

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

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| LASHAWN JONES, <i>et al.</i> , |) | |
| Plaintiffs, and |) | |
| UNITED STATES OF AMERICA, |) | |
| Plaintiffs in intervention |) | |
| v. |) | Civil Action No. 2:12-cv-00859 |
| |) | Section I, Mag. 5 |
| MARLIN GUSMAN, <i>et al.</i> , |) | Judge Lance M. Africk |
| Defendants. |) | Magistrate Judge North |
| _____ |) | |
| MARLIN GUSMAN, |) | |
| Third-Party Plaintiff |) | |
| v. |) | |
| |) | |
| THE CITY OF NEW ORLEANS, |) | |
| Third-Party Defendant. |) | |
| _____ |) | |

ORDER

THIS MATTER comes before the Court on the parties’ “Joint Motion for Entry of Stipulated Order” (ECF No. 785), filed February 6, 2015. In the interest of moving Defendants toward compliance with the Consent Judgment (ECF No. 466), which was entered as an Order of the Court on June 6, 2013 (ECF No. 465), it is hereby

ORDERED that the parties’ “Joint Motion for Entry of Stipulated Order” (ECF No. 785) is **GRANTED**, and it is further

ORDERED that, in granting the parties’ Joint Motion, the Court finds, as agreed by the parties, that:

1. Defendants have not yet reached compliance with the Consent Judgment, entered as an Order this Court on June 6, 2013 (ECF No. 465);

2. As a result, more specific remedial relief is necessary, as set forth below; and

3. The additional relief set forth below complies in all respects with the provisions of 18 U.S.C. § 3626(a). The relief is narrowly drawn, extends no further than necessary to correct violations of federal rights agreed by the parties with the entry of the Consent Judgment, and is the least intrusive means necessary to correct these violations, and will not have an adverse impact on public safety or the operation of the criminal justice system.

As stipulated by the parties, it is further

ORDERED that the additional relief will consist of the following:

1. OPSO Reporting on Compliance Status with the Consent Judgment:

a. At each of the scheduled Court status conferences, the Sheriff or his designee shall report to the Court regarding OPSO's compliance status with each section (e.g. Section IV.A, IV.B.) of the Consent Judgment. This report shall include a summary of OPSO's progress since the immediate previously scheduled status conference, and will include in the reporting OPSO's planned actions in the next 60 days to come into compliance.

b. OPSO shall comply with the Consent Judgment's requirement for periodic compliance reports as set forth in Consent Judgment Section VIII.A. The reports shall describe the steps OPSO has taken in furtherance of compliance, and the activities planned during the next reporting period. The first report is due by April 1, 2015, and periodic reports shall be due in accordance with Section VIII.A, and/or on dates mutually agreed to by the parties and the Monitors, and approved by the Court, as necessary.

c. Within 24 hours of the occurrence of any of the following incidents, OSPO shall notify the Monitor via email:

- Death of an inmate/arrestee while held in custody (or housed in a hospital to which the inmate has been committed for care and remains in the custody of OPSO; or whose injury occurred while in custody and was subsequently released from custody);
- An inmate's/arrestee's suicide, suicide attempt, aborted suicide attempt, suicidal intent, and/or deliberate suicide self-harm gesture as defined by the American Psychiatric Association¹;
- An inmate's allegation of sexual abuse, sexual assault, sexual harassment, or voyeurism whether the incident is between or among inmates, or between or among inmates and a staff/contractor or volunteer;
- an inmate's report, or a report by a staff/contractor or volunteer, of any inmate/inmate allegation of assault; or other inmate allegations of felonies occurring to them while in custody;
- an inmate's report, or a report by a staff/contractor or volunteer, of any allegation of use of excessive force by an employee, volunteer or contractor;
- suspension or arrest of any OPSO employee, volunteer, or contractor for alleged criminal activities while on-duty and/or in a facility under the control of OPSO; and
- recovery of significant contraband, specifically weapons.

¹ The following definitions shall apply:

Suicide: self-inflicted death with evidence that the person intended to die; Suicide attempt -self-injurious behavior with a nonfatal outcome and evidence that the person intended to die.

