

work

FILED
District Court of Guam
Agaña, Guam

MAY 9 1991

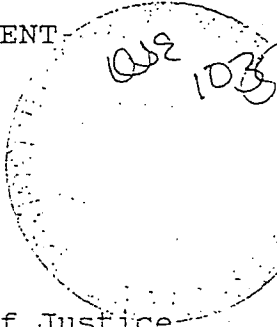
IN THE UNITED STATES DISTRICT COURT
TERRITORY OF GUAM

MARY E. M. MORAN
Clerk of Court

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
TERRITORY OF GUAM, et al.,)
)
Defendants)

CIVIL CASE NO. CIV91-00020

SETTLEMENT AGREEMENT



I. INTRODUCTION

On May 12, 1986, the United States Department of Justice, by and through then Assistant Attorney General Wm. Bradford Reynolds, gave notice to then Governor Ricardo J. Bordallo (deceased) of its intention to investigate alleged unconstitutional conditions at the Department of Mental Health and Substance Abuse (DMHSA) Inpatient Unit and the Adult Correctional Facility (ACF), pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997. The officials of the Territory of Guam cooperated in all respects with that investigation, and have, from the outset, indicated a willingness to remedy any deficiencies at the facilities.

On August 11, 1987, the United States Department of Justice sent a "Letter of Findings" to Governor Joseph F. Ada concerning its investigation of the Guam Adult Correctional Facility, and the Department of Mental Health and Substance Abuse Inpatient Unit. That "Findings Letter" stated that the conditions at ACF

COPY

and DMHSA violated the constitutional rights of the persons either confined or residing therein.

On June 14-16, 1989, the United States Department of Justice updated its investigation to ascertain the progress in remedying the cited deficiencies from the August 11, 1987, Findings Letter and included the Rosario Detention Facility (RDF) in the investigation with the Territory's consent. On November 20, 1989, the United States Department of Justice, through Acting Assistant Attorney General James P. Turner sent a "Findings Letter" to Governor Joseph F. Ada informing him that, while the Territory had taken substantial steps toward remedying the 1987 deficiencies, there continued to exist certain conditions that deprive persons at the three facilities of their constitutional rights.

On February 6, 7, and 8, 1991, the United States Department of Justice again updated its investigation to determine the level of progress in remedying the deficiencies cited in the earlier investigations. Throughout the investigation, Territory officials have continually cooperated in all respects. During the time period in which the United States Department of Justice was conducting its investigation, the Territory of Guam came forward with plans to improve the environmental conditions and practices at ACF and RDF as well as fire safety at all three facilities. Under the leadership of Governor Joseph F. Ada, the Territory was able to obtain legislative appropriations for substantial improvements at ACF and RDF. In addition, the

Territory was able to finalize plans and begin construction on a new facility for inpatients at DMHSA.

As a result of the recent investigation during February 6-8, 1991, and April 15, 1991, and negotiations stemming from the results of that investigation, both Territory and Federal officials generally concur regarding the need for, as well as the nature and scope of, necessary improvements at ACF, RDF, and DMHSA.

On February 13, 1991, the United States brought an action against the Territory. Territory and Federal officials have now determined as a result of this action that the interests of all concerned parties can best be served by entering into an agreement for needed improvements at ACF, RDF, and DMHSA, as opposed to continuing in adversarial litigation.

It is recognized that the Territory of Guam has, prior to entering into this Agreement, voluntarily taken affirmative steps towards improvement of conditions at ACF, RDF, and DMHSA, including providing fire retardant mattresses to all ACF inmates and RDF detainees, installing an alarm system at ACF and RDF, establishing a rat and rodent extermination program, repairing kitchen equipment, and actively assessing internal conditions and needs for improvement or remedial measures at ACF, RDF, and DMHSA.

It is further recognized that Territory officials are acting in good faith, and have voluntarily undertaken the commitments

inherent in this document in order to bring about needed improvements at ACF, RDF, and DMHSA.

It now appearing that Territory and Federal officials generally concur regarding needed improvements at ACF, RDF, and DMHSA, and to preclude continuing litigation, Territory and Federal officials have determined that it is in the best interest of all concerned to enter into a legally binding and judicially enforceable Settlement Agreement.

