

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 77-C-1093

FIDEL RAMOS, et al.,

Plaintiffs,

vs.

RICHARD LAMM, et al.,

Defendants.

AMENDED [MASTER] CONSENT ORDER

Being fully informed as to the underlying facts and legal claims of the plaintiffs and defendants, the Court enters this order upon the consent of the parties. This first amended [master] consent order modifies the consent order previously entered by this Court on August 7, 1985 (the "1985 Consent Order"). The provisions of the 1985 Consent Order, as well as prior orders entered by the Court in this case, remain in full force and effect to the extent they are not inconsistent with this first amended [master] consent order.

Introduction.

1. This order is intended to respond to defendants' request that the 1985 Consent Order be modified to permit limited double bunking in Colorado Territorial Correctional Facility, Centennial Correctional Facility and Shadow Mountain Correctional Facility (the "Ramos facilities"). That request was contained in defendants' motion to modify consent order filed July 13, 1988.

2. As a result of their discovery into the issues raised by defendants' motion, plaintiffs have concluded that significant questions exist as to whether current conditions of confinement at the Ramos facilities (before the institution of double bunking as requested in defendants' motion) comply with the standards set forth in the 1985 Consent Order. Plaintiffs have further indicated that in the near future they intend to file a motion to determine whether or not conditions at the Ramos facilities comply with that order. Defendants maintain that conditions at the Ramos facilities are in substantial compliance with the 1985 Consent Order. The resolution of that dispute will await the filing of plaintiffs' motion.

3. It is the Court's intention by the entry of this order to resolve only the limited issues addressed herein. Nothing in this order shall prejudice plaintiffs' rights subsequently to file a motion to determine whether or not conditions of confinement in the Ramos facilities (whether before or after the institution of double-bunking contemplated in this order) comply with the terms of the 1985 Consent Order or otherwise meet constitutional standards. Nothing in this order shall constitute an admission or evidence of the conditions or level of services to which prisoners at the Ramos facilities are entitled, either by the law of this case or under the Constitution.

4. Defendants have represented to plaintiffs that certain funds appropriated to the Department of Corrections by the Legislature will not be released until certain levels of double bunking, as set forth herein, have been approved by the Court. It is believed that such funds will provide significant benefits to substantial numbers of prisoners housed in the Ramos facilities, not just those assigned to double bunked cells.

Double Bunking.

5. Defendants hereby withdraw their request that they be permitted to double bunk prisoners at Centennial and shall not double bunk at that facility.

6. Defendants hereby withdraw their request that they be permitted to double bunk prisoners at Shadow Mountain. It is noted, however, that substantial funds have been appropriated by the Legislature for renovation of the facilities at Shadow Mountain. Defendants may renew their motion for such double bunking upon the completion of certain experts' reports agreed upon by the parties.

7. Paragraph 22 of the 1985 Consent Order is hereby amended to permit the double bunking of 94 cells in Cellhouses 1 and 7 at Territorial for a period of two years from the date of this order.

8. The temporary modular units currently being used to house prisoners at Territorial shall not be replaced when their

useful life has expired. It is agreed that the use of those units will be discontinued no later than two years from the date of this order.

9. A number of cells in Cellhouse 3 at Territorial are currently double bunked and being used to house prisoners from the Reception and Diagnostic Center at Territorial for whom there is no bed space in the Diagnostic unit. The construction of a new diagnostic unit near Denver is projected to be completed on March 1, 1991. As soon as that facility has been opened, defendants will discontinue the double bunking of diagnostic unit prisoners in Cellhouse 3. Thereafter, the only double bunking permitted at Territorial will be in the 94 cells in Cellhouses 1 and 7 as described in paragraph 7 of this order.

10. Paragraph 23 of the 1985 Consent Order is hereby amended to provide that the population of Territorial is limited as set forth below and subject to the provisions of paragraphs 8 and 9 of this order.

Diagnostic Unit	120
Cellhouse 1	182
Cellhouse 7	196
Cellhouse 3	<u>94</u>
Subtotal	592
Modular Units (to be discontinued)	60
Cellhouse 3 Double Bunk (to be discontinued)	56
Cellhouse 1, 7 Double Bunk (as permitted herein)	<u>94</u>
Total	802

After the construction of the Denver diagnostic unit, and in any event no later than two years after the entry of this order, the population of Territorial shall not exceed 592.

Additional Funding.

11. Defendants have represented that an additional \$852,579 is available in capital and operating funds for Territorial and Centennial to implement the provisions of this order. Those funds have been designated for projects in the areas of food service at Territorial, industries expansion at Centennial, life safety, programs and jobs at both facilities.

12. The following funds shall also be used to implement double bunking at Territorial.

Personal Services (39 FTE)	\$1,121,371
Operating	285,206
Utilities	65,625
Contract Services	<u>314,125</u>
	\$1,786,327

13. In addition, defendants promptly shall restore staffing levels at Centennial to the level previously maintained under the 1985 Consent Order.

14. The funds described in paragraphs 11 - 13 of this order shall be spent and the projects represented by them completed before the institution of double bunking at Territorial pursuant to this order.

Implementation of Double Bunking at Territorial.

15. In connection with defendants' motion to modify the 1985 consent order, the parties jointly retained the following experts to evaluate the conditions of confinement at the Ramos facilities: Sean McConnville, Ph.D. (Corrections), Herbert Britell, M.D. (Physical Health), Geoffrey Metzner, M.D. (Mental Health), Mildred Simmons, R.N. (Nursing) and Theodore Gordon (Environmental Health). Each of those experts has submitted to the parties a report indicating certain conditions and levels of service that must be enhanced before double-bunking can be instituted. Prior to instituting double-bunking at Territorial as described in this order, defendants shall obtain the concurrence of each expert that the material problems identified in his or her report have been corrected.

Semi-Annual Review.

16. The experts identified in the preceding paragraph, or such other individuals as may be agreed upon by plaintiffs and defendants, shall conduct a semi-annual review of conditions of confinement at the Ramos facilities in order to determine the extent to which those conditions comply with the terms of the 1985 Consent Order, as amended by this order.

Programs.

17. The definition of the term "eligible inmates" in paragraph 21(b) of the 1985 Consent Order is hereby modified as follows: The term "eligible inmates" shall also include prisoners in general population (including protective custody) who refuse to work. The intent of this paragraph is to require defendants to provide programs for at least 90% of the eligible prisoners at each of the Ramos facilities (including those who choose not to work).

HIV Positive Prisoners.

18. Defendants shall discontinue their current policy of testing all incoming inmates into the Department of Corrections for the human immunodeficiency virus (HIV). Further, defendants shall discontinue their general policy of segregating HIV positive inmates into their own residential living units, and agree to integrate, to the greatest extent possible, all such HIV positive inmates into the general population. Currently segregated HIV positive inmates will be integrated into the general population to the greatest extent possible consistent with the security concerns of the department and the inmates themselves. Nevertheless, defendants shall test for the presence of HIV when requested to by inmates and take appropriate medical action when an inmate is found to be HIV positive. Defendants shall take all steps necessary to protect the confidentiality of the medical information of such HIV positive inmates.

Attorneys Fees.

20. Plaintiffs shall have 30 days from the date of this order to submit their petition for an award of attorneys fees and costs relating to defendants' motion to modify.

Dated March __, 1989.

BY THE COURT

Jim R. Carrigan
United States District Judge

APPROVED:

For the Plaintiffs

A.C.L.U. FOUNDATION OF
COLORADO, INC.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 77-C-1093

FIDEL RAMOS, et al.,

Plaintiffs,

v.

RICHARD LAMM, et al.,

Defendants.

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MODIFICATION OF AMENDED [MASTER] CONSENT ORDER

The parties have asked the Court to modify the Amended [Master] Consent Order entered by this Court on March 21, 1989, as set out below. The provisions of the 1985 Consent Order, as well as prior orders entered by the Court in this case, remain in full force and effect to the extent that they are not inconsistent with this order and previous orders of Court including the referenced Amended [Master] Consent Order.

Policies Relating To Testing And Treatment For The Human Immunodeficiency Virus (HIV).

1. Defendant shall discontinue their current policy of testing all incoming inmates into the Department of Corrections for HIV. Defendants shall discontinue their general policy of segregating HIV positive inmates into their own residential living units, and agree to integrate, to the greatest extent possible, all such HIV positive inmates into the general population.

To the extent that an inmate is segregated consistent with this policy, he shall be eligible for review and reclassification pursuant to Department of Corrections Regulations 202-1 and 203-1 along with all other inmates.

2. Defendants shall test for the presence of HIV when requested to by inmates, when such tests are medically indicated, or when defendants have reasonable suspicion, documented in the record, that an inmate has engaged in high risk behavior as defined by the Centers For Disease Control. Defendants shall take appropriate medical action and provide adequate treatment when an inmate is found to be HIV positive.

3. This policy contemplates three different classes of HIV positive inmates:

- a) inmates who are mainstreamed in the prison population;
- b) inmates who are housed separately, but integrated to the greatest extent possible into the general prison population;
- c) inmates who have engaged in high risk behaviors and have been administratively segregated.

Further, the defendants will house and treat any inmate in a medically appropriate manner who is actually suffering from ARC or AIDS.

4. Defendants shall take all steps necessary to protect the confidentiality of the medical information of HIV positive inmates, and will not disclose the HIV status of any inmate, except as allowed by law. When testing is permitted under this provision, the Department shall take such steps as required to maintain quality assurance and accuracy in such tests. When test

results are disclosed to inmates, medically appropriate pre- and post-test counseling programs shall be employed. The confidentiality of such test results shall be strictly maintained and stringent guidelines setting out who may receive such information and penalties for unauthorized disclosure shall be implemented.


5. Prisoners who engage in the clearly defined but limited behaviors which transmit HIV shall be managed consistent with medical and security needs on a case by case basis. Reintegration of currently segregated population should occur with all deliberate speed but should recognize the desires, health, safety and security concerns of both the currently identified HIV positive inmates and the general population. HIV positive inmates wishing to remain segregated may continue to do so. Additionally, other alternatives such as placement out of state, in facilities where their HIV status is not known, or integration based on a staggered approach should all be considered.

6. A comprehensive AIDS education program for both staff and inmates (seropositive and seronegative) will be established. Prior to voluntary or for-cause testing the Department will counsel and educate all inmates as well as providing general education for inmates first coming into the prison system. Post-test counseling and education for both the seropositive and seronegative inmates shall be made available periodically throughout the year to all inmates. Provisions of the Department's policies concerning testing and treatment for HIV

shall be included in the Department's Medical Health Services Plan and reviewed by the joint experts of the parties as with any other provision and requirement of such Plan.

Dated March 28, 1989.

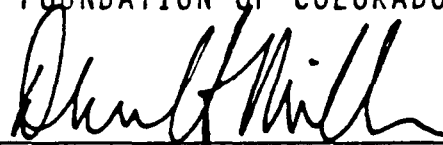
ATTORNEY GENERAL
STATE OF COLORADO


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Attorneys for Defendants

Respectfully submitted,

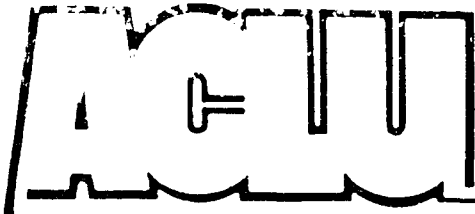
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF COLORADO


David H. Miller, Esq.
815 East 22nd Avenue
Denver, Colorado 80205
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and

James E. Hartley, Esq.
Jay Jester, Esq.
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555 17th Street, Suite 2900
PO Box 8749
Denver, Colorado 80201

Attorneys for Plaintiffs



77-C-1053

(C)

U.S. DISTRICT COURT
DENVER, CO
100

AMERICAN CIVIL LIBERTIES UNION OF COLORADO 02: 18
815 East 22nd Avenue • Denver, CO 80205 • (303) 861-2258

April 3, 1989

BY: 90
CLK.

TO ALL INMATES CONCERNING TESTING AND TREATMENT OF THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) THE CAUSE OF ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

Attached is a notice from the Court describing a recent Consent Order and proposed paragraph 18 of that Order concerning testing and treatment by the Department of Corrections for the Human Immunodeficiency Virus (HIV)--the cause of Acquired Immune Deficiency Syndrome (AIDS). This Consent Order and proposed paragraph 18 of that Order would resolve some of the outstanding questions in the Ramos case, which covers conditions at the three prisons described above. A copy of the actual provision itself is also attached with these materials in the document captioned "Modification of Amended [Master] Consent Order.

As counsel for plaintiff we have already discussed with many of you the general outline of these orders and the proposed order and have tried to address many of your concerns. However, we know that there is great and justified interest in addressing issues concerning the Department's policy on HIV.

Proposed paragraph 18 sets out the terms of a stipulation that the plaintiffs' attorneys have been able to reach with the Department and which we believe is in the best interests of not only HIV positive individuals but all general population individuals. The proposed stipulation would change the Department's policy of testing inmates for HIV as they come into the system and during your physicals without the consent of the inmate. It would also change the policy of segregating all HIV positive inmates against their will. It would allow for voluntary testing and testing when medically indicated and would make sure that the confidentiality of the results of those tests would be strictly kept. The agreement would guarantee accuracy when testing was done, require pre- and post-test counseling and education not only for inmates who were either HIV positive or not but also require such education for staff. Our experts inform us that the methods set out in our proposed stipulation concerning HIV are the surest ways to guarantee that the disease of AIDS will not spread throughout the prison population. We believe that the current policy of testing upon admission and during physicals is not a guarantee that the general population is protected against

the virus but that such policies merely make inmates falsely believe that they are protected and therefore they are more likely to engage in high risk behaviors and in fact spread the virus, and ultimately the disease of AIDS.

Please read through the Notice and the proposed Modification of Amended [Master] Consent Order. If you have any questions please do not hesitate to write to either of us. However, if you have objections and you wish to make those objections known to the Court please send your comments directly to the Court in written form and addressed to the Clerk of the U.S. District Court, P.O. Box _____, Denver, Colorado, 80294.

Very truly yours,



David H. Miller, Esq.
Legal Director ACLU of Colorado
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Denver, Colorado 80205

James E. Hartley, Esq.
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ATTORNEYS FOR PLAINTIFFS

IMPORTANT NOTICE TO INMATES CONCERNING RESOLUTION OF CERTAIN
ISSUES IN RAMOS v. LAMM, 77-C-1093 (D.COLO.)

READ THIS NOTICE CAREFULLY. YOU MAY HAVE RIGHTS AFFECTED BY THIS
PROPOSED CONSENT ORDER

30 MAR 30 1989 12:18
COURT
ADO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 79-C-1093

FIDEL RAMOS, et al.,

Plaintiffs,

v.

RICHARD LAMM, et al.,

Defendants.