Aborted suicide attempt: potentially self-injurious behavior with evidence that the person intended to die but stopped before physical damage occurred

Suicide ideation: thoughts of serving as the agent of one's own death

Suicidal intent: subjective expectation and desire for self-destructive act to end in death

Deliberate self-harm/ (gesture): willful self-infliction of painful, destructive or injurious acts without intent to die

(Reference: APA Practice Guidelines)

2. Policies and Procedures (All Relevant Sections):

a. By March 31, 2015, OPSO shall provide a schedule for the drafting and finalizing of all policies and procedures required under the Consent Judgment. This schedule shall include deadlines to simultaneously submit drafts to, and receive comments, from the Monitor(s), and from the Plaintiffs and USDOJ (“Plaintiffs”). The Plaintiffs will also provide a copy of their comments to the Monitor. In the event that the Monitor or the OPSO disagree with any comments or recommendations by the Plaintiffs, the Monitor will convene a conference call for the purpose of resolving issues.

b. The schedule shall identify the policies and procedures that are considered to be a priority including: use of force, incidents and referrals, the early intervention system, inmate grievance process, and inmate classification. The drafts of these policies shall be submitted to the Monitor(s) for initial review on or before March 31, 2015. Following receipt of the Monitors’ comments, OPSO will make any necessary revisions, consult with the Monitor(s) as needed, and provide a final draft to the Plaintiffs to provide substantive comments to both OPSO and the Monitor(s). In the event that the Monitor and/or the OPSO disagree with any comments or recommendations by the Plaintiffs, the Monitor will convene a conference call for the purpose of resolving issues.

3. Memoranda to Implement Substantive Provisions of the Consent Judgment:

Pending implementation of policies that implement the Consent Judgment, OPSO shall prepare memoranda² to all OPSO staff, contractors, and volunteers, as outlined in various provisions

² The memorandum shall include the date of issue, date of expiration, subject, title of issuing authority, to whom the memorandum is directed, the dates for reading at roll call, the dates to be posted, and location of posting.

below. For each provision, the memoranda shall delineate the responsibilities of staff, contractors and/or volunteers under the terms of the Consent Judgment as well as the required procedures for notification/action. OPSO shall submit each draft memoranda to Plaintiffs and the Monitor no later than March 1, 2015. Plaintiffs and the Monitor will have three business days to comment on the draft memoranda. In the event that the Monitor and/or the OPSO disagree with any comments or recommendations by the Plaintiffs, the Monitor will immediately convene a conference call for the purpose of resolving issues. Within seven business days of finalizing the memoranda based on the comments of the Monitor(s) and Plaintiffs, OPSO will assure that the memoranda are read at roll call on all shifts, in all facilities, and in all locations (e.g. medical) for three consecutive days. Discrete memoranda regarding similar topics noted in this Stipulated Order may be combined into a single memorandum. OPSO will maintain a written list of staff, contractors and volunteers present during the reading of the memoranda and will produce that list on request. OPSO will also post any memoranda in places where roll calls are held, locker rooms, and other non-inmate areas where staff may view the information.

4. Use of Force Reporting (§ IV.A.3):

a. **Disciplinary Action for Failure to Report (§ IV.A.3.a):** OPSO shall issue a memorandum to OPSO staff and contractors regarding their obligation to report uses of force for inmates under the legal care, custody and control of OPSO and in any facility operated by OPSO, and including in vehicles, hospitals, during transports, and in court holding areas. The memoranda will outline the requirements and timelines for reporting.

b. **Use of Force (UOF) Reports (§ IV.A.3.b):** OPSO shall issue a memorandum to staff and contractors that all incident reports regarding a use of force will contain all Consent Judgment-required elements as outlined in § IV.A.3.b-c, e. The

memorandum will be issued in accordance with the terms specified in Item 3 of this Stipulated Order.

c. **Watch Commanders' and Wardens' Responsibilities (§IV.A.3.d):**

OPSO shall issue a memorandum to Watch Commanders and to Wardens to ensure that Watch Commanders and Wardens' reports contain all elements required under the Consent Judgment, as outlined in § IV.A.3.d.,f. The memorandum will be issued in accordance with the terms specified in Item 3 of this Stipulated Order.

5. Early Intervention System (EIS) (§ IV.A.4):

a. By February 15, 2015, OPSO shall identify the names of the members of the Use of Force Review Board to the Monitor and the Plaintiffs/USDOJ.

b. Commencing March 1, 2015, OPSO will make available to Monitors, at the Monitors' request, the quarterly reviews conducted by ISB and the command staff regarding the operation of the EIS system, including supporting documentation reviewed, as delineated by Section IV.A. 4.b., c., d., and e. of the Consent Judgment.

