IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

JIMMY (BILLY) McCLENDON, et al.,

Plaintiffs,

vs. **CIV 95-24 JB/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 other similarly situated,

Plaintiff-Intervenors.

DEFENDANT BERNALILLO COUNTY BOARD OF COMMISSIONERS' RESPONSE TO PLAINTIFFS' AND PLAINTIFF-INTERVENORS' JOINT MOTION FOR ORDER TO SHOW CAUSE

Defendant, the Bernalillo County Board of County Commissioners (*hereinafter* "the County"), through its attorneys, Robles, Rael & Anaya, P.C. (Marcus Rael and Kelsea Sona) hereby states the following for its Response to Plaintiffs and Plaintiffs-Intervenors' (jointly "Plaintiffs") Motion for Order to Show Cause Why Defendants Should Not Pay Monetary Penalties for Violating the Court's Consent Decree Regarding Medical Care:

INTRODUCTION

This decades old case addresses conditions of confinement and institutional reform at the Metropolitan Detention Center ("MDC"). As contemplated by the Settlement Agreement **(Doc. No. 1222-1)**, the three Court-appointed experts make findings of fact regarding the status of

compliance of the substantive provisions set forth in three Check-Out Audit Agreements. The parties agreed "[t]he expert's review will be governed solely by the Settlement Agreement and th[e applicable] Check-Out Audit Agreement." **(Doc. No. 1222-2)** at pp. 1-2. In order to facilitate compliance with the Check-Out Audit Agreements, the parties have agreed to various corrective action plans. At issue here is the Medical Corrective Action Plan ("CAP"), see CAP Addendum, Ex. 1 to **(Doc. No. 1785)**,[1] to facilitate compliance with Check-Out Audit Agreement No. 1 (Medical) (**Doc. No. 1222-2**). The intent of the CAP is to ensure compliance with requirements in Check-Out Audit Agreement No. 1, not to supplant or enlarge the County's obligations under the Settlement Agreement. See Amended Stipulated Settlement Agreement Resolving Doc. 1468 **(Doc. No. 1785)**, p. 5 ("CAP Order"). The University of New Mexico Hospital - MDC ("UNMH") is contracted to provide medical and mental health services at MDC.

The CAP was developed by and is expected to be monitored by the Court's appointed medical expert, Dr. Muthusamy Andandkumar ("Dr. Kumar").[2] Contrary to Plaintiffs' suggestions, in drafting the CAP, Dr. Kumar acknowledged his desire for flexibility and deference to the medical professionals "on the ground" at MDC. Dr. Kumar stated "[t]he facility can adopt evidence-based best practices or innovative solutions as determined by clinical leadership." See CAP Addendum, Ex. 1 to **(Doc. No. 1785)**, p. 1.

As set forth in greater detail below, although the County did not meet the original 30-day deadline for projects plans – prior to the filing of Plaintiffs' Motion –UNMH did provide project plans for all 17 CAP areas, which were satisfactory to Dr. Kumar. Moreover, the CAP Order did

[1] The Court inadvertently did not include the Addendum as an exhibit to Doc. No. 1785. It was resubmitted via e-mail by Kate Loewe to the Court on November 18, 2025.

[2] Dr. Kumar has expressly indicated his preference to be referred to as Dr. Kumar.

not create enforceable rights to documentation for Plaintiffs' counsel. Finally, the County is currently complying with requirements regarding quality assurance review reports. Thus, the Court should decline to issue an order to show cause.

BACKGROUND

A. Factual Background Regarding Status of Medical Care.

At the outset, the County objects to Plaintiffs' references to class and subclass member deaths at the MDC. Plaintiffs' allegations are entirely supposition. While Plaintiffs claim autopsy reports support some of their allegations, no such reports were provided to the Court. Further, Plaintiffs do not explain how the autopsy reports reach the conclusion about alleged denial of medical care. Moreover, Plaintiffs have produced *no* evidence that any of these deaths were preventable or were caused by inadequate medical care.

Unfortunately, much of MDC's population is made up those individuals who are at greater risk for sudden death, including those struggling with substance abuse and unhoused and/or economically depressed individuals without regular access to medical care. Contrary to Plaintiffs' insinuation that because deaths occurred around the time of Dr. Kumar's visit, Dr. Kumar's findings are applicable to care provided to inmates who passed away, Dr. Kumar has never opined on the cause or preventability of any in custody death. The allegation that intervention by the Court is necessary to prevent future deaths and/or that sanctions will reduce the number of deaths at MDC is wholly unsupported.

Further, Plaintiffs ignore the many areas in which Dr. Kumar's latest report found improvement. For example, Dr. Kumar noted:

> The detox program, emergency response, Intake health screening, off-site referral process, and dentist services are all progressing well. Each of these services has

> designated leaders who are responsible for their specific areas. These leaders have taken ownership of their processes and are focused on optimizing the workflow, leading to significant improvements.

(Doc. No. 1769), p. 3.[3] Dr. Kumar further found that the UNMH leadership team was "committed to creating a center of excellence in correctional health." Id. The Executive Director position, which was vacant as of Dr. Kumar's April 2025 report has since been filled by Adrienne Batchel. Although he acknowledged some hurdles, Dr. Kumar acknowledged "diligent" efforts by the leadership team. Id., p. 27.

B. County's Compliance Efforts with the CAP.

UNMH has worked with Dr. Kumar to improve medical care since UNMH assumed the contract for medical and mental health services. Additionally, UNMH specifically instituted weekly meetings with Dr. Kumar to discuss CAP implementation. The CAP specifically provides for *monthly* updates to Dr. Kumar. See CAP Addendum, p. 36. Thus, the County is exceeding the required collaboration regarding the CAP.

Although Plaintiffs' Motion argues that specific *documentation* must be produced, the CAP refers only to *updates* and *plans*. See e.g., Addendum, p. 17 (discussing a project plan and a status report). Dr. Kumar has been given updates on UNMH's progress in each of the weekly meetings, to include *plans* to implement the CAP. Without information from Dr. Kumar regarding whether he has found the oral plans to be sufficient, the Court cannot find the County's oral updates violated the requirements of the CAP.

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[3] The County notes that during the course of briefing Plaintiffs' Motion, Dr. Kumar filed his more recent report, dated October 2025. **(Doc. No. 1799)**.

Additionally, the County explained to Plaintiffs and Dr. Kumar during his November site visit that UNMH had not received approval from Dr. Kumar on the original five action plans and that this feedback would be valuable for finalizing project plans for the remaining CAP areas. This was a reasonable belief and practical solution that Dr. Kumar did not clearly reject.

Plaintiffs also misstate the documentation requirements. Plaintiffs argue the CAP provides an initial documentation requirement of a project plan and then monthly required documentation. Plaintiffs argue that if the County does not provide all documentation listed under the monthly documentation in the CAP, the County is violating the CAP Order. This is contrary to the clear language of the CAP. For example, Dr. Kumar set certain benchmarks for development of training and also noted that training plans would be part of the monthly documentation. The more specific deadline for the training plan clearly controls, not the general monthly documentation requirements.

There is no evidence the parties agreed or Dr. Kumar intended for the recommended documentation to be enforceable rights for Plaintiffs in this matter. There is little need for additional monitoring by Plaintiffs' counsel in this case given that class and subclass counsel already spend an average over 275 work hours per month on this matter. The purpose of the CAP was for *Dr. Kumar* to monitor progress, not to increase the already hopelessly bloated fee budget in this case.[4] Compliance-reporting obligations are to Dr. Kumar—not to counsel. See e.g., CAP

[4] "Plaintiffs' counsel is entitled to compensation for **reasonable** efforts to preserve the fruits of the decree." Johnson v. City of Tulsa, Okla., 489 F.3d 1089, 1111 (10th Cir. 2007) (emphasis added). Fee shifting statutes "were not designed as a form of economic relief to improve the financial lot of attorneys nor were they intended to replicate exactly the fee an attorney could earn through a private fee arrangement with his client." Id. (citation omitted). The Tenth Circuit has expressed a "reluctance to treat a class-action decree as a 'gravy train' that provides attorneys a 'guaranteed lifetime income.'" Id., at 1110 (citation omitted).

Addendum, Ex. 1 to **(Doc. No. 1785)**, p. 2 ("Monthly Status Update to Monitor" repeated throughout CAP).

Notably, it is the Interim Access Order **(Doc. No. 754)** that speaks directly to enforceable monitoring rights by Plaintiffs' counsel. Nowhere in the CAP Order **(Doc. No. 1785)** do the parties evince an intent to modify the Interim Access Order and/or to enlarge Plaintiffs' rights to documentation. Oral updates and ongoing collaboration have been exchanged with the Court's expert as contemplated by Dr. Kumar's CAP.[5]

Further, the County also disputes that it only provided five action plans. Plaintiffs are focusing on form over substance. On September 12, 2025, the County produced the "written CAP plan" which noted that work plans for the majority of CAP items would be rolled into the intake work plan. See e-mail from Adrienne Bachtel, UNMH, to Dr. Kumar, dated Sept. 12, 2025, attached hereto as *Exhibit A*; Written CAP Plan, attached hereto as *Exhibit A-1*. With the October 2025 CAP Update, the County produced a spreadsheet tracking the intake improvement which addresses many of the interim steps identified in the CAP. Thus, simply because the plans are not arranged by the exact CAP topics in the addendum, does not mean that the County only created an action plan for five of the 17 CAP areas.

More importantly, however, prior to the filing of Plaintiffs' motion, UNMH had already provided Dr. Kumar with project plans addressing all areas of the CAP and was actively working towards Dr. Kumar's approval of these plans. See e-mail from Taylor Rahn to Kate Loewe, dated Nov. 25, 2025, attached hereto as *Exhibit B.* The County anticipates Plaintiffs may argue these

[5] UNMH has recently voluntarily, temporarily, agreed to have a monthly meeting with Plaintiffs' counsel to discuss CAP updates addition to the monthly access meeting contemplated by the Interim Access Order.

project plans are insufficient. However, Dr. Kumar, the drafter and monitoring of the CAP has found them sufficient as initial plans. The County recognizes that these plans were not submitted to Dr. Kumar within 30 days of the effective date of the CAP order. However, as addressed in greater detail below, this delay does not warrant sanctions.

Finally, the County's quality assurance manager for medical, Natalie Vance, has begun submitting her monthly reports the County Manager. See e-mail to County Manager, dated Dec. 30, 2025, attached hereto as *Exhibit C*.[6] The effective date of the Medical CAP was in August 2025, with an update anticipated in September, October, and November. Accordingly, Ms. Vance's report was not submitted for three months, but, again, this does not warrant sanctions.

LEGAL STANDARD

"To prevail in a civil contempt proceeding, the plaintiff has the burden of proving, by clear and convincing evidence, that a valid court order existed, that the defendant had knowledge of the order, and that the defendant disobeyed the order." Reliance Ins. Co. v. Mast Constr. Co., 159 F.3d 1311, 1315 (10th Cir. 1998) (internal citation omitted). The order being enforced must be "clear and unambiguous." Reliance Ins. Co. v. Mast Const. Co., 84 F.3d 372, 376 (10th Cir. 1996). "Any ambiguities or omissions in the order will be construed in favor of [the order's target]." Id., at 377; see Enforcement of Judgment for Specific Relief, 12 Fed. Prac. & Proc. Civ. § 3022 (2d ed.) ("[A] party may not be punished for disobeying an order that does not definitely state what it is to do or refrain from doing."). "Civil contempt 'is a severe remedy, and should not be resorted to

[6] This report was based upon UNMH's December 2025 update and a copy was provided to Plaintiffs' counsel on January 7, 2026 (delayed due to the transition of counsel for the County). See e-mail to Plaintiffs' counsel from Kelsea E. Sona, dated Jan. 7, 2026, attached hereto as *Exhibit D*.

where there is a fair ground of doubt as to the wrongfulness of defendant's conduct.'" MAC Corp. of Am. v. Williams Patent Crusher & Pulverizer Co., 767 F.2d 882, 885 (Fed. Cir. 1985) (*quoting* California Artificial Stone Paving Co. v. Molitor, 113 U.S. 609, 618 (1885)).

LEGAL ARGUMENT

As set forth above, the County did not clearly violate the CAP Order. Notably, although Plaintiffs object to the format of the project plans, the County through UNMH did provide project plans for each of the CAP areas. These plans are satisfactory to the Court expert, Dr. Kumar. While several of these plans were not completed within 30 days of the effective date of the CAP, the plans were nevertheless completed **before** Plaintiffs filed their Motion.

Contrary to Plaintiffs' allegations, the County has provided updates and information to the Court expert in accordance with the CAP Order. To the extent any specific document was not produced, this is not a clear violation of the CAP Order. The CAP Order does not require document production to inmates' counsel nor does it expand counsel's monitoring rights under the Interim Access Order. Finally, while Ms. Vance's report was delayed from the start date of the CAP Order, the County has since begun producing Ms. Vance's report.

Courts have acknowledged the purpose of sanctions are two-fold: to compensate for damages sustained due to violations and to coerce compliance. See United States v. United Mine Workers of America, 330 U.S. 258, 303 (1947) ("Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes; to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained.").

Plaintiffs acknowledge they are proceeding under the second purpose, to coerce compliance.[7] As set forth above, there is no need to use sanctions to coerce compliance, because notwithstanding that some steps were not taken immediately upon the effective date of the CAP Order, the initial project plans for all CAP areas have been now been completed to Dr. Kumar's satisfaction and the County continues to make progress towards the other deadlines.

While it is true that some of the 60-day deadlines have not been implemented, this is due to the rolling nature of the deadlines. For example, the 60-day deadlines are contingent upon completion of the 30-day deadlines, and the 90-day deadlines are contingent upon completion of the 60-day deadlines and so on. The County has sought to employ the specific modification procedures outlined in the CAP Order for the deadlines that had not passed as of the filing of Plaintiffs' Motion. Thus, the County is actively working to remedy the delay in implementation. Although Plaintiffs' Motion speaks to ensuring *future* compliance, their Motion is in fact generally aimed at punishment for the initial delay, not ensuring future compliance.

Plaintiffs suggest that the Court can and should act in a summary fashion based upon counsel's allegations. Dr. Kumar's impressions of the *updates* due to him and provided orally to him are imperative to a bona fide finding of a violation of the Court Order. The CAP Order vests Dr. Kumar with the power to decide whether a deadline extension or proposed substantive revision to the CAP is permissible. Thus, at the very least, the Court should hear from Dr. Kumar before issuing any sanctions.

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[7] Notably, in order to receive compensatory damages, Plaintiffs would need to show actual harm, which they have not done so in this instance.

The parties previously agreed that the Court may engage in *ex parte* communication with the Court experts, however, in this context, both parties should be permitted to examine Dr. Kumar at an evidentiary hearing prior to this Court ruling on Plaintiffs' motion. Plaintiffs also mention in passing that the County was "slow to disburse" prior funds set aside in lieu of a monetary sanction from the Court. That settlement agreement contained no time limit on disbursement of funds and, thus Plaintiffs' characterization of this as "slow" does not demonstrate a lack of compliance by the County.

Finally, while the County recognizes that placing any type of penalty into a fund to be used for improving medical care at MDC would likely be more efficient for the parties, this Court has repeatedly challenged Plaintiffs' counsel to present any authority demonstrating this Court's ability to dictate budgetary functions of the MDC. Plaintiffs' counsel were unable to present the Court with any such authority during the prior occasions this request was made and have failed to do in the instant motion. While of course the County would prefer that any funds be used for the improvement of MDC rather than sitting in a court registry, Plaintiffs' proposed remedy is simply not supported by the law.

WHEREFORE, the County respectfully requests the Court deny Plaintiffs' Motion for Order to Show Cause.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

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I hereby certify that on this 14th day of January 2026, the foregoing was electronically served through the CM/ECF system to all counsel of record.

By: /s/ Kelsea E. Sona
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