

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

JIMMY (BILLY) MCCLENDON, et al.,

Plaintiffs,

vs.

No. CV 95-24 JAP/KBM

CITY OF ALBUQUERQUE, et al.,

Defendants.

vs.

**E.M., R.L., W.A., D.J., P.S., and N.W., on behalf
of themselves and all others similarly situated,**

Plaintiff-Intervenors.

**CHECK-OUT AUDIT AGREEMENT No. 3:
THE CONDITIONS OF CONFINEMENT AT THE
BERNALILLO COUNTY METROPOLITAN DETENTION CENTER**

1. The subcategories covered in Check-Out Audit Agreement No. 3 (*hereinafter* referred to as the “Agreement”) include all conditions of confinement except for the provision of medical and mental health services.
2. This Agreement provides definitive, specific, and measurable tasks to be accomplished in order to achieve substantial compliance.
3. With respect to the conditions of confinement, this Agreement is comprehensive. Thus, the parties understand and agree that this Agreement incorporates (but does not supersede) all extant orders and agreements. The expert’s review will be governed solely by the Settlement

Agreement and this Check-Out Audit Agreement.

4. This Agreement sets forth, area by area, the scope of the check-out audit for the conditions of confinement at MDC only.

5. The parties agree that the Court's jail operations expert will review the conditions of confinement at MDC as set forth in paragraph 6 of this Agreement.

6. The Court's jail operations expert will make findings of fact which address the subcategories listed below:

A. Population Management

- 1) Whether MDC has created an Emergency Population Management Plan in cooperation with Criminal Justice Review Commission (CJRC) to ensure that the population at MDC remains at or under 1,950. *[Doc. No. 1161, pp. 6-7, para. 2(q)]*.
- 2) Whether the Defendants provide what is necessary to obtain the appointment of one or more pro tem state judges who will have the authority and responsibility to: a) utilize a "judicial classification system" to evaluate the classification status of inmates; b) process probation and parole violators as expeditiously as possible; c) handle failure to appear warrants more expeditiously; d) issue orders to the Department of Corrections (DOC) to transport inmates to the local DOC facility for transport to court; and e) consider and implement other measures consistent with the judgments and sentences to reduce

the inmate population. *[Doc. No. 315, p. 4]*.

- 3) Whether the Defendants provide direction to law enforcement officials to issue citations, where appropriate, and to use the “walk through procedures,” rather than incarcerating individuals, where appropriate. *[Doc. No. 319, p. 5, para. 1]*.
- 4) Whether the Defendants have developed an adequate plan to include persons who do not have both a permanent address and a telephone number in the Community Custody Program. *[Doc. No. 319, p. 6, para. 3]*.
- 5) Whether the Defendants operate a medical detox facility and alcohol treatment facility within the jail system. *[Doc No. 255 p. 4, para. 6]*.
- 6) Whether the Defendants have participated in developing an adequate plan to expand the program for early resolution of criminal cases. *[Doc. No. 319, p. 7, para. 5]*.
- 7) Whether the Defendants are continuing to use all appropriate population management tools in effect in 2002. *[Doc. No. 361, p. 2, para. 8]*.
- 8) Whether the County has hired a full-time employee or contractor to monitor measures for the reduction of the inmate population at the MDC. *[Doc. No. 1004, p. 3, para. 1(i)]*.

B. Use of Force by Security Staff

1) Whether MDC has developed and effectively implements comprehensive and contemporary policies regarding the appropriate use of force, including the following areas:

- a. restraint devices; *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;
- b. restraint and control (defensive tactics); *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;
- c. inflammatory and chemical agents; *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;

(1) Whether MDC implements a policy regarding the use of inflammatory agents to assist with the forced medication of seriously mentally and medically ill inmates which meets generally accepted correctional standards.

- d. Taser CEW; *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;

(1) Whether MDC implements a policy regarding the use of a Taser CEW to assist with the forced medication of seriously mentally and medically ill inmates which meet generally accepted correctional standards.

- e. less-lethal munitions and distraction devices; *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;
- f. restraint chair; *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;

- (1) Whether MDC only uses the restraint chair in a fashion consistent with the manufacturer's recommendations; [*Doc. No. 256, pp. 14-15, para. III(N)(3)*];
- (2) Whether MDC prohibits the use of metal restraints, including handcuffs unless the inmate has broken free of the chair's soft restraints; [*Doc. No. 256, pp. 14-15, para. III(N)(3)*];
- (3) Whether MDC prohibits the placement of inmates in the restraint chair, hand-cuffed or otherwise, restrained behind the back of the chair; [*Doc. No. 256, pp. 14-15, para. III(N)(3)*];
- (4) Whether MDC requires the prior authorization by a shift supervisor before an inmate is placed in a restraint chair; [*Doc. No. 256, pp. 14-15, para. III(N)(3)*];
- (5) Whether MDC requires the periodic check of a restrained inmate's wrists, preferably every 20 minutes; [*Doc. No. 256, pp. 14-15, para. III(N)(3)*];
- (6) Whether MDC requires written reports regarding use of a restraint chair; [*Doc. No. 256, pp. 14-15, para.*

III(N)(3)];

(7) Whether MDC requires the preparation of a written report every time that security staff places an inmate in a restraint chair; [*Doc. No. 256, pp. 14-15, para. III(N)(3)]*; and

(8) Whether the shift supervisor or his designee must investigate modification to the restraint chair and alternative forms of restraint; [*Doc. No. 256, pp. 14-15, para. III(N)(3)]*.

g. firearms (deadly force); [*Doc. No. 1161, p. 5, para. 2(f)&(g)]*.

