

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is between United States, by and through the United States Department of Justice, Civil Rights Division (“United States”), and Dallas County, Texas, and the Sheriff of the Dallas County Jail (collectively “Defendants”). This MOU resolves the United States’ outstanding claims against Defendants, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, regarding Defendants’ care and services for individuals at the Dallas County Jail (“DCJ”) in the areas of medication administration, access to health care, medical facilities, mental health assessment and treatment, that the United States and the Court Monitor maintain are still deficient. The MOU also requires the County to maintain and sustain the remedial measures made to date pursuant to the Agreed Order in *United States v. Dallas County, Texas, et al.*, regarding DCJ.

I. INTRODUCTION

The United States began its investigation of DCJ in 2005. The Parties negotiated an Agreed Order entered by a federal court in November 2007. Agreed Order, *United States v. Dallas County, et al.*, No. 3:07-CV-1559-N (N.D. Texas – Dallas Division, entered Nov. 6, 2007). The Agreed Order mandated comprehensive reforms at DCJ, including, *inter alia*, reforms in medical care, mental health care, and sanitation and environmental health. The Parties selected a monitor to assess, review, and report on the Defendants’ implementation of, and compliance with, the provisions of the Agreed Order.

Following the entry of the Agreed Order, the United States along with the Independent Monitor and an expert compliance team worked with Dallas County and DCJ officials to assist in bringing DCJ into constitutional compliance. Compliance tours were conducted biannually, the most recent being the week of September 19-23, 2011. Reports were produced by the Independent Monitor following each tour, detailing the status of compliance and providing technical assistance. The most recent report of the Independent Monitor found that DCJ had achieved substantial compliance with virtually all of the 72 overall provisions of the Agreed Order. 9th Monitoring Report (September, 2011 visit) (incorporated by reference). The Independent Monitor found that there are three partially compliant areas in the medical program and one remaining partially compliant area in the mental health program.

The United States and the Defendants filed a Notice of Termination requesting the end of court supervision based on the County’s progress and compliance to that point in time with the Agreed Order. The District Court granted the request on October 27, 2011 thereby ending court supervision at DCJ.

The Parties, however, recognize that significant concerns remain in providing adequate medical and mental health care at DCJ. The Parties enter into this MOU to complete the necessary reforms and to ensure continued sustained compliance with all areas where substantial compliance had been achieved under the Agreed Order.

II. DEFINITIONS

- A. “DCJ” or “the Jail” shall refer to the Dallas County Jail and shall include the Suzanne Kays Detention Facility; the Decker Detention Facility; the George Allen Courts Building; and the adjoining Lew Sterrett Center Tower Facilities (“Lew Sterrett”); as well as any facility that is built, leased, or otherwise used, to replace or supplement the Jail.
- B. “DOJ” shall refer to the United States Department of Justice, which represents the United States in this matter.
- C. “Effective date” shall mean the date the MOU is signed and executed by the Parties.
- D. Throughout this MOU and the previous Agreed Order, the following terms are used when discussing compliance: substantial compliance, partial compliance, and non-compliance. “Substantial compliance” indicates that the Jail has achieved compliance with all components of the relevant provision of the MOU. “Partial compliance” indicates that compliance has been achieved on some of the components of the relevant provision of both the MOU and the Agreed Order, but significant work remains. “Non-compliance” indicates that most or all of the components of the MOU and the Agreed Order provision have not been met.
- E. “Agreed Order” shall mean the Agreed Order entered by the federal court in November 2007. Agreed Order, *United States v. Dallas County, et al.*, No. 3:07-CV-1559-N (N.D. Texas – Dallas Division, entered Nov. 6, 2007).

III. PURPOSE OF THE MOU AND EFFECT OF THE AGREED ORDER

The Parties acknowledge that the underlying purpose of this MOU is twofold: (1) to ensure that Defendants shall achieve substantial compliance with the areas in partial compliance when the Agreed Order was terminated; and, (2) to ensure that Defendants maintain compliance in those areas of the Agreed Order where substantial compliance has been achieved. The Parties acknowledge and recognize that this MOU shall remain in effect until the Defendants have achieved substantial compliance with all the provisions of this MOU. While the Agreed Order is no longer binding, in order to sustain substantial compliance, it is expressly incorporated as part of this MOU, and the Parties may reference the Agreed Order if disputes arise as to the meaning of the terms of this MOU. (See Attachment A).

IV. SUBSTANTIVE PROVISIONS

A. Achieve Substantial Compliance

The Defendants shall take all necessary measures to achieve substantial compliance in the areas of the Agreed Order found in partial compliance by the Monitor in his DCJ 9th Monitoring Report. More specifically, regarding medical care, the Defendants shall take all necessary measures to achieve substantial compliance in the areas of access to health care (Agreed Order, Section A (5) (a)-(d)); medication administration (Agreed Order, Section A (8) (a)-(b)); and medical facilities (Agreed Order, Section A (9) (a)-(b)). In addition, regarding mental health care, the Defendants shall take all necessary measures to achieve substantial compliance in the area of assessment and treatment, privacy, disciplinary charges, and segregation (Agreed Order, Section B (2) (b), (d), and (e)).

