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

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DWIGHT DURAN, et al.,  
Plaintiffs,

*Robert M. Marshall*  
CLERK U.S. DISTRICT COURT

vs.

Civil No. 77-0721-JC

GARY JOHNSON, et al.,  
Defendants.

**AMENDED STIPULATION**

On March 29, 1996 the parties in this civil action filed, and the court entered an order approving, a stipulation concerning the assignment of certain New Mexico inmates to certain facilities in Texas. The parties hereby amend that stipulation to read in its entirety as follows:

**Definitions:**

- Adult Basic Education ..... ABE
- Central Arizona Detention Center..... CADC
- Central New Mexico Correctional Facility..... CNMCF
- Dallas County Jail and other county jail facilities in Texas..... Texas Facility (ies)
- Inmate Literacy Program ..... ILP
- New Mexico Corrections Department ..... NMCD
- New or additional non-NMCD prison facilities  
in New Mexico, including additional prison bed capacity at  
facilities already under contract, beds in new or  
additional non-NMCD New Mexico facilities not currently  
under contract (e.g., Roswell, Dona Ana), and beds  
at one or more new facilities in New Mexico,  
constructed by private vendors or counties..... New NM Beds

Duran v. Apodaca



PC-NM-001-042

Prison beds currently operated by NMCD in New Mexico,  
and prison beds built and operated in the future by NMCD in  
New Mexico.....NMCD Beds

Reception and Diagnostic Center..... RDC

Southern New Mexico Correctional Facility ..... SNMCF

Vincent M. Nathan or W. David Arnold.....special master

Western New Mexico Correctional Facility ..... WNMCF

**A. Use of Texas Facilities**

1. So long as defendants are complying with Section D of this Amended Stipulation, have no available cells for housing medium security prisoners, and have assigned no more than 140 medium security prisoners to dayroom beds at CNMCF and SNMCF pursuant to Section C of this Amended Stipulation, defendants may assign no more than 350 medium security prisoners to the Dallas County Jail or to another jail facility in Texas, (“Texas facility” or “Texas facilities”). The following conditions will apply to the assignment of prisoners to a Texas facility:

- a. Defendants will ensure that officials at the Dallas County Jail expand or permit expansion of correspondence privileges (increased availability of writing materials, envelopes, and stamps) and access to legal materials (expansion of the collection of New Mexico legal research materials), as recommended to NMCD officials by the special master.
- b. Any Texas jail to which prisoners are transferred, other than the Dallas County Jail, must be of at least comparable quality to the Dallas County Jail in terms of physical plant and the provision of services to prisoners,

including correspondence and legal access services described in subsection A.1.a of this Amended Stipulation. Prior to the transfer of any prisoner to a Texas jail other than the Dallas County Jail, the special master will inspect the proposed facility and certify its comparability to the Dallas County Jail.

- c. Defendants may only transfer newly received prisoners to Texas facilities directly from the RDC. All such prisoners must be classified as medium security, and no such prisoner can be under indictment or be in the process of pursuing a direct appeal of his criminal conviction at the time of his transfer.<sup>1</sup> Defendants may apply other criteria (e.g., chronic medical or mental health condition, unusual hardship) to exclude prisoners from eligibility for transfer to a Texas facility, but the failure to identify a sufficient number of medium security prisoners at the RDC who are eligible for transfer to a Texas facility will not constitute an excuse for noncompliance with any provision of this Amended Stipulation.
- d. No prisoner assigned to a Texas facility will be assigned to such a facility a second time unless that person's conduct results in his readmission to the NMCD as a new admission to the RDC. "Readmission to the NMCD as a new admission" includes persons returned as parole violators; persons returned as probation violators; violators of conditions of reintegration;

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<sup>1</sup> The exclusion of prisoners under indictment or pursuing a direct appeal does not encompass prisoners who are in the process of making a collateral attack, by writ of habeas corpus or otherwise, on their conviction, plea, or sentence.

and persons who were previously incarcerated, then released, then admitted pursuant to a new or separate conviction.

e. All prisoners assigned to a Texas facility in the future will be returned to and physically housed in New Mexico or the CADC as quickly as possible and in no event longer than 180 calendar days from the date the prisoner leaves the RDC.