2) Whether MDC's use of force policies address the following impermissible uses of force and whether the MDC effectively implements such policies:

a. use of force as a first response to verbal insults or inmate verbal taunts;

b. use of force as a first response to inmates' failure to follow instructions where there is no risk of harm to the safety of the institution, inmates, or staff, unless MDC security staff has attempted a hierarchy of nonphysical alternatives that are documented;

c. use of force as punishment, discipline, or retaliation;

- d. use of force against an inmate after the inmate has ceased to offer resistance and is under control;
 - e. use of choke holds on an inmate;
 - f. use of unnecessary or excessive force;
 - g. use of canines (dogs) for use of force purposes against any inmate; and
 - h. use of force before using confrontation avoidance techniques and other alternatives to the use of force, when the circumstances permit the use of such techniques and alternatives. *[Doc. No. 1161, p. 5, para. 2(f)&(g)]*;
- 3) Whether MDC policies require the presence of a unit supervisor during all planned uses of force and whether MDC effectively implements these policies.
- 4) Whether MDC has developed and effectively implements a policy to ensure that staff adequately and promptly reports all uses of force, including the use of the restraint chair. *[Doc. No. 1161, p. 5, para. 2(h)] & [Doc. No. 256, pp. 13-15, para. III(N)(1)&(3)]*.
- 5) Whether MDC had adopted and effectively implements a policy to ensure that use of force reports will:
- a. be written in specific terms in order to capture the details of the incident;

- b. state whether staff attempted confrontation avoidance techniques or other alternatives to the use of force before using force and if not, include an explanation of the reasons why staff did not attempt to use such techniques or alternatives;
- c. contain an accurate, detailed account of the events leading to the use of force incident;
- d. include a description of the weapon(s) or instrument(s) of restraint, if any, and the manner in which it was used;
- e. be accompanied with the inmate disciplinary report that prompted the use of force incident, if applicable;
- f. state the nature and extent of injuries sustained both by the inmate and staff member;
- g. contain the date and time medical attention was actually provided;
- h. describe, in factual terms, the type and amount of force used and precise actions taken in a particular incident and avoid use of “boiler plate” descriptions for describing force, such as, “inmate taken to the ground with the force that was necessary”; and
- i. state whether the planned or controlled use of force was video

recorded and, if it was not, include an explanation of why it was not.

- 6) Whether MDC staff consistently video record planned or controlled uses of force in accordance with MDC policies. *[Doc. No. 1161, p. 5, para. 2(h)]*.
- 7) Whether MDC has developed and effectively implements a system to track all incidents of use of force that, at a minimum, includes the following information:
 - a. a tracking number;
 - b. the inmate(s) name;
 - c. housing assignment;
 - d. date;
 - e. type of incident;
 - f. injuries (if applicable);
 - g. if medical care is provided;
 - h. primary and secondary staff involved;
 - i. reviewing supervisor;
 - j. external reviews and results (if applicable);
 - k. remedy taken (if appropriate); and
 - l. administrative sign-off.
- 8) Whether MDC has adopted and effectively implements policies to

ensure that, as part of a use of force incident package, security staff take photographs of any and all reported injuries sustained by inmates.

- a. Whether MDC security staff promptly takes photographs following a use of force incident.
 - b. Whether the photographs become evidence and are made part of the use of force package and, if applicable, used for investigatory purposes.
- 9) Whether MDC has adopted and effectively implements policies to ensure that management reviews use of force reports and inmate grievances alleging excessive or inappropriate uses of force.
- 10) Whether MDC has adopted and effectively implements policies to ensure prompt administrative reviews of use of force reports.
- a. Whether such reviews include a case-by-case review of individual incidents of use of force as well as a more systemic review in order to identify patterns of incidents.
 - b. Whether MDC incorporates such information into quality management practices and takes necessary corrective action.
- 11) Whether MDC has established and effectively implements a system for referring for investigation certain use of force incidents, including but not limited to those involving:

- a. injuries that are extensive or serious;
 - b. injuries involving fractures or head trauma;
 - c. injuries of a suspicious nature (including black eyes, broken teeth, injuries to the genitals, etc.);
 - d. injuries that require treatment at outside hospitals; and
 - e. reports of events by staff and inmates which are inconsistent.
- 12) Whether MDC has adopted and effectively implements policies to ensure that inmates may report allegations of the use of excessive force verbally to any MDC staff member, who will reduce such reports to writing.
- 13) Where there is evidence of staff misconduct related to inappropriate or unnecessary force against inmates, whether MDC initiates appropriate personnel actions and systemic remedies, as appropriate.
- a. Whether MDC appropriately disciplines any correctional officer found to have:
 - (1) engaged in the use of unnecessary or excessive force;
 - (2) failed to report or report accurately the use of force;
 - (3) retaliated against an inmate or other staff member for reporting the use of excessive force; or
 - (4) interfered or failed to cooperate with an internal investigation regarding use of force.