B. Maintaining Compliance

The Defendants shall maintain compliance in all areas where substantial compliance has been achieved under the Agreed Order. Specifically, the Defendants shall maintain compliance in the areas of (1) medical care (intake screening; acute care; chronic care; follow-up care; specialty care; staffing, training, and supervision; quality assurance review; and dental care); (2) mental health care (timely and appropriate evaluation; psychotherapeutic medication administration; and suicide prevention); and (3) sanitation and environmental conditions (sanitation of laundry; protection from biohazards; environmental control; maintenance and sanitation of facilities; and fire and life safety).

V. ENFORCEMENT

A. Selection of Monitor

The Parties jointly agree to continue to use Michael Puisis, D.O., as the expert to monitor the State's implementation of this MOU (the "Monitor"). The Monitor shall have full authority to assess, review, and report on Defendants' implementation of and compliance with the provisions of the MOU. No Party, nor any employee or agent of any Party, shall have any supervisory authority over the Monitor's activities, reports, findings, or recommendations. In the event that Dr. Puisis is unable to serve or continue serving as the Monitor, or in the event that the Parties for any reason agree to discontinue the use of Dr. Puisis, the Parties shall meet or otherwise confer within 30 days of being notified of the incapacity or the decision to discontinue use of Dr. Puisis to select a new Monitor. The Parties will endeavor to select a new Monitor in good faith. The procedure described in this paragraph shall apply to all successor Monitors.

The Parties agree that the Monitor may use consultants to assist the Monitor. Any such consultants shall be paid for time, services, and expenses pursuant to the Monitor's existing budget. Neither the Monitor, nor any person or entity hired or retained by the Monitor to assist in furthering any provision of this MOU, shall be liable for any claim, lawsuit, or demand arising out of the monitoring of this MOU. This paragraph does not apply to any proceeding before a court for enforcement or payment of contracts or subcontracts for monitoring this MOU.

B. Reimbursement and Payment Provisions

1. The Parties and the Monitor have agreed upon the annual budget for the Monitor's work.
2. The cost of the Monitor, including the cost of any consultant(s) to assist the Monitor, shall be borne by Defendants. All reasonable expenses incurred by the Monitor or any consultant, in the course of the performance of the duties of the Monitor, pursuant to the budget of the Monitor, shall be reimbursed by the Defendants. The United States will bear its own expenses.

C. Responsibilities and Powers of the Monitor

1. The role of the monitor is to determine: (1) whether the Defendants have complied with the provisions of this MOU and (2) whether the implementation of the MOU has achieved the goals intended by both this MOU and the now terminated Agreed Order.
2. The overall duties of the Monitor shall be to observe, review, report findings, and make recommendations, where appropriate, with regard to the implementation of the foregoing substantive provisions by Defendants. The Monitor shall regularly review the services provided to DCJ inmates to determine Defendants' implementation of and compliance with this MOU and whether reforms have been successful in addressing deficiencies. During the Monitor's review, the Monitor shall have full and complete access to all of DCJ's buildings and facilities, staff, patients, patient records, documentation, and information relating to the issues addressed in this MOU. The Defendants shall direct all employees to cooperate fully with the Monitor. The Monitor shall be permitted to initiate and receive ex parte communications with the Parties. The Monitor shall devote such time as is necessary to fulfill the purposes of the duties and responsibilities of the Monitor pursuant to this MOU.
3. The Monitor shall consult with the Parties and shall continue to utilize the methodologies employed in assessing compliance with the now terminated Agreed Order to assess Defendants' compliance with and implementation of this MOU. The Monitor's evaluation shall include: regular on-site inspection of DCJ's facilities and programs for patients, interviews with administrators, professional and other staff, contractors, and patients, and detailed review of pertinent documents and patient records. The Parties envision that the Monitor may provide specific recommendations to Defendants with regard to steps to be taken to come into compliance with the MOU. Defendants, however, retain the discretion to achieve compliance by any legal means available to them, and may choose to utilize methods other than those that may

be proposed by the Monitor or the United States. The Monitor shall not be empowered to direct Defendants to take, or to refrain from taking, any specific action to achieve compliance with the MOU.

4. The Parties envision that the Monitor will use his last evaluations of DCJ during the Agreed Order as a “baseline” evaluation of Defendants' compliance with the terms of this MOU. This baseline evaluation is intended as an initial benchmark to inform the Parties and the Monitor of the status of compliance with this MOU.

5. The Monitor shall conduct an on-site tour of DCJ at least annually, upon reasonable notice, to fulfill his or her obligations pursuant to this MOU. The Monitor shall conduct the first tour of each unit of DCJ no later than 6 months from the Effective Date of this MOU.