It is the intent of the parties that this Agreement shall be legally binding and judicially enforceable. In entering into this Settlement Agreement, Territory officials do not admit to any violation of law, nor may this Agreement be used as evidence of liability in any other civil proceeding other than this litigation, and then only to enforce the provisions of the Agreement.

The parties agree that care and confinement of persons at ACF, RDF, and DMHSA implicate rights of these residents that are secured and protected by the Constitution of the United States made applicable to the Territory of Guam pursuant to 48 U.S.C. §1421b(u). The parties entering into this Settlement Agreement recognize these constitutional interests, and for the purposes of avoiding protracted and adversarial litigation, agree to the provisions set forth herein.

II. PURPOSES AND OBJECTIVES

The Territory of Guam and the United States stipulate and agree that the purposes and objectives of this Settlement

Agreement are to establish as promptly as practicable the following conditions at ACF, RDF, and DMHSA, in order to ensure that persons at the facilities are not being deprived of rights, privileges, or immunities secured to them by the Constitution of the United States, and are in accordance with the following objectives:

1. That the inmates at ACF will be protected against undue risks of harm due to fires, will be provided adequate medical care, and will not be subjected to undue risks of harm from unsanitary conditions of confinement;

2. That the pre-trial detainees and other inmates at RDF will be protected against undue risks of harm from fires, will be provided adequate medical care, and will not be subjected to undue risks of harm from unsanitary conditions of confinement; and

3. That the patients confined at DMHSA will be protected against undue risks of harm from fires.

In the case of dispute as to the meaning of any portion of this Agreement, it shall be read in light of the purposes and objectives as stated above. In order to assure compliance with the above-stated purposes and objectives, the Territory will perform the actions required for the facilities stated below.

III. ADULT CORRECTIONAL FACILITY

1. The Territory will provide by April 18, 1992, a complete automatic sprinkler system which will utilize quick response heads throughout the buildings housing inmates, except where such

sprinklers are unfeasible due to conditions such as high temperature in equipment rooms.

2. The Territory is in the process of installing a fire alarm system with system type smoke detectors in ACF. The Territory will contract by July 18, 1991, the services of an electrician and/or someone with the necessary expertise to test such units on a monthly basis for serviceability and repair as necessary. The Guam Fire Department will be contacted to certify by July 18, 1991, whether the current fire alarm system with system type smoke detectors in each housing unit is an approved type and that it is functional.

3. The Territory has already removed all polyurethane foam mattresses, pillows, and other foam materials from ACF. The Territory agrees to complete, before June 1, 1991, a comprehensive inspection for the removal of any remaining foam materials throughout the ACF facility. The Territory agrees, henceforth, to utilize only fire resistant and/or retardant mattresses, pillows and paddings. The parties agree that solid core boric acid treated cotton and solid construction fire retardant low smoke neoprene foam are acceptable.

4. The Territory agrees to contract before August 18, 1991, for the services of a maintenance person who has expertise in the maintenance of the present generator to assure the generator complies with the National Fire Protection Association (NFPA) Code. The contractual services will continue for a period of one (1) year and be renewed upon expiration until a permanent full-

time maintenance person is hired. The maintenance contract must provide for the adequate servicing of the battery charger and a log for weekly documentation of oil changes, live load tests, and in-use service data.

5. The Territory agrees to provide, before October 15, 1991, a one hour fire and smoke barrier in each housing unit, and each wing of multiple wing units, to provide an area of refuge from fire and smoke.

6. The Territory agrees to complete before June 1, 1991, a comprehensive survey of all substandard and hazardous electrical conditions and to correct such conditions. Afterwards, the Guam Fire Department will be requested to conduct an inspection of ACF to determine if any electrical hazardous conditions still exist. Any hazard pointed out by the Guam Fire Department shall be corrected. Emphasis will be placed on the "F" Unit.

7. The Territory agrees to provide before October 1, 1991, approved waste receptacles and metal containers for personal combustible items for use by ACF inmates in their sleeping areas. The Territory further agrees to immediate removal of all unnecessary combustible items and materials from cells, storage areas, and core areas.