- 14) Whether MDC developed and effectively implements accountability policies for the effective and accurate maintenance, inventory and assignment of inflammatory agents, chemical agents, less-lethal munitions, distraction devices, firearms, and other security equipment.
- 15) Use of Force Training; *[Doc. No. 1161, p. 5, para. 2(f)]*:
 - a. Whether MDC developed and employs an effective and comprehensive training program in the appropriate use of force.
 - b. Whether MDC ensures that correctional officers receive adequate training in MDC's use of force policies.
 - c. Whether MDC ensures that correctional officers receive adequate training in the following areas:
 - (1) use of force;
 - (2) confrontation avoidance techniques;
 - (3) the use of restraints;
 - (4) restraint and control techniques (defensive tactics);
 - (5) inflammatory and chemical agents;
 - (6) electronic control devices (Tasers);
 - (7) less-lethal munitions (if applicable);
 - (8) distraction devices (if applicable);

- (9) firearms (if applicable);
 - (10) documenting and reporting the use of force; and
 - (11) the MDC's policy regarding discipline for violations of policies related to the use of force.
 - d. Whether MDC ensures that correctional officers receive pre-service and in-service training on reporting use of force and completing use of force reports.
- 16) Whether MDC ensures that incident reports, use of force reports, and inmate grievances are screened for allegations of staff misconduct and, if the incident or allegation meets established criteria, that it is referred for investigation.
- 17) Whether MDC established and effectively implements an "Early Warning System (EWS)" that will document and track correctional officers who regularly employ force on inmates and any complaints related to the excessive use of force.
- a. Whether MDC's EWS protocol includes the following components: data storage, data retrieval, reporting, data analysis, pattern identification, supervisory assessment, supervisory intervention, documentation, and audit.
 - b. Whether MDC effectively uses the EWS as a tool for correcting inappropriate staff behavior before it escalates to

more serious misconduct.

- c. Whether the EWS alerts MDC administration to any potential need for retraining, problematic policies, or supervision lapses.
- d. Whether all appropriate MDC leadership, supervisors, and investigative staff have access to EWS information and are able to monitor the occurrences.
- e. Whether MDC's EWS allows MDC administration sufficient information to improve quality management practices, identify patterns and trends, and take appropriate corrective action both on an individual and systemic level.

C. Inmate Discipline [*Doc. No. 1161, p. 4, para. 2(c-e)*]

- 1) Whether MDC maintains and effectively implements policies and procedures for a formal disciplinary process, including:
 - a. timely issuance of written disciplinary citations, administrative review and disciplinary reports for alleged rule violations, in accordance with generally accepted correctional standards; and
 - b. a prohibition of the use of behavior modification programs, discipline, and punishment, unless permitted by MDC's written inmate discipline policies. [*Doc. No. 1161, p. 4, para.*

2(d)].

2) Whether MDC ensures that disciplinary charges against inmates with a mental or developmental disability are reviewed by a Qualified Mental Health Professional:

a. Whether the Qualified Mental Health Professional determines the extent to which the charge was related to a mental or developmental disability; and

b. Whether the Qualified Mental Health Professional communicates his or her finding to MDC to ensure that inmates who commit infractions resulting from a mental or developmental disability are not punished for behavior caused by a mental or developmental disability. *[Doc. No. 256, IV(A)(1)]*.

3) Whether MDC has adopted and effectively implements written policies for the use of disciplinary measures with regard to inmates with a mental or developmental disability (including inmates exhibiting recognizable signs or symptoms of mental or developmental disability) including the following:

a. Whether MDC staff consults with Qualified Mental Health Staff to determine whether initiating disciplinary procedures is appropriate for inmates with a mental or developmental

disability; and

- b. If a Qualified Mental Health Professional determines the inmates' actions that are the subject of the disciplinary proceedings are symptomatic of a mental or developmental disability, whether MDC mitigates the imposition of discipline.
- 4) Whether MDC ensures that inmate disciplinary hearings are conducted in a reasonably private and secure setting.
- 5) Whether MDC ensures that all inmates placed in lock down status are timely provided with the protections set forth in MDC's policies and procedures and generally accepted correctional standards.
- 6) Whether MDC ensures that the disciplinary officer's/board's written record accurately reflects the evidence and discussion from the disciplinary hearing, including any recommendations from a Qualified Mental Health Professional regarding the extent to which disciplinary charges are related to an inmate's mental or developmental disability, or suggestions for minimizing the deleterious effect of disciplinary measures on the inmate.
- 7) Whether MDC alerts the facility's medical provider when inmates are placed in disciplinary segregation or protective custody.
- 8) Whether a Qualified Mental Health Staff member works with the

disciplinary officer or board, as needed, to address the needs of inmates who have a mental or developmental disability.

