prisoner's employment or programmatic status in a Texas facility, subject to the NMCD's current regulations governing termination and forfeiture of good time for misconduct and consistent with the requirements of NMSA §33-2-34. In addition, every prisoner currently assigned to a Texas facility and every prisoner assigned to a Texas facility in the future, upon his return to a New Mexico penal institution, will be awarded six days of lump-sum good time for each month or portion thereof the prisoner spent in a Texas facility, subject to the NMCD's current regulations governing forfeiture of good time for misconduct.

9. Any prisoner assigned to a Texas facility in the future may file a classification appeal challenging his designation as medium security or any other element of the classification, and any such appeal will be resolved in accordance with the classification appeals policies of the NMCD. Such an appeal, however, will not be subject to the special provisions and limitations controlling an appeal of an out-of-state transfer. Any complaint concerning assignment to a Texas facility (as opposed to complaints about other facets of the classification

process) will be treated as a grievance and will be resolved under the grievance procedures of the NMCD. If the filing of a classification appeal would otherwise be timely, NMCD will accept classification appeals from prisoners after their transfer to a Texas facility. Moreover, defendants also will establish a procedural mechanism by which prisoners assigned to a Texas facility can submit grievances to NMCD officials. Defendants will provide the special master with a copy of any such classification appeal or grievance by a prisoner selected for transfer to a Texas facility, including prisoners currently assigned to a Texas facility, and the special master will review these appeals and grievances and communicate with NMCD officials to ensure that fair and timely decisions are rendered.

10. Plaintiffs hereby withdraw, without prejudice, their January 29, 1996 Motion for Temporary Restraining Order and Motion For Injunctive and Other Remedial Relief.

11. As long as defendants comply with the provisions of this stipulation and with paragraphs II.A, B, and C of the June 10, 1991 Settlement Agreement, and until the opening of a new medium security prison in Santa Rosa, New Mexico, plaintiffs will not file any legal action challenging the assignment of prisoners to Texas facilities or the assignment of prisoners to dayroom beds. In the event plaintiffs' counsel believe defendants are in noncompliance with a provision of this stipulation, they may file a legal action, for contempt or otherwise, challenging the assignment of prisoners to Texas facilities or the assignment of

prisoners to dayroom beds, but only following the exhaustion of all of the following steps:

A. Based upon information received from the special master pursuant to paragraph 1 of this stipulation, or upon information received from other sources, plaintiffs' counsel formally request an investigation and written report by the special master concerning defendants' alleged noncompliance with any provision of this stipulation.

B. The special master conducts an investigation, which he has represented to the parties he will accomplish as promptly as possible, and issues a written report containing a finding of noncompliance with this stipulation.

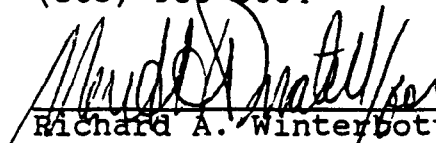
C. The parties, within ten business days following the special master's issuance of a written report containing a finding of such noncompliance, fail to reach agreement during the course of good faith negotiations regarding instances of noncompliance found by the special master.

12. If plaintiffs file a legal action pursuant to paragraph 11 of this stipulation, defendants will be free to raise all available defenses in response to such action, including challenging the special master's finding of non-compliance.

13. The parties will file this stipulation for the court's review and approval.



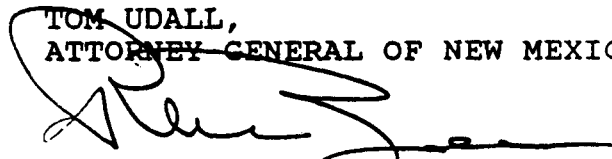
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