2. Upon their return to New Mexico, all prisoners currently assigned to a Texas facility and all prisoners assigned to a Texas facility in the future will be transferred directly to a facility in New Mexico other than the RDC.<sup>2</sup>

3. Because of the lack of work and educational opportunities in Texas facilities, every prisoner currently assigned to a Texas facility and every prisoner assigned to a Texas facility in the future will earn day-for-day good time, regardless of the prisoner's employment or programmatic status in a Texas facility, subject to NMCD's current regulations governing termination and forfeiture of good time for misconduct and consistent with the requirements of NMSA section 33-2-34. In addition, every prisoner currently assigned to a Texas facility and every prisoner assigned to a Texas facility in the future will, for the first four months he is housed in the Texas facility, be awarded six days of good time for each month or portion thereof he is housed in a Texas facility, assuming he is otherwise eligible for good time awards and subject to applicable NMCD good time policies and procedures, and will, for the remaining time he is housed in the Texas facility, be awarded eight days of good time for each month or portion

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<sup>2</sup> That "facility other than the RDC" could be an NMCD Bed, a New NM Bed or, if the inmate has been reclassified as minimum or minimum-restrict, a contract facility in which minimum and minimum-restrict beds are leased by NMCD.

thereof he is housed in a Texas facility, assuming he is otherwise eligible for good time awards and subject to applicable NMCD good time policies and procedures. NMCD will either ensure that sufficient educational slots are available at Texas facilities to ensure that inmates in the ILP obtain the educational programming needed to permit them to earn maximum good time for which they are otherwise eligible, or ensure that if sufficient educational programming slots are not available, ILP inmates are excused from the education requirements so that they can earn the maximum good time for which they are otherwise eligible.

4. Any prisoner assigned to a Texas facility in the future may file a classification appeal challenging his designation as medium security or any other element of the classification, and any such appeal will be resolved in accordance with the classification appeals policies of the NMCD. Such an appeal, however, will not be subject to the special provisions and limitations controlling an appeal of an out-of-state transfer. Any complaint concerning assignment to a Texas facility (as opposed to complaints about other facets of the classification process) will be treated as a grievance and will be resolved under the grievance procedures of the NMCD. If the filing of a classification appeal would otherwise be timely, NMCD will accept classification appeals from prisoners after their transfer to a Texas facility. Moreover, defendants also will establish a procedural mechanism by which prisoners assigned to a Texas facility can submit grievances to NMCD officials. Defendants will provide the special master with a copy of any such classification appeal or grievance by a prisoner selected for transfer to a Texas facility, including prisoners currently assigned to a Texas facility, and the special master will review these appeals and grievances and communicate with NMCD officials to ensure that fair and timely decisions are rendered.

5. Provisions to the contrary in this Section A notwithstanding, defendants may house voluntary administrative segregation inmates at a Texas facility under the following terms and conditions:

- a. Prior to any such transfers, the special master will visit the Texas facility and prepare an informal report for the parties certifying its suitability for housing voluntary administrative segregation inmates. If the special master determines that the Texas facility is not suitable for this purpose, the parties will utilize the dispute resolution mechanisms of paragraph F.3 of this Amended Stipulation.
- b. All voluntary administrative segregation inmates in the Texas facility will be housed in single occupancy cells and will have access to a day room.
- c. The following inmates will not be included in the pool of voluntary administrative segregation inmates eligible for transfer to a Texas facility under this Amended Stipulation: (i) inmates whose medical and mental health needs preclude transfer in the professional judgment of NMCD medical and mental health staff, (ii) inmates who have an IEP/transition plan or who are in the IDEA-eligibility evaluation process (as those terms are defined in the Termination Plan -- Part I [Special Education]), (iii) pretrial detainees and inmates facing pending charges if those charges were not brought as a result of the inmate's in-prison activities, and (iv) inmates whose cases are on direct appeal and who are within seven months of their convictions.

- d. No voluntary administrative segregation inmate transferred to a Texas facility under this agreement will be housed at such facility for more than one year, at which time the inmate must be returned to an NMCD Bed or a New NM Bed.
- e. The following programs will be available to all voluntary administrative segregation inmates transferred to a Texas facility: (i) access to mental health services; (ii) access to medical services; (iii) a recreation schedule equivalent to that offered to general population New Mexico inmates at the Texas facility at the time the first voluntary segregation inmates arrive at the facility; (iv) visiting; (v) access to law library and general library services; (vi) access to religious programs; and (vii) educational programming that includes an initial review of each inmate's educational status, development of an appropriate educational course (as determined by an educational professional) through the ABE level for each inmate who chooses to participate (which educational programming may be in a group or individual setting) and, for those for whom educational services are provided individually, individual contact with an educational staff member no less than twice each week.
- f. To the maximum extent possible, defendants will house administrative segregation inmates only at the North unit. Unless all beds at the North unit are occupied pursuant to this paragraph, no inmate will be housed in administrative segregation at PNM South for longer than thirty days. Defendants will house inmates in long-term involuntary administrative

segregation only at the North Unit unless sufficient beds are not available for that purpose. No involuntary administrative segregation inmate will be housed at a satellite unit for more than thirty days unless every bed at the North unit is occupied by an involuntary administrative segregation inmate; provided, however, that in exceptional cases (*e.g.*, enemies, high risk protective custody) voluntary administrative segregation inmates may be assigned to the North unit even though all beds there are not completely occupied by involuntary administrative segregation inmates, and in that case involuntary administrative segregation inmates may be housed at a satellite facility for more than thirty days, but in no case for longer than is needed to locate a bed for them at the North unit and transfer them to that facility. Inmates in voluntary administrative segregation may be placed at the North unit if they require that level of protection and/or supervision or if beds are available. If defendants have complied with all of the requirements of this section, defendants may house voluntary administrative segregation inmates at one or more satellite facilities. The following will be available to administrative segregation inmates housed at satellite facilities: (i) access to mental health services; (ii) access to medical services; (iii) a minimum of one hour outdoor recreation per day, weather permitting; (iv) visiting; (v) access to law library and general library services; (vi) access to religious programs; and (vii) educational programming that includes an initial review of each inmate's educational status, development of an appropriate educational course (as determined



by an educational professional) through the ABE level for each inmate who chooses to participate (which educational programming may be in a group or individual setting) and, for those for whom educational services are provided individually, individual contact with an educational staff member no less than twice each week.

B. Use Of CADC

1. Under the terms and conditions established by this Amended Stipulation, defendants may transfer medium or close custody inmates to CADC.
2. An inmate may be housed at CADC no more than one year unless he volunteers in writing to stay longer; provided, however, that if the 1998 New Mexico legislature provides NMCD with no funding for additional NMCD Beds or for New NM Beds, the parties will meet and confer immediately following the adjournment of the 1998 legislature to discuss the impact of such failure on this subsection, and will include the results of those discussions in the status report that the parties file with the three-judge court no later than forty-five days following the adjournment of the 1998 legislature. If the parties cannot agree on these issues at the time of the status report, each party will be free to pursue whatever legal remedies are available, which as to defendants may include a motion under the PLRA; provided, however, that defendants will not file a motion under the PLRA as to population issues prior to the filing of the joint status report.
3. The following inmates will not be included in the pool eligible for transfer to CADC under this Amended Stipulation: (a) inmates whose medical and mental health needs preclude transfer in the professional judgment of NMCD medical and mental health staff, (b) inmates who have an IEP/transition plan or who are in the IDEA-eligibility evaluation process (as those terms are defined in the Termination Plan -- Part I [Special Education]), (c) pretrial

detainees and inmates facing pending charges if those charges were not brought as a result of the inmate's in-prison activities, (d) inmates whose cases are on direct appeal and who are within seven months of their convictions, (e) inmates housed in honor units, and (f) up to thirteen *Duran* class representatives designated by plaintiffs' counsel; provided, however, that this agreement not to transfer a certain number of class representatives to CADC confers on those designated class representatives no particular status or right with respect to the *Duran* orders.

4. The following inmates will be initially excluded from the pool of inmates eligible to be transferred to CADC under this agreement unless all other medium and close custody inmates have been disqualified for transfer: (a) inmates employed in prison industry jobs, food service, or clerical positions; (b) inmates who have been incarcerated in the Dallas County Jail or the Central Texas Parole Violator Facility as a result of a transfer from NMCD; (c) inmates enrolled in college or vocational education programs; (d) inmates housed in Housing Unit One at the North facility; and (e) inmates who receive weekly visits. Inmates will be selected for transfer from this list in reverse order (*i.e.*, inmates who receive weekly visits will be transferred before inmates housed in Housing Unit One, and so forth).

5. Inmates transferred to CADC under this agreement will earn an additional six days of good time for each month or portion thereof they are housed out of state, assuming they are otherwise eligible for good time awards and subject to applicable NMCD good time policies and procedures, for the first four months they are housed in CADC. Thereafter, inmates will earn an additional eight days of good time for each month or portion thereof they are housed at CADC, assuming they are otherwise eligible for good time awards and subject to applicable NMCD good time policies and procedures. Any inmate who is transferred to CADC having previously been housed at a Texas facility will earn an additional eight days of good time for

each month or portion thereof they are housed at CADC, assuming he is otherwise eligible for good time awards and subject to applicable NMCD good time policies and procedures, starting with the first month that he is housed at CADC; provided, however, that no inmate will earn more than eight days of additional good time in any given month based on his incarceration during that month at a Texas Facility, CADC, or both. NMCD will either ensure that sufficient educational slots are available at CADC to ensure that inmates in the ILP obtain the educational programming needed to permit them to earn maximum good time for which they are otherwise eligible, or ensure that if sufficient educational programming slots are not available, ILP inmates are excused from the education requirements so that they can earn the maximum good time for which they are otherwise eligible.

6. Defendants will assign one NMCD classification officer to CADC for at least the first sixty days after the first group of NMCD inmates is transferred to CADC. This classification officer will conduct joint classification meetings with the staff of CADC for the purpose of making housing assignments and will be available for other classification consultations with inmates and staff.

7. Medium and close custody inmates will be housed in cells in New Mexico upon their return from CADC to the maximum extent feasible consistent with sound corrections policy and consistent with the assignments to cells of inmates who have been assigned to a day room bed.

8. The special master has prepared an informational memorandum that defendants will provide to all inmates assigned to CADC.

9. Defendants have promulgated and will continue to maintain guidelines on what property inmates may possess at CADC and what steps will be taken to safeguard inmate

property that cannot be possessed at CADC. Inmates will be able to take with them to CADC property that is permitted at CADC under these guidelines.

10. NMCD policy CD-081601, revised May 15, 1996, paragraph D, page 6-7 (appeal process), will apply to inmates assigned to CADC.

11. Defendants will ensure that security staff are assigned at CADC as provided in this paragraph B.11. At CADC, two fifty bed housing units contain multiple occupancy rooms of six and eight beds each. These two housing units will be staffed with one security officer to roam both units on the first and second shifts. On the third shift, an additional security officer (for a total of two) will be assigned to roam these two housing units, so that at least one security officer will be assigned to each separate housing area; provided, however, that NMCD is not required to ensure that an additional security officer is assigned to these two housing areas on the third shift unless and until both housing units containing multiple occupancy rooms are occupied by two or more inmates.

12. Plaintiffs' willingness to enter into this Amended Stipulation is based on their understanding of the conditions of confinement at CADC as observed by the court's special master and reported to them by him. If plaintiffs obtain evidence that those conditions of confinement have been materially altered during the term of this Amended Stipulation, they may present that evidence to the special master, and the mechanisms established by paragraphs F.3(a), (b), and (c) of this Amended Stipulation will be employed to address plaintiffs' concerns. If the use of those mechanisms results in formal legal action by plaintiffs seeking abrogation or modification of this Amended Stipulation, paragraph F.4 of this Amended Stipulation also will be effective.