6. Safety and Supervision (§ IV.A.5):

a. By February 15, 2015, in order that the housing for youthful offenders is continually staffed by a deputy, OPSO will assure that a deputy is working on every shift, on every day on the unit housing youthful offenders. This deputy may not be assigned to other tiers or other responsibilities, and shall be periodically relieved by another deputy and/or supervisor. The evidence of compliance with this document will be the staffing assignments each day, each shift for the facility in which youthful offenders are held, and samples of the log books from that unit.

b. OPSO shall ensure by May 15, 2015, that all staff assigned to the housing for inmates with acute and chronic mental health (in Templeman V, TDC, or other housing in which this population is held) attend training regarding working this population. The lesson plans/curricula for this training shall be reviewed and approved by the Monitors. The draft of the training curriculum and training plan is due to the Monitors by April 15, 2015 and should include participation by subject matter experts employed by the medical contractor.

7. Staffing, Staffing Plans, and Recruitment (§ IV.A.6.a):

a. OPSO shall provide a monthly report to the Monitors, identifying the number of deputies hired the previous month; the number of deputies who resigned, if known, the reason for resignation, and the date the deputy entered service; and the number of deputies who were terminated, the reason for termination, and the date the deputy entered service. The same report shall be provided for non-sworn (civilian staff). A cumulative annual total will also be included as part of this report.

b. By March 15, 2015, OPSO shall provide a recruitment plan for sworn (e.g. deputy sheriffs) and non-sworn/civilian staff that addresses current and anticipated vacancies for the next 18 months and based on the staffing plan. The plan will be provided to the Monitors for comment and recommendations by March 1, 2015.

c. At the scheduled status conferences with the Court, OPSO shall report regarding progress to achieving hiring based on the plan, as well as any modifications and update to the plan, in accordance with Item 1 of this Stipulated Order.

d. By April 30, 2015, OPSO will evaluate all posts to determine if use of contractors is feasible for non-inmate contact positions (e.g., perimeter security, security

screening of staff and visitors). The report will be provided to the Monitors and Plaintiffs for their review.

8. Incidents and Referrals (§IV.A.7): OPSO shall issue a memorandum to all staff and contractors regarding their responsibilities and the process to document all reportable incidents within 24 hours, identified in § IV.A.7 of the Consent Judgment. The memorandum will be issued in accordance with the terms specified in Item 3 of this Stipulated Order.

9. Investigations (§ IV.A.8):

a. By March 31, 2014, OPSO shall develop policies and procedures governing the operations of the Investigative Services Bureau (ISB) including post orders for all positions within OPSO that have investigative responsibilities, criminal and/or administrative. This draft will be provided to the Monitors. Following receipt of the Monitors' comments, OPSO will make any necessary revisions, consult with the Monitor(s) as needed, and provide a final draft to the Plaintiffs to provide substantive comments to both OPSO and the Monitor(s). In the event that the Monitor and/or the OPSO disagree with any comments or recommendations by the Plaintiffs, the Monitor will convene a conference call for the purpose of resolving issues.

b. By March 15, 2015 OPSO shall make available a laptop computer to investigative staff assigned full-time to ISB for use in the employees' official capacities. Supervisors shall have the ability access all files. To the extent possible the laptop computers will be linked to a mainframe/cloud to facilitate the supervisor's remote access to the files.

10. Grievances (§ IV.A. 11): By March 1, 2015, OPSO shall develop a job description for the Grievance Officer and revise OPSO's organizational chart to identify the chain-of-command for this position.

11. PREA (§ IV.A.12): By March 15, 2015, OPSO shall produce to the Monitors the outline and production schedule for the video and orientation materials advising prisoners of the Prison Rape Elimination Act. Following receipt of the Monitors' comments, OPSO will make any necessary revisions, consult with the Monitor(s) as needed, and provide a final draft to the Plaintiffs to provide substantive comments to both OPSO and the Monitor(s). In the event that the Monitor and/or the OPSO disagree with any comments or recommendations by the Plaintiffs, the Monitor will convene a conference call for the purpose of resolving issues.