BY
FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
MAR 31 1989
JAMES R. MANSPEKER
CLERK
BY

Pursuant to Rules 23(c) and 23(e), Federal Rules of Civil
Procedure, and the Order of the United States District Court for
the District of Colorado, PLEASE TAKE NOTICE:

PART I.
THE LAW SUIT

On November 30, 1977, an action was filed challenging
conditions of confinement at the maximum security unit of the
Colorado State Penitentiary at Canon City, Colorado. The
plaintiff class was defined as all persons incarcerated in the
Colorado Territorial Correctional Facility (including the
Reception and Diagnostic Center), Shadow Mountain Correctional
Facility and Centennial Correctional Facility.

After a trial in October, 1979, the Court issued its
findings and order as published in the case of Ramos v. Lamm, 485

F.Supp. 122 (D. Colo. 1980). The Court's ruling held that many conditions were unconstitutional and ordered the defendants to make substantial changes. The defendants appealed and the Tenth Circuit Court of Appeals affirmed in part, reversed in part, and remanded the case back to the District Court for further proceedings. Ramos v. Lamm, 639 F.2d 559 (10th Cir. 1980) cert. denied, 450 U.S. 1041 (1981).

In August, 1981, the District Court issued an order requiring the defendants to present detailed plans for protecting the plaintiffs' constitutional rights. Ramos v. Lamm, 520 F.Supp. 659 (D. Colo. 1981). Since that time the plaintiffs and the defendants have negotiated for improved conditions and the Court has retained jurisdiction to review the status of conditions and enter remedial orders.

On August 7, 1985, the parties entered into a consent order approved by the Court. Under this order the parties identified 35 separate requirements with which the Department of Corrections must comply. Those requirements include such matters as staffing and service, physical facilities and sanitation, inmate safety, physical and mental healthcare, programatic requirements, and establishment of a grievance system.

On January 10, 1986, the Court entered a further consent order resolving the issue of legal access to the courts. Pursuant to the terms of both this and the earlier consent order the case was to terminate and be deemed closed on February 7, 1987, if defendants were in compliance with prior Court

orders. After further motions from the parties, including plaintiffs' objections to the closure of the case and defendants' motions to modify the 1985 Consent Order, the case was closed by order dated December 8, 1987. Thereafter, defendants filed two further motions (on March 16, 1988, and July 13, 1988) asking that the case be reopened and that, among other things, the Department be allowed to continue and expand double bunking. Pursuant to defendants' motion filed July 13, 1988, the Department of Corrections requested permission from the Court to double bunk an additional 150 inmates at Colorado Territorial Correctional Facility, temporarily double bunk 96 inmates at Shadow Mountain Correctional Facility, and double bunk 50 inmates at Centennial Correctional Facility.

Outside correctional experts were brought in to evaluate the defendants' proposals, and discovery was entered into by the parties. Pursuant to negotiations the parties reached a settlement of defendants' motion approved by the Court as its Amended [Master] Consent Order signed March 21, 1989, whereby defendants agreed not to double bunk any inmates at Centennial Correctional Facility, to defer the issue of double bunking at Shadow Mountain Correctional Facility until certain studies are completed and renovation funding is finalized, and to double bunk an additional 94 inmates in Cellhouses 1 and 7 of Territorial Correctional Facility with the agreement that such double bunking, as well as all other double bunking, will stop two years from the date of the Court's order. Additionally, the parties have agreed that defendants will expend \$852,579 in

capital and operating funds at both Territorial and Centennial for expansion of food services, staff, life safety, programs and jobs. Another \$1,786,327 will be spent to institute double bunking at Territorial. The parties' joint experts will conduct semi-annual reviews of conditions of confinement pursuant to the 1985 Consent Order, and prior to the implementation of double bunking, the Department of Corrections will complete the required renovations and receive the approval of the experts.

Other important provisions of the Amended [Master] Consent Order relate to the definition of "eligible inmates" in paragraph 21(b) of the 1985 Consent Order which has been modified to include prisoners in general population and protective custody who refuse to work and requires defendants to provide 27.5 hours of meaningful activity for at least 90% of those eligible at each facility, including those who choose not to work.

Plaintiffs will be requesting additional attorney's fees and have indicated to the Court that they will file a motion challenging whether defendants are in substantial compliance with prior Court orders.

PART II. OUTSTANDING ISSUES

On March 21, 1989, the Court ordered the parties to give the plaintiff class the opportunity to object to paragraph 18 of the Amended [Master] Consent Order relating to prisoners tested positive for the human immunodeficiency virus (HIV) which causes the Acquired Immune Deficiency Syndrome (AIDS).

In that section plaintiffs propose and defendants agree to the following:

A. To discontinue their current policy of testing all incoming inmates into the Department of Corrections for HIV;

B. To discontinue their general policy of segregating HIV positive inmates;

C. To integrate, to the greatest extent possible, new and currently segregated HIV positive inmates into the general population, consistent with the health, safety and security of inmates and the Department;

D. To continue to provide testing upon inmate request, and when medically indicated or when an inmate has engaged in high risk behavior as defined by the Centers For Disease Control;

E. To provide appropriate medical action when an inmate is found to be HIV positive;

F. To take all steps necessary to protect the confidentiality of the medical information of the HIV positive inmates, and;

G. To provide adequate counseling and education for inmates and staff both pre- and post-testing.

A copy of the proposed provisions of paragraph 18 are attached to this Notice in the document captioned "Modification of Amended [Master] Consent Order."

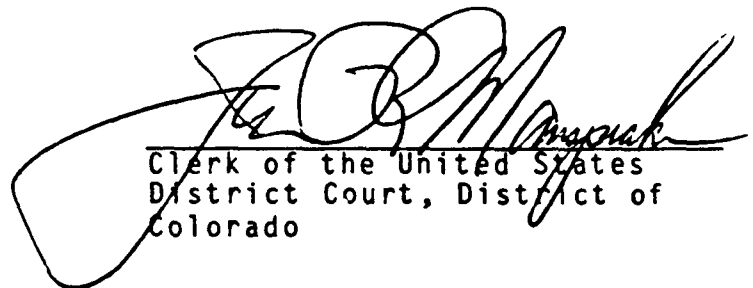
**PART III.
COMMENTS OR OBJECTIONS**

A hearing will be set to determine whether the Court will approve paragraph 18 of the Consent Order after the posting of

this Notice. Any class member wishing to make comments or objections to the fairness or reasonableness of this paragraph of the Consent Order must file a written statement of his comments with the Clerk of the United States District Court at P.O. Box 1618, Denver, Colorado, 80201, postmarked no later than April 23, 1989. Any class member who does not make his objection in this manner shall be forever barred from making such objection to the Court's approval of these matters in a subsequent order.

If you have any questions which you want to raise concerning matters in this Notice, please address your questions in writing to the Clerk of the United States District Court, P.O. Box 1618, Denver, Colorado, 80201. All correspondence should refer to the name and number of this action, which is "Ramos v. Lamm, 77-C-1093, D. Colo."

Dated March ~~24~~³¹, 1989.


Clerk of the United States
District Court, District of
Colorado

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

JAMES R. MANSPEAKER, CLERK
C-145 U.S. Courthouse
1929 Stout Street
Denver, Colorado 80294
(303) 844-3433

Date: April 3, 1989

Case No.: 77-C-1093

The undersigned hereby certifies that on the above date a copy of
Important Notice to Inmates Concerning Resolution of
Certain Issues in Ramos v. Lamm, 77-C-1093 signed by ~~Jim R. Manspeaker, Clerk~~

James R. Manspeaker, Clerk

on March 31, 1989 was mailed to the following:

David Miller, Esq.
815 E. 22nd Ave.
Denver, CO 80205

James Hartley, Esq.
P.O. Box 8749
Denver, CO 80201

Terrence Gillespie, Esq.
1525 Sherman St., 3rd Floor
Denver, CO 80203

James R. Manspeaker, Clerk

By: 
Deputy Clerk