The Monitor shall provide the Parties with a compliance report, transmitted electronically, as soon as possible, but at least within 60 days of each tour and shall detail with as much specificity as possible how the Defendants are or are not in compliance with particular provisions of the MOU. Drafts of the Monitor’s reports shall be provided to the Parties for comment at least 10 business days prior to issuance of the reports.

VI. REPORTING REQUIREMENTS AND RIGHT OF ACCESS

A. Defendants shall submit, at a minimum, annual compliance reports to both the United States and the Defendants.

B. Each compliance report shall describe the actions the Defendants have taken during the reporting period to implement both this MOU and the now terminated Agreed Order and shall make specific reference to the Agreed Order and MOU provisions being implemented.

C. Defendants shall maintain sufficient records to document that the requirements of this MOU are being properly implemented and shall make such records available at all reasonable times for inspection and copying by the United States. In addition, Defendants shall maintain and submit upon request records or other documents, at Defendant’s cost, to verify that they have taken such actions as described in their compliance reports (e.g., census summaries, policies, procedures, protocols, training materials, and incident reports) and will also provide all documents reasonably requested by the United States.

D. The United States and its attorneys, consultants, and agents, and any other persons authorized by the Parties, including the Monitor and any consultant(s), shall have unrestricted access to the Jail, Jail inmates, Jail staff (including staff at DCJ employed by Parkland or any other outside medical services provider), and documents as reasonably necessary to address issues affected by this MOU.

E. Within 30 days of receipt of written questions from the DOJ concerning Defendants’ compliance with the requirements of this MOU, Defendants shall provide the DOJ with written answers and any requested documents.

F. Defendants shall appoint a compliance coordinator to oversee compliance with this MOU and to serve as a point of contact.

VII. CONSTRUCTION, IMPLEMENTATION AND TERMINATION

A. Defendants shall implement all reforms necessary to effectuate this MOU. The implementation of this MOU will begin immediately upon execution by the Parties. As needed, Defendants shall retain the services of third-party consultants to provide technical assistance regarding the implementation of the substantive provisions contained in Section III of the Agreed Order.

B. This MOU shall not terminate until the Defendants have substantially complied with each of its provisions. The burden shall be on Defendants to demonstrate this level of compliance. After the IM has determined that the Defendants have substantially complied with each of the provisions of the MOU and has sustained such compliance for a period of at least one year, this MOU shall terminate. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance will not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of sustained noncompliance shall not constitute substantial compliance.

C. Failure by either party to enforce this entire MOU or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this MOU.

D. If any unforeseen circumstance occurs that causes a failure to timely carry-out any requirements of this MOU, Defendants shall notify the DOJ in writing within 20 calendar days after Defendants become aware of the unforeseen circumstance and its impact on the Defendant's ability to perform under the MOU. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. Defendants shall implement all reasonable measures to avoid or minimize any such failure.

E. This MOU and incorporated documents shall constitute the entire integrated MOU of the Parties.

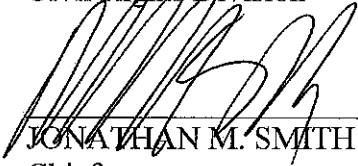
F. The MOU shall be applicable to, and binding upon, all Parties, their officers, agents, employees, assigns, and their successors in office.

G. Each party shall bear the cost of their fees and expenses incurred in connection with this cause, except as specifically provided herein.

H. In the event that any provision of this MOU is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this MOU.

FOR THE UNITED STATES:

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division



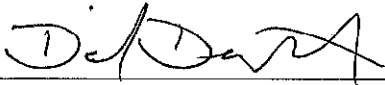
JONATHAN M. SMITH
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3/12/2012
DATE



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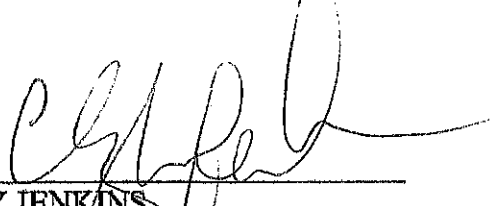
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DAVID DEUTSCH
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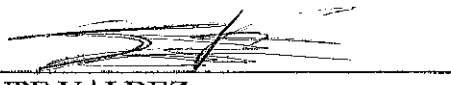
3/12/2012
DATE

**FOR THE DEFENDANTS DALLAS COUNTY, TEXAS
AND LUPE VALDEZ, SHERIFF OF DALLAS COUNTY, TEXAS:**



CLAY JENKINS
Dallas County Judge
Dallas County Commissioners Court

3/21/12
DATE



LUPE VALDEZ
Sheriff of Dallas County, Texas

3-15-12
DATE

RECOMMENDED FOR APPROVAL BY:

CRAIG WATKINS
DISTRICT ATTORNEY

BY: Peter L. Harlan

PETER L. HARLAN
ASSISTANT DISTRICT ATTORNEY
CHIEF OF FEDERAL LITIGATION
FOR THE DEFENDANTS

3-21-12
DATE