- 9) Whether MDC provides an adequate number of staff to carry out the duties and responsibilities of the inmate disciplinary system as required by MDC policy and procedure.
- 10) Whether MDC punishes groups of residents for the behavior of individuals and whether lockdowns of living units occur that are not authorized by the jail director or his designees. *[Doc. No. 256.]*
- 11) Whether MDC developed and employs an effective and comprehensive training program on inmate discipline. *[Doc. No. 1161 at p. 5, para. 2(j).]*
- 12) Whether MDC ensures that correctional officers receive adequate training in MDC's policies regarding inmate discipline. *[Doc. No. 1161 at p. 5, para. 2(j).]*

D. Classification

- 1) Whether MDC maintains and effectively implements policies and procedures for an appropriate, objective classification system that separates inmates in housing units by classification levels in order to protect inmates from an unreasonable risk of harm.
- 2) Whether MDC's classification system considers an inmate's security level, severity of current charges, types of prior commitments, suicide

risk, history of escape attempts, history of violence, and special needs.

- 3) Whether MDC ensures that classification staff has sufficient access to current information regarding cell availability throughout the facility.
- 4) Whether MDC provides adequate training and access to all correctional officer supervisors on the full capabilities of MDC's classification system.
- 5) Whether MDC provides ongoing internal and external review and validation of its inmate classification system to ensure its reliability and objectivity.
- 6) Whether MDC ensures that inmates requiring segregation who are high risk, security threats, seriously mentally ill, disciplinary, or reclassification are not double-celled, unless those inmates have been determined to be compatible using a reliable objective classification tool. *[Doc. No. 1161, p. 64, para. 2(m)]*.
- 7) Whether MDC ensures that segregation inmates who are in protective custody and new inmates are not double celled, unless the inmates have first been determined to be low risk and compatible using a reliable classification tool. *[Doc. No. 1161, p. 64, para. 2(m)]*.
- 8) Whether MDC ensures that inmates who have committed or been charged with acts of violence are not housed with inmates who have

not committed or been charged with such acts by using a pre-classification triage system as recommended by the Department of Justice National Institute of Corrections (NIC). *[Doc. No. 1161, p. 64, para. 2(n)]*.

- 9) Whether MDC ensures that inmates who have not yet been classified are not housed in the same pod as inmates who require segregation, as recommended by the NIC. *[Doc. No. 1161, p. 64, para. 2(o)]*.

E. Inmate Grievance Procedure

- 1) Whether MDC has adopted and effectively implements policies and procedures to ensure inmates have access to an adequate grievance process and to ensure that grievances may be accessed and filed confidentially, without requiring the intervention of a correctional officer, in accordance with generally accepted correctional standards.
- 2) Whether MDC has adopted and effectively implements policies to ensure that the grievances receive appropriate follow-up, including, providing a timely written response that explains to the grievant the reason(s) for the outcome and tracking implementation of resolutions.
- 3) Whether MDC ensures that grievance forms are available on all units and are available in Spanish.
- 4) Whether MDC ensures that there is adequate opportunity for illiterate inmates, inmates who have physical, mental, or cognitive disabilities,

and inmates who are not English speakers to access the grievance system.

- 5) Whether a member of MDC management staff reviews the grievance tracking system regularly in order to identify areas of concern and takes adequate corrective action, as needed, to improve its grievance system.
- 6) Whether MDC developed and employs an effective training program regarding inmate grievances. *[Doc. No. 1161 at p. 5, para. 2(j).]*
- 7) Whether MDC ensures that staff receive adequate training in MDC's policies regarding grievances. *[Doc. No. 1161 at p. 5, para. 2(j).]*
- 8) Whether MDC ensures that inmate grievances are screened for allegations of staff misconduct and abuse or mistreatment, if the incident or allegation meets established criteria, are referred for investigation.
- 9) Whether incident reports regarding allegations of staff misconduct and abuse or mistreatment are provided to quality assurance staff and reported on by the quality assurance system to determine if the system of inmate grievance is functioning properly. *[Doc. No. 256.]*

F. Safety and Supervision

- 1) Whether MDC has adopted and effectively implements security and control-related policies, procedures, and practices, including but not

limited to effective training, that will result in a reasonably safe and secure environment for all inmates and staff, in accordance with generally accepted correctional standards.

- 2) Whether MDC has adopted and effectively implements policies, procedures, and practices to ensure the adequate supervision of inmate work areas and trustees, in accordance with generally accepted correctional standards.
- 3) Whether MDC ensures that security staff appropriately monitor inmates to ensure that they are reasonably safe and secure, including but not limited to:
 - a. Whether rounds are conducted with sufficient frequency to provide inmates with reasonable safety.
 - b. Whether MDC provides direct supervision of inmates by posting an adequate number correctional officers inside the day room area of a housing unit to conduct constant surveillance.
 - c. Whether more frequent rounds are conducted for special management inmates who require more intensive supervision for security and safety reasons.
 - d. Whether all security rounds are accurately documented on forms or logs that do not contain preprinted rounding times.

- 4) Whether MDC ensures that security supervisors conduct daily rounds in the inmate housing units, and document the results of their inspections.
- 5) Whether the number and nature of assaults and altercations indicates that the MDC is providing an environment that is reasonably safe for inmates.

G. Contraband Control

- 1) Whether MDC maintains and effectively implements procedures to prevent inmates from possessing or having access to dangerous contraband, including conducting regular inspections of cells and common areas of the housing units to identify and prevent rule violations by inmates.
- 2) Whether MDC has purchased and uses security equipment that is capable of detecting drugs and other forms of contraband from coming into the facility.
 - a. Whether MDC ensures that all inmates, staff, and visitors are properly screened through the use of MDC's security equipment before entering the secure area of the facility.
 - b. Whether MDC has purchased and uses drug scanning security equipment for the mailroom in order to properly screen all incoming mail and packages.

- c. Whether MDC maintains in working order sufficient monitoring equipment at the facility, including cameras, alarms, radios (hand held), interior and exterior lighting, x-ray and other screening equipment, and walk-through metal detectors.

H. Housing and Segregation

- 1) Whether MDC ensures that three or more inmates are never housed in a cell designed to house two inmates. *[Doc. No. 1004, p. 1, para. 1(a)] & [Doc. No. 1161, p. 6, para. 2(l)]*.
- 2) Whether MDC ensures that no fewer than two separate housing units are used for female inmates requiring segregation. (When the population of the MDC allows, MDC may house female inmates of different classifications in one *unit*, so long as MDC separates women with different classifications using security barriers. However, Defendants may only reduce the number of segregation units for female inmates pursuant to a plan approved by Manuel Romero.) *[Doc. No. 1161, pp. 5-6, para. 2(j)]*.
- 3) Whether MDC provides inmates housed in segregation one (1) hour out of cell time per day, except in the case of a facility lockdown. *[Doc. No. 989, p. 2, para. 2], [Doc. No. 1004, p. 1, para. 1(b-c)], & [Doc. No. 1161, p. 4, para. 2(b)]*.

- 4) Whether MDC developed and effectively implements a consistent method of ensuring that there is adequate, accessible, and verifiable documentation of denial of out of cell time. *[Doc. No. 1161, p. 6, para. 2(l)].*
- 5) Whether MDC developed and employs an effective and comprehensive training program on out of cell time. *[Doc. No. 1161 at p. 5, para. 2(j).]*
- 6) Whether MDC ensures that correctional officers receive adequate training in MDC's policies regarding out of cell time. *[Doc. No. 1161 at p. 5, para. 2(j).]*

I. Sexual Misconduct

- 1) Whether MDC has developed and adequately implements policies, protocols, trainings, and audits consistent with the requirements of the Prison Rape Elimination Act of 2003, 42 U.S.C. § 15601, et seq.
- 2) Whether MDC's policies and protocols adequately address the prevention, detection, reporting, and investigation of sexual abuse, sexual harassment, and sexual touching.
- 3) Whether MDC's policies and protocols adequately address the collection of data regarding sexual abuse (including inmate-on-inmate and staff-on-inmate sexual abuse), sexual harassment, and sexual touching.

- 4) Whether MDC adequately protects inmates from sexual abuse, sexual harassment, and sexual touching.

J. Internal Investigations [*Doc. No. 256, p. 16, para. IV(B)*]

- 1) Whether MDC maintains and adequately implements comprehensive policies, procedures, and practices for the timely and thorough investigation of alleged staff misconduct, in accordance with generally accepted correctional standards.
- 2) Whether internal investigations are conducted by persons who were not involved in any way in the incident under investigation and who do not have supervisory responsibility for the staff member(s) being investigated.
- 3) Whether MDC ensures that all internal investigations include timely, thorough, and documented interviews of all relevant staff and inmates who were involved in, or witnessed, the incident in question.
- 4) Whether MDC ensures that internal investigation reports include all supporting evidence, such as witness and participant statements, policies and procedures relevant to the incident, physical evidence, video or audio recordings, and relevant logs.
- 5) Whether MDC ensures that all investigatory staff receives pre-service and in-service training on appropriate investigation policies and procedures, the investigation tracking process, investigatory

interviewing techniques, and confidentiality requirements.

- 6) Whether MDC provides all investigators who will be assigned to conduct investigations of use of force and sexual misconduct incidents with specialized training in investigating use of force and sexual misconduct incidents and allegations.
- 7) Whether MDC ensures that the results of each internal investigation are documented in an investigation report.
- 8) Whether MDC administration reviews the investigation reports, along with the underlying documentation, and takes corrective action, including disciplinary action and training, as appropriate.
- 9) Whether MDC adequately implements appropriate remedies based upon the results of internal investigations.
- 10) Whether MDC has a tracking system for all internal investigations.
- 11) Whether Defendants maintain a contract with an outside investigatory entity for conducting investigations of matters which are best investigated by an outside entity.

K. Staffing [*Doc. Nos. 1004 at p. 2, para. 1(h), 1161, p. 6, para. 2(p)*]

- 1) Whether MDC's correctional officer staffing and supervision levels at the facility are adequate to supervise inmates, protect inmates and staff, and allow for the safe operation of the facility, consistent with generally accepted correctional standards.

- 2) Whether MDC has prepared a written staffing plan, in consultation with Manuel Romero, which requires correctional officer staffing and supervision levels at the facility that are adequate to supervise inmates, protect inmates and staff, and allow for the safe operation of the facility, consistent with generally accepted correctional standards and the Court's November 5, 1996 Order [*Doc. 256*].
- 3) Whether MDC effectively implements the written staffing plan with oversight by Manuel Romero.
- 4) Whether MDC employs adequate numbers of employees in the areas of inmate discipline, inmate grievance, inmate classification, case managers, and CCP.
- 5) Whether MDC has sufficient correctional officer staffing to provide inmates requiring treatment with adequate access to appropriate medical and mental health care by providing timely movement of inmates to medical units, transport of inmates who have been referred for outside specialty care, and escort, if necessary, to Qualified Medical and Mental Health Staff on housing units;

L. Fire and Life Safety

- 1) Whether MDC has a comprehensive fire safety program, which is approved by the fire prevention authority having jurisdiction.
- 2) Whether MDC has developed and implements an adequate

evacuation plan for inmates and staff and ensures that comprehensive fire drills are conducted every three months on each shift.

- 3) Whether MDC has adequate fire and life safety equipment, including installation and maintenance of fire alarms and smoke detectors in all housing areas according to applicable fire codes.
- 4) Whether MDC properly maintains and routinely inspects all fire and life safety equipment.
- 5) Whether MDC staff are able to manually unlock all doors (without use of the manual override in the event of an emergency in which the manual override is broken), including in the event of a power outage or smoke buildup where visual examination of keys is generally impossible.
- 6) Whether MDC ensures that combustibles are adequately controlled and eliminates highly flammable materials throughout the facility and inmate living areas (e.g., inmates' use of paper bags as trash receptacles, ripped fire-retardant mattress covers, improvised cell light covers, blankets on cell floors, and improperly stored and labeled flammable liquids and other chemicals).

M. Sanitation and Environmental Conditions

- 1) Whether MDC maintains an adequate written staffing plan and sufficient staffing levels to provide for adequate maintenance of the

facility.

- 2) Whether MDC maintains and adequately implements written housekeeping and sanitation plans to ensure the proper routine cleaning of housing, shower, and medical areas, in accordance with generally accepted correctional standards.
- 3) Whether MDC provides adequate ventilation throughout the facility to ensure that inmates receive an adequate supply of air flow and reasonable levels of heating and cooling.
- 4) Whether MDC ensures adequate lighting in all inmate housing and work areas.
- 5) Whether MDC ensures adequate pest control throughout the housing units, medical units, RDT, and food storage areas.
- 6) Whether MDC has developed and adequately implements policies and procedures for cleaning, handling, storing, and disposing of biohazardous materials, in accordance with generally accepted correctional standards.
- 7) Whether MDC has developed and adequately implements a policy on hazardous materials storage, in accordance with generally accepted correctional standards, and ensures that all MDC staff is properly trained on the procedure.
- 8) Whether MDC ensures the use of cleaning chemicals that sufficiently

destroy the pathogens and organisms in biohazard spills.

- 9) Whether MDC has obtained a sufficient amount of stack-a-bunks or boats so that no inmate will have to sleep on the floor.
- 10) Whether MDC has a sufficient supply of towels, blankets, and pillows in stock and in reasonable condition, to provide every inmate with linen, a towel, and a blanket.
- 11) Whether MDC ensures that all inmates have access to needed hygiene supplies
- 12) Whether MDC has an adequate system for storing inmates' personal necessities such as hygiene products.
- 13) Whether MDC ensures adequate control and observation of all housing units, including distribution and collection of razors and cleaning supplies.
- 14) Whether MDC at all times stores in the female housing units sufficient supplies of tampons and/or sanitary pads for female inmates and whether MDC issues the same on request by any inmate.
- 15) Whether MDC implements adequate procedures and processes for the cleaning and sanitizing of inmate mattresses that are in use in all living areas.
- 16) Whether MDC has developed and adequately implements an inmate indigent policy.

N. Sanitary Laundry Procedures

- 1) Whether MDC has developed and adequately implements policies and procedures for laundry procedures to protect inmates from risk of exposure to communicable disease, in accordance with generally accepted correctional standards.
- 2) Whether MDC ensures that inmates are provided adequate clean clothing, underclothing, and bedding, consistent with generally accepted correctional standards, and that the laundry exchange schedule provides consistent distribution and pickup service to all housing areas.
- 3) Whether MDC trains staff and educates inmates regarding laundry sanitation policies.
- 4) Whether MDC ensures that laundry delivery procedures protect inmates from exposure to communicable diseases by preventing clean laundry from coming into contact with dirty laundry or contaminated surfaces.
- 5) Whether MDC requires inmates to provide all clothing and linens for laundering and prohibit inmates from washing and drying laundry outside the formal procedures.

O. Food Service

- 1) Whether MDC ensures that food service at the facility is operated in a

safe and hygienic manner and that foods are served and maintained at safe temperatures.

- 2) Whether MDC ensures that all types of meals (including meals served to inmates requiring medical diets, inmates with food allergies, and inmates with religious diets) provide adequate nutrition.
- 3) Whether MDC ensures that all food service staff, including inmate staff, are adequately trained in food service operations, safe food-handling procedures, and appropriate sanitation.
- 4) Whether MDC ensures that the kitchen is staffed with a sufficient number of appropriately supervised and trained personnel.
- 5) Whether MDC ensures that dishes and utensils, food preparation and storage areas, and vehicles and containers used to transport food are appropriately cleaned and sanitized.
- 6) Whether MDC checks and records, on a regular basis, the temperatures in the refrigerators, coolers, walk-in-refrigerators, the dishwasher water, and all other kitchen equipment with temperature monitors to ensure proper maintenance of food service equipment.

P. Access to Counsel and Legal Materials

- 1) Whether MDC provides inmates with adequate opportunities to use telephones during normal business hours so that they may contact attorneys.

- 2) Whether MDC ensures that staff members do not interfere with inmates' access to materials pertaining to inmates' legal matters, including but not limited to attorney-client correspondence, discovery, legal research, and pleadings.

Q. Law Library

- 1) Whether MDC's law library meets the applicable standards stated in the American Correctional Association's Standards for Adult Detention Centers.
- 2) Whether MDC's law library is kept reasonably current. *[Doc. Nos. 115 at 1-2, 255, 416; see also Doc. 106 at 18.]*
- 3) Whether MDC follows its policies and procedures pertaining to the delivery of access to its law library. *[Doc. Nos. 115 at 1-2, 255, 416; see also Doc. 106 at 18.]*
- 4) Whether MDC provides inmates with mental or developmental disabilities reasonable accommodations and assistance in order for them to have effective access to the judicial system to challenge the length or conditions of their confinement and in order for them to attack their sentences. *[Doc. No. 256, p. 16, para. IV(C)(1)].*
- 5) Whether MDC provides inmates with mental or developmental disabilities reasonable access to the law library in a reasonable amount of time. *[Doc. No. 256, p. 17, para. IV(C)(4)].*

- 6) Whether MDC provides inmates with mental or developmental disabilities assistance with the preparation of an initial pleading regarding the length or conditions of confinement or regarding the resident's conviction or sentence. *[Doc. No. 256, p. 17, para. IV(C)(4)]*.

R. U.S. Mail Service

- 1) Whether MDC's U.S. mail service policies and practices meet the applicable standards stated in the American Correctional Association's Standards for Adult Detention Centers.
- 2) Whether MDC provides adequate resources to allow indigent inmates to correspond with their family, friends, and his/her attorney.
- 3) Whether MDC promptly delivers U.S. mail to inmates.
- 4) Whether MDC ensures that staff do not read attorney-client correspondence and do not open incoming attorney-correspondence outside the presence of the addressee.

S. Inmate Access to Telephones

- 1) Whether MDC provides its inmates access to telephones which meets the applicable standards stated in the American Correctional Association's Standards for Adult Detention Centers.
- 2) Whether MDC has adequate policies and procedures governing inmate access to telephones and whether it adequately implements

those policies.

- 3) Whether MDC has inmate telephones in the booking area and all housing units and whether it provides inmates with adequate access to those telephones.

T. Inmate Programming (excluding mental health programming)

- 1) Whether MDC's inmate programming (excluding mental health programming) meets the applicable standards stated in the American Correctional Association's Standards for Adult Detention Centers.
- 2) Whether MDC has adequate policies and procedures that address programming and whether they adequately implement those policies and procedures.
- 3) Whether MDC provides adequate resources and opportunities for recreation, exercise, reading, and other activities.

U. Inmate Access to Commissary

- 1) Whether MDC provides its inmates access to commissary which meets the applicable standards stated in the American Correctional Association's Standards for Adult Detention Centers.
- 2) Whether MDC has an adequate policy and procedure that addresses the commissary service and whether it adequately implements that policy and procedure.
- 3) Whether MDC inmates are provided the opportunity to purchase from

the commissary store approved items not furnished by the jail.

V. Access to Community Services

- 1) Whether MDC has a full-time benefits manager to assist in securing public benefits for inmates. *[Doc. No. 361, p. 2, para. 10]*.

W. Access to Information

- 1) Whether MDC ensures that newly admitted inmates receive information, through an inmate handbook or orientation video, regarding the following areas:
 - a. facility rules and regulations;
 - b. how to report misconduct;
 - c. how to report sexual abuse or assault;
 - d. the process for accessing medical and mental health care;
 - e. emergency procedures;
 - f. rules for sending and receiving mail;
 - g. the visitation process;
 - h. facility schedule;
 - i. the disciplinary process;
 - j. how to seek redress of grievances; and
 - k. a description of the *McClendon* class action and the methods for contacting counsel for the class and subclass.
- 2) Whether MDC ensures that materials and information on facility

rules and services are available for inmates who are not literate, inmates who do not speak English, and inmates who have a mental or developmental disability.

X. Competency Evaluations

- 1) Whether the County contracts with a licensed psychologist to provide written competency evaluations to jail residents charged with misdemeanors who are ordered by the Courts to undergo such evaluations. *[Doc. No. 255, p. 4, para. 7]*.
- 2) Whether the County funds a program to provide appropriate court-sanctioned written competency evaluations prepared by a qualified mental health professional whenever the results of such evaluation could result in the release of a resident. *Doc. No. 255, p. 4, para. 7]*.

Y. Supplemental opinions

- 1) Whether the conditions of confinement at MDC evidence repeated examples of acts that put inmates at risk of harm;
- 2) Whether the examples of acts that put inmates at risk of harm disclose a pattern of conduct by MDC security staff that effectively denies inmates an appropriate classification system, appropriate procedural safeguards in the areas of grievances, discipline, classification and segregation, safe conditions of confinement or reasonably sanitary conditions of confinement;

- 3) Whether there are systematic or gross deficiencies in staffing, facilities, equipment, or procedures; and
- 4) Whether the systematic or gross deficiencies effectively deny the inmate population fairness, safe conditions of confinement or reasonably sanitary conditions of confinement.

Z. Supplemental opinions continued

- 1) Whether adequate communication occurs between MDC administration and treating health care professionals regarding an inmate's significant medical needs and mental health needs that must be considered in classification decisions in order to preserve the health and safety of that inmate, other inmates, and staff;
 - a. Whether MDC security staff is sufficiently advised of inmates' special medical needs and mental health needs that may affect housing, work, program assignments, disciplinary measures, and admissions to and transfers from institutions.
 - b. Whether health care and security staff adequately communicates about inmates with special needs conditions.
- 2) Whether MDC security staff allows inmates the use of medical and dental orthoses, prostheses, and other aids as determined by the responsible physician or dentist.
 - a. Whether patients receive and are permitted to retain

prescribed aids to impairment.

- b. Where the use of specific aids to impairment is contraindicated for security reasons, whether alternatives are considered so the health needs of the inmate are met.

7. The Court's jail operations expert will conduct six (6) check-out audits regarding the conditions of confinement for the following domains:

A. Domain 3: Group A:

- 1) Fire and Life Safety;
- 2) Sanitation and Environmental Conditions;
- 3) Sanitary Laundry;
- 4) Food Service;
- 5) U.S. Mail Service;
- 6) Inmate Access to Telephones;
- 7) Inmate Access to Commissary;
- 8) Access to Community Services; and
- 9) Competency Evaluations.

B. Domain 4: Group B:

- 1) Inmate Discipline;
- 2) Classification;
- 3) Inmate Grievance Procedure;
- 4) Safety and Supervision;

- 5) Contraband Control;
- 6) Staffing;
- 7) Access to Counsel and Legal Materials;
- 8) Law Library;
- 9) Inmate Programming (excluding mental health programming);
- 10) Access to Information; and
- 11) Supplemental report subcategories as set forth in paragraphs 6(Y) and

6(Z), above.

- C. Domain 5: Population Management
- D. Domain 6: Housing and Segregation
- E. Domain 7: Sexual Misconduct
- F. Domain 8: Use of Force by Security Staff and Internal Investigations.

8. The Court's jail operations expert will conduct the check out audit for each domain after (i) the Court makes an initial finding that defendants are in substantial compliance with all subcategories listed in that domain and (ii) defendants' self-monitoring demonstrates substantial compliance with all of the subcategories in that domain for a period determined by the Court. As to each domain, after review of the Defendants' self-monitoring and self-reporting and subsequent Check-Out Audit, the Court's jail operations expert will make findings regarding compliance, partial compliance or non-compliance and submit a copy of his or her proposed findings to the Court and provide copies to all counsel. The Court will then make a finding as to whether Defendants are in sustained substantial compliance with the provisions of the Check-Out Audit.

9. If the Check-Out Audit reflects that the domain is not in substantial compliance (due to failure to accomplish the tasks described in this Agreement) , the Court's jail operations expert will identify the deficiency and provide Defendants with specific corrective action which Defendants must take to obtain substantial compliance. Defendants may propose alternative remedial action to obtain substantial compliance which must be approved by the Court's medical expert. Defendants will have a period of 90 days to cure the deficiency, unless Defendants provide notice that more time is needed, as set forth in the Settlement Agreement.

10. If the Court determines that the domain is not in sustained substantial compliance, the Court will set an additional period for self monitoring, after which Manuel Romero will conduct another Check-Out Audit.

11. The parties understand and agree that the terms and conditions set forth in the Settlement Agreement to which this Agreement is attached are incorporated herein.

IT IS SO ORDERED.

The Honorable James A. Parker
SENIOR UNITED STATES DISTRICT JUDGE

APPROVED:

Randy Autio
Attorney for County Defendants

Luis Robles
Marcus J. Rael, Jr.
Attorney for County Defendants

Peter Cubra
Attorney for Plaintiff-Intervenors

Jeffrey L. Baker
Attorney for County Defendants

Mark H. Donatelli
Attorney for Plaintiffs

Mark Baker
Attorney for Plaintiffs

Zachary A. Ives
Attorney for Plaintiffs

Nancy L. Simmons
Attorney for Plaintiff-Intervenors

The Honorable Alan Torgerson
Special Master

Julie Morgas Baca
Bernalillo County Manager