8. The Territory agrees to provide by July 18, 1991, remote egress doors from each dormitory/cubicle area in F-Building. These doors will be operated with common keys from inside or outside the building.

9. The Territory agrees to provide by July 18, 1991, one hour fire rated separation of the library in "F" Unit from all other areas.

10. The Territory agrees to remove all combustible foam insulation before June 1, 1991, from the ceiling area of the infirmary (pharmacy) and any other area of the facility.

11. The Territory agrees that no later than July 18, 1991, the ACF will discontinue use of the portion of the ACF Women's Unit underneath the tin/wood roof and will remove the tin/wood roof and other combustible materials. All Administrative offices will be consolidated under the concrete roof. The Territory will provide remote control locks for all cells and egress doors in the ACF Women's Unit under the concrete roof. The Territory will provide fire rated doors at each end of the ACF Women's Facility with the concrete roof.

12. The Territory agrees to provide before August 18, 1991, outside unlocking for all units. Special emphasis will be placed on "C" and "D" Unit. The Territory will provide before January 18, 1992, remote electric doors and local common key operation for each separate unit's egress/ingress doors.

13. The Territory agrees to remove by June 1, 1991, manually operated locks and latches on doors at the Special Housing Unit. By January 18, 1992, remote unlocking will be utilized for all cell doors and means of egress throughout the facility. No double locking shall be permitted.

14. The Territory agrees that by June 18, 1991, a comprehensive ongoing training and fire safety program will be established. The training will consist of emergency procedures and the use of fire protection equipment such as fire extinguishers under actual fire conditions. Training shall be conducted at least annually and for newly hired persons. The Territory agrees that by June 1, 1991, a person will be specifically designated as being responsible for the facility's fire safety, training, equipment, and features.

15. The Territory agrees to establish and implement by June 18, 1991, a fire safety inspection and maintenance program for all fire safety systems and equipment.

IV. ROSARIO DETENTION FACILITY

1. The Territory will provide by April 18, 1992, a complete automatic sprinkler system which will utilize quick response heads throughout the facility, except where such sprinklers are unfeasible due to conditions such as high temperature in equipment rooms.

2. The Territory has already removed all polyurethane foam mattresses, pillows and other foam materials from RDF. The Territory agrees to complete, before June 1, 1991, a comprehensive inspection for the removal of any remaining foam materials throughout the RDF facility. The Territory agrees henceforth to utilize only fire resistant and/or retardant mattresses, pillows, and paddings. The parties agree that solid

more boric acid treated cotton and solid constructed fire retardant low smoke neoprene foam are acceptable.

3. The Territory is in the process of installing a fire alarm system with system type smoke detectors in RDF. The Territory will contract by July 18, 1991, the services of an electrician and/or someone with the necessary expertise to test such units on a monthly basis for serviceability and repair as necessary. The Guam Fire Department will be contacted to certify by July 18, 1991, whether the current fire alarm system with system type smoke detectors in the facility is an approved type and that it is functional.

4. The Territory agrees to provide before October 1, 1991, approved waste receptacles and metal containers for personal combustible items for use by RDF inmates in their sleeping areas. The Territory further agrees to immediate removal of all unnecessary combustible items and materials from cells, storage areas, and core areas.

5. The Territory will provide at RDF by July 18, 1991, a hookup to the ACF emergency generator which meets NFPA code standards.

6. The Territory agrees to provide by June 18, 1991, a remote unlocking system for all cell doors and doors necessary for egress in the event of an emergency.

7. The Territory agrees that by June 18, 1991, a comprehensive ongoing training and fire safety program will be established. The training will consist of emergency procedures

and use of fire protection equipment such as fire extinguishers under actual fire conditions. Training shall be conducted at least annually and for newly hired persons. The Territory agrees by June 1, 1991, a person will be specifically designated as being responsible for the facility's fire safety, training, equipment, and features.

8. The Territory agrees to establish and implement by June 18, 1991, a fire safety inspection and maintenance program for all fire safety systems and equipment.

9. The Territory agrees to provide by January 18, 1992, artificial illumination for all RDF cells producing a minimum of twenty-foot candle power measurable thirty six inches from floor upward with an on-and-off control switch located within each cell.

V. THE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE
INPATIENT UNIT

1. The Territory agrees to provide by June 18, 1991, two (2) exits, one on the north side and one on the south side of the existing facility, as a temporary measure until another facility which meets fire safety standards is available for DMHSA use. The Territory agrees to provide by June 18, 1991, two remote exit doors directly to the outside from the unit. One key shall unlock both doors from the inside and outside.

2. The Territory agrees to provide by June 18, 1991, fire safe doors at each end of the DMHSA Inpatient Unit. These doors shall be covered with fire retardant rated gypsum board and a sheet of steel on each side or steel doors. The partition

surrounding the door and separating the Unit shall be of two (2) hour fire rated construction.

3. The Territory agrees to ensure by May 15, 1991, that all mattresses utilized in the DMHSA Inpatient facility are fire resistant and/or retardant. Innerspring mattresses shall not be utilized. All use of polyurethane is prohibited. The parties agree that mattresses made of boric acid treated solid core cotton and fire resistant low smoke neoprene are acceptable.

4. The Territory agrees to immediately remove all furniture containing polyurethane except one (1) sofa and one (1) chair until adequate replacement can be made; thereafter, any replacement furniture shall not use polyurethane.

5. The Territory agrees to immediately remove all excess mattresses and all furnishings not of non-combustible metal construction when not needed or in use.

6. The Territory agrees that all combustible supplies, files, materials, equipment, clothing, stock linen, and other combustible materials shall be kept to an absolute minimum, and stored in metal containers when not in use in the DMHSA Inpatient Unit. Linen storage, combustible storage, the laundry, and any other materials or functions shall be conducted or located outside of the DMHSA Inpatient Unit.

7. The Territory agrees that by June 18, 1991, a comprehensive ongoing training and fire safety program will be established. The training will consist of emergency procedures, and use of fire protection equipment such as fire extinguishers

under actual fire conditions. Training shall be conducted at least annually and for newly hired persons. The Territory agrees by June 1, 1991, a person will be specifically designated as being responsible for the facility's fire safety, training, equipment, and features.

8. The Territory agrees to establish and implement by June 18, 1991, a fire safety inspection and maintenance program for all fire safety systems and equipment.

9. The Territory agrees that by June 18, 1991, all combustible materials in the nurse's station of the DMHSA Inpatient Unit will be covered with noncombustible material or shall be removed. Replacement with fire retardant gypsum board or galvanized sheet metal is acceptable. All wooden desks will be replaced with metal desks.

10. The Territory agrees to complete before June 1, 1991, a comprehensive survey of all substandard and hazardous electrical conditions and to correct such conditions. Afterwards, the Guam Fire Department will be requested to conduct an inspection of DMHSA to determine if any hazardous electrical conditions still exist. Any hazard pointed out by the Guam Fire Department shall be corrected.

VI. ENVIRONMENTAL SANITATION

1. The Territory shall fully implement by June 18, 1991, the policies and procedures regarding food service, as well as any revisions thereto, attached to this Order and incorporated herein, marked "Appendix A."

2. The Territory shall arrange with officials of the Guam Department of Public Health by June 18, 1991, to conduct quarterly inspections of all areas of ACF and RDF. The Territory agrees to implement their recommendations within fifteen (15) days of the receipt of such quarterly reports. The Territory agrees to abide by the Rules and Regulations of the Guam Department of Public Health as provided in "Appendix B" attached to this Order and incorporated herein.

3. The Territory shall ensure by October 18, 1991, that all personnel handling food receive training in the basic principles of food protection and food service hygiene by the Guam Department of Public Health, Division of Environmental Health.

4. The Territory agrees to fully implement the preventive maintenance policies and procedures, as well as any revisions thereto, attached as "Appendix C" and incorporated herein. The Territory will continually maintain compliance with ACF Policy and Procedure for the Preventive Maintenance Program as provided in Appendix "C." The Territory will contract before August 18, 1991, the services of a qualified technician to perform required periodic maintenance on all refrigerators, freezers, and all other equipment within the ACF facility.

5. The Territory agrees to establish by June 18, 1991, written policies and procedures for routine daily housekeeping for all inmate residential areas, including shower and toilet areas.

6. The Territory will immediately provide for ACF inmates and RDF detainees tempered water not to exceed 120 degrees Fahrenheit and not below 110 degrees Fahrenheit for showering and bathing purposes of all ACF inmates and RDF detainees.

7. The Territory will immediately implement and maintain a pest-control program at ACF for control of cockroaches, rats, and mice, including rat-proofing all areas of the facility to preclude access. The Territory will secure by October 18, 1991, contractual services for pick up and disposal of all garbage at ACF and RDF. This service will provide containerized dumpsters for use by ACF and RDF. In the interim, all solid waste shall be disposed of in containers.

8. The Territory will provide by August 18, 1991, proper screening of all windows to prevent the entrance of mosquitos and flies into ACF inmate and RDF detainee housing areas.

9. The Territory will provide by August 18, 1991, food warmers and other necessary equipment for the proper preparation, transportation, service, dispensing, and management of food service delivery for RDF inmates. The Territory agrees that all methods and procedures for delivery of food to RDF inmates must fully comply with the Rules and Regulations of the Guam Department of Public Health as provided in "Appendix B."

10. The Territory agrees to provide by January 18, 1992, forced air mechanical ventilation supply and exhaust for all ACF and RDF inmate/detainee housing units to ensure a minimum of

twenty cubic feet of fresh, unrecirculated air per cell, per inmate.

VII. MEDICAL AND DENTAL

1. The Territory agrees to develop by June 18, 1991, a plan to provide adequate inmate/detainee access to routine and emergency medical, dental, and mental health care. The Territory is presently negotiating with the Department of Public Health Services and will attempt to finalize a contract by June 30, 1991, for routine and emergency dental care with a provision for referral to a private dentist if necessary. A licensed medical physician will become a full-time physician at ACF by November 18, 1991. Legislation has been drafted to establish a forensic unit at ACF.

VIII. MONITOR

The parties shall agree on an independent monitor to study and report on the Territory's efforts to comply with the Settlement Agreement and other plans and orders entered in this case. The Monitor shall have the authority as set forth below:

1. The Monitor shall have unlimited access to all facilities, buildings, and premises that are subject to this action.

2. She/he shall have unlimited access to all relevant records, files, and papers maintained by the Territory and reports of the Department of Justice (hereinafter DOJ) to the extent necessary to perform the duties as detailed in this Settlement Agreement. The Territory and the DOJ shall refuse no

reasonable request for documents. The Monitor may, upon specific request, view in camera any relevant confidential documents in the possession of the parties, including individual inmate records and the consultant reports of the United States. The Monitor shall maintain the confidentiality of such information.

3. The Monitor shall have access to all pertinent staff members and employees of the ACF, RDF, and DMHSA and employees of the DOJ directly involved in this action. She/he may engage in both formal and informal conferences with such staff members and employees, including confidential personal or group interviews, and such persons shall cooperate with the Monitor and shall respond to all reasonable inquiries and requests relating to the Territory's compliance efforts. The Territory shall designate a representative to have the sole responsibility to coordinate tours of the relevant facilities, to assist in gathering documents, and to provide any additional material or information the Monitor may request.

4. The Monitor shall give the Territory reasonable notice of all tours, unless she/he believes such action will interfere with the factfinding process. The Monitor, when possible, shall notify the Territory in advance of each tour of any special needs or arrangements that should be made, e.g., staff interviews or confidential interviews with inmates.

5. The Monitor shall submit semi-annual reports to the Court and the parties beginning three months after appointment.

6. The Territory shall pay all reasonable fees and expenses submitted by the Monitor.

IX. CONSTRUCTION AND IMPLEMENTATION

In construing and implementing the terms of this Agreement, the following are agreed upon by the parties:

1. In entering into this Settlement Agreement, Territorial officials do not admit to any violation of law, nor may this Agreement be used as a cause of action or as evidence of liability in any other civil proceeding.

2. Except as otherwise expressly provided in this Agreement, the choice of the specific means to be employed to achieve compliance with the purposes and requirements set forth in the Agreement is a matter within the discretion of the Territory of Guam.

3. Territory officials agree to draft and submit to the United States and the Court the plan(s) referenced herein by the dates designated herein. The United States shall have sixty (60) days to object or otherwise comment regarding the adequacy of the plan(s) to effectuate the terms of this Agreement. If the United States has no objection, the plan(s) will become final as an Order of the Court. If the United States has any objection to any plan or part of the plan, Territory and Federal officials shall confer by telephone in a good faith effort to resolve their differences. Only after a failure to resolve the matter amicably, shall any party seek relief from the Court. If, following approval of any plan required herein, Territory

officials determine the need to change or otherwise modify a plan or part thereof, Territory officials shall notify the United States of any such change. The procedural requirements described in this paragraph shall apply to any changes.

4. Territory officials will submit quarterly status reports to the United States on progress made toward implementation of this Agreement. These status reports will commence for the period beginning October 10, 1991, and will be submitted to the United States within 15 days of the end of each period. These quarterly reports shall continue for a period of one year after full implementation of this Agreement by Territory officials, unless this action is dismissed earlier. The status reports shall provide a complete status for each plan of action.

5. The United States, their agents, attorneys, and consultants shall have reasonable access to the ACF, RDF, and DMHSA facilities, and facility records, upon reasonable notice to defendants for the purposes of determining compliance with this Agreement.

6. If the United States believes the Territory has not complied with any provision of this Agreement, the United States shall give notice of the believed violation in writing to the Territory. If any of the provisions of this agreement are in conflict with the laws or regulations of the Territory of Guam, the laws or regulations of the Territory shall control to the extent they are consistent with the United States Constitution.

X. TERMINATION OF AGREEMENT

1. The parties contemplate that the Territory shall have fully and faithfully implemented all provisions of this Settlement Agreement, and plans herein required to be submitted and approved by the Court, on or before April 18, 1994.


2. The Court shall retain jurisdiction of this action for all purposes under this Settlement Agreement until the Territory shall have fully and faithfully implemented all provisions of the Settlement Agreement and plans submitted pursuant thereto, and until the case is dismissed.

3. On or after the date on which the Territory shall have fully and faithfully implemented all provisions of this Settlement Agreement and plans submitted thereto, the Territory may move that the Order entered herein be dissolved.

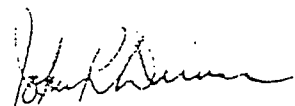
4. Dismissal shall be granted unless, within sixty (60) days after receipt of the Territory's motion, the United States objects to the motion. If such an objection is made with particularity, the Court shall hold a hearing on the motion and the burden shall be on the Territory to demonstrate that they have fully and faithfully implemented all provisions of this Settlement Agreement, including any approved plan(s).

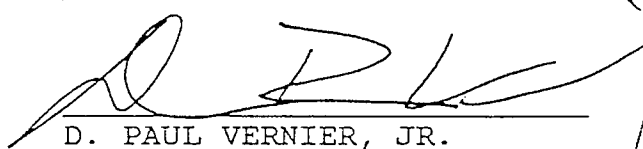
The undersigned agree to entry of this Agreement as a
Judgment of the Court.

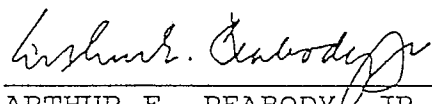
FOR THE TERRITORY OF GUAM
AND JOSEPH F. ADA, Governor;
RICARDO SALAS, Director,
Department of Corrections;
ADOLF P. SGAMBELLURI, Chief of Police;
and MARILYN WINGFIELD, Director,
Department of Mental Health and
Substance Abuse

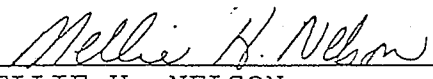

ELIZABETH BARRETT-ANDERSON
Attorney General

FOR THE UNITED STATES
OF AMERICA


JOHN R. DUNNE
Assistant Attorney General
Civil Rights Division


D. PAUL VERNIER, JR.
United States Attorney
District of Guam and
Northern Mariana Islands


ARTHUR E. PEABODY, JR.
Chief
Special Litigation Section


MELLIE H. NELSON
Deputy Chief
Special Litigation Section