12. Access to Information (§IV.A.13): By April 1, 2015, OPSO shall produce to the Monitors the outlines and production schedule for the inmate orientation video and materials, including the revised inmate handbook. OPSO shall also include the strategy for orienting inmates, and maintenance of inmate handbooks throughout OPSO facilities, including language access requirements, Section IV.F. of the Consent Judgment. Following receipt of the Monitors' comments, OPSO will make any necessary revisions, consult with the Monitor(s) as needed, and provide a final draft to the Plaintiffs to provide substantive comments to both OPSO and the Monitor(s). In the event that the Monitor and/or the OPSO disagree with any comments or recommendations by the Plaintiffs, the Monitor will convene a conference call for the purpose of resolving issues.

13. Medical Care (§ IV.C): By March 15, 2015, OPSO shall provide the Monitor with the medical and mental health care contractor's action plan for compliance with all the medical and mental health provisions of the Consent Judgment. The action plan shall include the due dates for compliance with the paragraphs of the Consent Judgment, the individual(s) responsible for the activities, and the specific activities to be undertaken. Following receipt of the Monitors' comments, OPSO will make any necessary revisions, consult with the Monitor(s) as needed, and provide a final draft to the Plaintiffs to provide substantive comments to both OPSO and the Monitor(s). In the event that the Monitor and/or the OPSO disagree with any comments or recommendations by the Plaintiffs, the Monitor will convene a conference call for the purpose of resolving issues.

14. Mental Health (§IV.B)

a. OPSO shall issue a memorandum requiring that inmates with mental illness housed in the mental health housing have access to non-contact family visitation and family telephone calls. The decision as to visiting and telephone calls will be determined in consultation with the mental health staff assigned to that inmate's care. If an inmate is denied visiting and telephone calls the reasons are to be specifically included in the inmate's chart.

b. By April 1, 2015, OPSO, in collaboration with CCS, will produce a management plan for inmates on the mental health caseload (Levels 1–4), whether these inmates are housed in the step-down unit, or in general population.

15. The New Jail Facility (§ VI.): By April 30, 2015, OPSO shall submit to the Monitors the plan for opening the new jail, including the schedule for movement of inmates into the facility, and closing of existing facilities. The schedule shall be predicated on the potential opening dates known at that time, including alternative scenarios.

16. Sanitation and Environmental Conditions (§IV.D.1): OPSO shall issue a memorandum to all staff that inmates and staff assigned to clean biohazards spills/incidents must be trained on doing so, outfitted with proper equipment, and properly supervised in accordance with § IV.D.1.f of the Consent Judgment. The directive will be issued in accordance with the terms specified in Item 3 of this Stipulated Order.

17. Youthful Offenders (§IV.G)

- a. By March 1, 2015, OPSO shall contact the school board and community groups to solicit proposals for programming in the youthful offender unit.
- b. At the scheduled Court status conferences, OPSO shall report on progress in securing such programming, and/or the responses from the school board and stakeholders.
- c. By May 1, 2015, OPSO shall provide a programming plan, based on the resources it has been able to secure, to include education, for all eligible youth in its custody, to the Monitors for review. Following receipt of the Monitors' comments, OPSO will make any necessary revisions, consult with the Monitor(s) as needed, and provide a final draft to the Plaintiffs to provide substantive comments to both OPSO and the Monitor(s). In the event that the Monitor and/or the OPSO disagree with any comments or recommendations by the Plaintiffs, the Monitor will convene a conference call for the purpose of resolving issues.

18. Notice and Cure

- a. Before taking judicial action to initiate contempt or other enforcement proceedings, Plaintiffs shall give OPSO written notice of its intent to initiate such proceedings,


and the Parties shall engage in good-faith discussions to resolve the dispute and may petition the Court for a status conference to assist in resolution.

b. OPSO shall have 30 days from the date of such notice to cure the failure (or such additional time as is reasonable due to the nature of the issue and agreed upon by the Parties) and provide the complaining party with sufficient proof of its cure. At the end of the 30-day period (or such additional time as is reasonable due to the nature of the issue and agreed upon by the Parties), in the event that the complaining party determines that the failure has not been cured, that party may initiate contempt proceedings without further notice. The Parties commit to work in good faith with Defendant to avoid enforcement actions.

c. In case of an emergency posing an immediate threat to the health or safety of any prisoner or staff member at OPP, however, Plaintiffs may omit the notice and cure requirements herein and seek enforcement of this Agreement.

SO ORDERED.

New Orleans, Louisiana, February 11th, 2015.



LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE