

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA, Plaintiff,

v.

SHELBY COUNTY, TENNESSEE et al., Defendants.

JOINT MOTION

The United States, Plaintiff, and Shelby County, et al., Defendants, having entered into the attached Settlement Agreement, jointly move this Court for entry of an Order conditionally dismissing this action, pursuant to Fed. R. Civ. P. 41(a)(2), conditioned upon Defendants' achieving compliance with the terms of the Settlement Agreement. The parties respectfully request that the Court place the case on its inactive docket while retaining jurisdiction over the case until a final dismissal with prejudice is entered.

Respectfully submitted,

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Dated: August \_\_\_\_\_, 2002

## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

On August 24, 2000, the United States notified Shelby County officials of its intent to investigate conditions of confinement at the Shelby County Jail, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997. On October 4-6 and December 11-13, 2000, the United States toured the Shelby County Jail with consultants in the fields of penology, correctional health care, environmental health and safety, and mental health care.

Throughout the course of the investigation and inspection of the facilities, the United States received complete cooperation and access to all facilities and documents from Shelby County Sheriff A.C. Gillless and the staff of the Office of the Sheriff and the Sheriff's Legal Advisor, from Chief Jailer Marron Hopkins and his staff, and from County Attorney Donnie E. Wilson and Chief Administrative Officer Jimmy M. Kelly, and staff throughout the Shelby County government.

On June 27, 2001, the United States issued a findings letter ("Findings Letter"), pursuant to 42 U.S.C. § 1997(a)(1), which concluded that certain conditions in the Shelby County Jail violated the constitutional rights of detainees and recommended remedial measures. Attorneys for the United States met with Shelby County officials in July 2001, to begin negotiations on an agreement to address and remedy the concerns raised in the Findings Letter. County officials subsequently provided a substantive written response to the United States that proposed corrective measures and proposed means of monitoring and documenting those changes, many of which are incorporated in this proposed agreement.

The United States acknowledges that Shelby County has already begun drafting many of the new and revised policies and procedures required by the Settlement Agreement ("Agreement"), some of which may be completed prior to execution of this Agreement.

The parties agree that this Agreement does not constitute an admission by the defendants of the truth of findings contained in the Findings Letter and does not constitute an admission of liability by the defendants. The parties enter into this Agreement solely for the purpose of avoiding the risks and burdens of litigation.

### **II. DEFINITIONS**

1. "County" shall refer to defendants Shelby County, Tennessee, the Sheriff of Shelby County in his official capacity, the Mayor of Shelby County in his official capacity, and their agents and successors in office.
2. "DOJ" shall refer to the United States Department of Justice.
3. "Inmates" or "detainees" shall refer to individuals sentenced to, incarcerated in, detained at, or otherwise confined at Shelby County Jail.

4. "Shelby County Jail" ("SCJ") shall mean the jail facility located at 201 Poplar Avenue in Memphis, Tennessee (the "Jail"), and the facility currently housing female detainees in East Memphis ("Jail East"), as well as any facility that is built to replace or supplement the SCJ. The terms of this Agreement shall apply to all SCJ facilities, unless specifically noted otherwise.

5. "Jail Compliance Unit" shall refer to SCJ's internal unit responsible for conducting, inter alia, security audits, including audits of tool and key control practices, and other inspections and random checks required under this Agreement, except where another entity or staff person is specified by this Agreement to conduct such inspections (e.g., monitoring of gang activity, health care services, food services and maintenance).

6. "Gang Intelligence Unit" shall refer to the staff members with responsibilities related to monitoring and controlling gang activity at SCJ.

7. "Qualified Medical Professional" shall mean an individual with a minimum of masters-level education and training in medicine or nursing, who is currently licensed by the State of Tennessee to deliver those health care services they have undertaken to provide.

8. "Qualified Medical Workers" and "Qualified Medical Staff" shall refer to individuals who have completed an educational program at an accredited school of nursing, and who have complied with licensing requirements in the State of Tennessee; or, individuals with substantially equivalent education and training, and two years of experience providing health care services.

9. "Qualified Mental Health Professional" shall refer to: a) an individual with a minimum of masters-level education and training in psychiatry, psychology, counseling, social work or psychiatric nursing, who is currently licensed by the State of Tennessee to deliver those mental health services they have undertaken to provide; except that a social worker with masters-level education, training and experience may practice consistent with Tennessee state guidelines without obtaining a license in social work; or, b) a registered nurse with a bachelor's degree in nursing with a minimum of two (2) years psychiatric experience, or a registered nurse with a minimum of five (5) years psychiatric experience.

10. "Qualified Mental Health Workers" and "Qualified Mental Health Staff" shall refer to individuals with a minimum of a bachelor's degree and two years of experience providing mental health services.

11. The term "special needs inmates" shall refer to those inmates who are suicidal, mentally ill, mentally retarded, intoxicated, seriously or chronically ill, physically disabled, or otherwise a danger to themselves.

12. "Security staff" shall mean all employees, irrespective of job title, whose regular duties include supervision of inmates at the SCJ.

13. The term "Semi-annual Report" shall mean reports SCJ will submit to the United States to demonstrate its compliance with this Agreement as specified in paragraph 84 (below).

14. The term "100 Day Report" shall mean a report submitted by Shelby County to the United States within 130 days of execution of this Agreement to demonstrate its compliance with those provisions for which a 100 day report is specified.

### **III. SUBSTANTIVE REMEDIAL MEASURES**

#### **A. SECURITY, SUPERVISION AND PROTECTION FROM HARM**

##### **Security Staffing and Training**

15. In order to improve sight and sound supervision of inmates in their housing units, the Jail shall convert the majority of inmate living spaces to a direct model of supervision in which the security staff's work station is located inside the inmate housing unit (either inside a pod or a dormitory). Within 100 days of this Agreement, the County shall provide DOJ with a written schedule for conversion of the living units that remain to be converted, and shall notify DOJ in writing of any subsequent delays in and/or modifications to that schedule. At a minimum, the plan shall provide for the completion of the conversion within one year from execution of this Agreement. Written notification to DOJ concerning any subsequent delays shall be provided within 30 days of any such delay or modification.

16. The County shall train all security staff in the principles of direct supervision:

a. The County shall ensure that all supervisors and managers complete a course in direct supervision for supervisors and managers no later than January 1, 2003.

b. The County shall report to DOJ on the changes made to its existing pre-service training that changes the focus of this training to direct supervision as the dominant form of supervision at the SCJ.

c. The County shall continue to provide comprehensive pre-service training to all security staff.

d. The County shall develop pre-service training for all non-security staff (including civilians) who have contact with inmates directly to provide services or supervision of inmates. This pre-service training, at a minimum, shall address:

i) emergency and evacuation procedures;

ii) preventing transmission of blood borne pathogens;

iii) recognition and reporting of signs of mental illness and/or suicide risks; and

iv) reporting requirements for use of force.

17. The County shall hire and train sufficient security staff to fill all shifts. In so doing the County shall adhere to the current overtime management policy (Chapter 106, Overtime Management). Additionally, the County shall not make any substantive changes to the Overtime Management Policy without first allowing DOJ to review the proposed substantive changes.

18. Within twelve (12) months of executing this Agreement, the County shall create and maintain individual training records for all staff, documenting the date and topic of all pre-service and in-service training completed, for all training completed on or after September, 2001.

### **Population Management**

19. The County shall continue to engage in proactive population management to prevent a recurrence of excessive crowding, including collection and analysis of data, and implementation of the population management plan, as described in the Population Management Report by consultant A. Gaston, dated March 14, 2002.

### **Security Policies and Procedures**

20. The County shall implement revised key control and tool control procedures. Within 100 days of signing this Agreement, the County shall provide to DOJ revised policies in these areas, and a schedule for implementation of the revised procedures. At a minimum, the County shall provide for implementation of revised policies within one year from execution of this Agreement. If implementation of the revised policies is not scheduled to begin within six (6) months of the date of the Agreement, then the County shall also provide, with its 100 day report, interim tool and key control plans.

- a) At a minimum, the key control policy and interim measures shall:
  - i) assure maximum safety and security of staff, inmates and civilians in the SCJ;
  - ii) provide for emergency identification of keys by touch or other non-visual means;
  - iii) include revised post orders that reflect ongoing training in use of keys and both manual and electronic locking mechanisms;
  - iv) require routine testing and maintenance of keys and locks; and
  - v) ongoing inventory, audit and evaluation of key control.
- b) At a minimum, the tool control plan and interim measures shall require ongoing inventory, audit and evaluation of tool use at the SCJ.

21. The Jail Compliance Unit shall verify that SCJ conducts and documents random checks of the security staff's familiarity with emergency tool and key procedures on a monthly basis.

22. The County shall provide security audit training for the Jail Compliance Unit and designated supervisory staff. Sufficient staff will be trained in time for the County to initiate an internal security audit within nine months of this Agreement. An internal security audit will be conducted every six months thereafter for the duration of this Agreement.

23. The County shall continue to utilize members of the specially trained Detention Response Team ("DRT") to conduct frequent and random shake-down searches of inmate housing areas, on both day and evening shifts. The County shall add to the shakedown log a section to record a summary of contraband confiscated.

24. The County shall provide timely escort of inmates, as required, to attend necessary programming.

### **Classification and Inmate Discipline**

25. The County shall revise its inmate classification system. The revised system shall, at a minimum, incorporate the following changes:

- a) Any revised classification system shall meet professional standards prior to its final implementation;
- b) Inmates shall be reviewed periodically for possible re-classification (upward or downward) based on institutional behavior; and
- c) The County shall implement a system of warning flags that alert intake workers of specific indicators in the records of an inmate's past incarceration at the SCJ, which, if present, require immediate referral to medical staff before classification is completed or the inmate assigned to housing. The indicators shall include, at a minimum:
  - i) Diagnosis or treatment for mental illness at any time during a past incarceration;
  - ii) Diagnosis or treatment for serious chronic illness, including but not limited to diabetes, hypertension, heart disease, seizure disorders, tuberculosis or HIV infection;
  - iii) Placement on heightened observation for suicide, risk at any time during a past incarceration at the SCJ; and
  - iv) Any medical contraindications for the use of chemical sprays.

26. The County shall include in its 100 day report a schedule for implementing a revised classification system, and any anticipated changes to the revised system. The

County shall also provide an interim plan for implementing periodic re-classification reviews and a system of warning flags based on past history, pending implementation of the new classification system. At a minimum, the County shall provide for the implementation of the new classification system within one year from execution of this Agreement.

27. The County shall implement procedures for assigning vulnerable, assaultive or special management inmates to administrative segregation and shall provide a sufficient number of single-occupancy cells to enable prompt segregation of these inmates.

28. The County shall implement an effective and timely system of inmate discipline and provide a sufficient number of single-occupancy cells for the prompt segregation of all inmates sentenced to the disciplinary segregation unit.

### **Use of Force Policies**

29. The County shall revise its policies on the use of force, including the use of chemical agents and the use of restraints, to provide operational guidance to staff. The revised policy will be provided to DOJ for approval prior to implementation. At a minimum, the revised policies shall ensure that:

- a) use of physical force is limited to those situations clearly identified by the policy;
- b) SCJ shall conduct periodic inventory of chemical agents, and shall appropriately respond to indications of mis-use or excessive use of chemical agents;
- c) mental health professionals are consulted before any planned use of force or non-routine use of restraints on any inmate with a diagnosis of mental illness;
- d) all uses of force, including chemical agents and restraints, are reported pursuant to policy and all reports are reviewed by supervisory staff;
- e) staff are subject to discipline for failure to report a use of force when policy requires such a report;
- f) all uses of force and all failures to report a use of force are investigated thoroughly and appropriately by trained investigators; and
- g) inmates may report allegations of the use of excessive force orally to any staff member, who shall reduce the report to writing.

30. The County shall implement an effective system for the prompt discipline of staff who violate policies on reporting and use of force.

31. The County shall revise its policy on use of the restraint chair to require pre-authorization and supervision by mental health staff for any non-emergency use of the restraint chair involving inmates with mental illnesses.

32. No hoods may be used under any circumstances. The County shall submit to DOJ for approval a revised policy to permit the use of a disposable spit cap in limited circumstances; the policy shall, at a minimum, prohibit the use of spit caps which restrict an inmate's airway.

33. Security staff shall receive special training on all revised use of force policies.

34. The County shall require all security staff to attend annual in-service training on the use of force and de-escalation techniques.

### **Grievance Procedures**

35. Grievance forms shall be available in all housing units at all times without the need to request one from a counselor or other staff member. The County shall provide a secure and confidential method for delivery of grievances, such as a secure lockbox in an area accessible to inmates. The County shall continue to record and maintain records of inmate grievances, including dispositions, for a minimum of one year. The County shall ensure that inmate grievances are investigated and responded to within a reasonable time frame. Inmates shall be provided at least one level of appeal. The County shall not retaliate against inmates who file grievances or appeals, and shall not limit an inmate's ability to file repetitive grievances, except as consistent with state law. In appropriate cases, the SCJ's response to a repetitive filing may be a reference to an earlier response.

36. The SCJ shall periodically review inmate grievances and the disposition of these grievances to identify trends or emergent problems that may require a management response.

### **Gang Management**

37. The County shall identify and control inmates who are members of organized gangs. Illicit gang-related behavior shall be a factor considered in increasing an inmate's classification status.

## **B. MEDICAL AND MENTAL HEALTH CARE**

### **Screening, Medication, and Specialty Care**

38. The County shall comply with its stated policies to provide medical and mental health intake screening to all inmates; shall provide a 14-day health assessment and examination; shall ensure continuation of prescription medications within 24 hours of intake; shall comply with stated policies to screen inmates for infectious disease; shall continue to provide mental health evaluations for all inmates whose histories or whose

responses to initial screening questions indicate a need for such an evaluation; shall provide accurate diagnoses for inmates in need of mental health services; and shall continue to provide timely and appropriate referrals for specialty care.

39. The County shall comply with its stated policy for medication administration, particularly in documenting any missed doses of medication.

### **Sick Call and Staffing**

40. The County shall provide access to sick call to all inmates a minimum of five days per week; shall ensure that sick call request forms are reviewed by qualified medical staff within 24 hours; and shall ensure that, for non-emergency requests, inmates are seen by a qualified medical professional no more than 24 hours after submission of the request, or, if requests are first reviewed by qualified staff, within another 24 hours of that review, except that inmates may be seen within 72 hours of submission of a request on weekends.

41. The County shall hire additional staff to ensure that all sick call examinations are conducted by appropriately qualified and licensed medical professionals or medical staff, pursuant to licensing standards for medical professionals and nurses in the State of Tennessee. At a minimum, in its contract with its medical care provider beginning July 1, 2002, the County shall increase the number of medical doctors to a minimum of three (3) full time equivalent ("FTE") positions (one of the FTE medical doctor positions may be satisfied by substituting one and one half (1 ½) FTE mid-level practitioner such as a licensed nurse practitioner or physician's assistant); the County shall also use its best efforts to hire at least ten (10) additional registered nurses to fill the currently authorized nursing positions.

42. The County shall hire additional mental health professionals to ensure delivery of necessary mental health services. At a minimum, the County shall increase psychiatrist staffing to one and one-fifth FTE positions, and shall add a minimum of two FTE positions for mental health professionals to the staffing level authorized through addendum no. 11 to its health care contract.

43. The County shall assess the impact of the chargeable-care policy on delivery of medical and mental health care, consistent with the recommendations contained in the March 31, 1996 position statement on Charging Inmates a Fee For Health Care Services by the National Commission on Correctional Health Care.

44. The County shall provide to DOJ in its 100 Day Report a copy of all materials through which the SCJ explains the chargeable-care system for health care to inmates, including all materials prepared for non-literate and non-English speaking inmates.

45. Mental health workers shall make regular rounds to all housing units, including administrative segregation, in accord with SCJ stated policy; mental health workers shall speak regularly with pod officers on these rounds to assess whether inmates in general