13. Defendants will not assign administrative segregation inmates to CADAC.

C. Use of Day Rooms

In order to provide housing for medium security prisoners<sup>3</sup> for whom no cell beds are available in spite of measures taken by defendants pursuant to Section D of this Amended Stipulation, and only upon continued compliance with Section D of this Amended Stipulation, defendants will assign such prisoners to beds in a day room (“day room beds”) only at SNMCF and CNMCF. Defendants may assign prisoners to no more than 70 such beds at CNMCF and to no more than 70 such beds at SNMCF, for a total of 140 day room beds. In addition, if beds in cells are not available at the RDC, defendants may continue to assign prisoners to no more than 45 day room beds at the RDC at WNMCF, or if the RDC is moved from WNMCF, up to 45 inmates may be assigned to beds in day rooms at the new location of the RDC, except that no day room beds may be employed at the PNM complex; provided further that if the RDC is moved to CNMCF or SNMCF, defendants will assign no more than a total of 100 inmates to beds in day rooms at such unit (including inmates at the RDC), provided that the number of inmates assigned to day room beds at the RDC located at such facility may exceed 45 so long as the total number of inmates assigned to day room beds at that facility does not exceed 100.

D. Other Population Measures

1. Defendants, on a continuing and ongoing basis, will develop and implement all feasible means to maximize the availability and use of all medium security beds in cells within the NMCD. Defendants will work closely with the special master to accomplish these objectives.

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<sup>3</sup> In the absence of specific language to the contrary, all references to “inmate,” “prisoner,” “prisoners,” or “medium security prisoners” throughout this Amended Stipulation include only male prisoners.

The special master will maintain ongoing communication with plaintiffs' counsel to apprise the latter of progress on these matters and will keep plaintiffs' counsel fully informed of all efforts defendants take or decline to take to maximize the availability and use of all medium security cell beds within the NMCD.

2. NMCD will establish and maintain a Central Office review process for all forfeitures of good time longer than 90 days and will promulgate a CD policy governing that review process.

3. No later than September 1, 1997, NMCD will implement the CD Policy attached hereto as Exhibit B in connection with restoration of forfeited good time.

4. NMCD will implement the plan for drug courts attached hereto as Exhibit C.

5. NMCD will implement the plan to divert technical parole violators to community corrections attached hereto as Exhibit D.

6. NMCD will continue with its present policy of having a staff member at the Central Office available up to full time to help inmates ready for parole develop an acceptable parole plan; this staff person will assist inmates within 90 days of parole eligibility who request assistance in expediting the parole process, and will serve as the Secretary's designee at the Central Office to review appeals on grievances relating to parole eligibility, including time calculations and good time awards. As part of their periodic classification reviews of inmates on their caseloads, NMCD unit case workers will prepare a list of all inmates on their caseload who are within ninety days of parole eligibility but who do not yet have a parole plan in place. The case workers will prepare a list of these names and transmit the list at the end of each month to the staff member in the central office, and will inform such inmates of the availability and identity of the central office staff person to assist with development of a parole plan.

7. NMCD will issue the Memorandum attached as Exhibit E concerning how dual sentences are to be served.

8. NMCD will continue to review carefully classification overrides to ensure that public safety, staff and inmate safety and security, and population concerns are fairly and appropriately addressed.

9. No later than thirty days following execution of this agreement, NMCD will revise the classification scoring form to increase the length of sentence needed for 13 points from 3.5 years to 4 years, and to remove absconding from community corrections as a 13 point item, so long as the absconding did not result in criminal charges for escape.

E. Future Population Measures

1. Defendants will continue to use all reasonable efforts to identify and obtain New NM Beds.

2. If defendants assign medium, close, or administrative segregation custody inmates to new NMCD Beds or to New NM Beds, such beds to which medium, close or administrative segregation custody inmates are assigned will meet the Standards for Adult Correctional Facilities of the American Correctional Association and the NMCD policies identified and set forth in Exhibit A hereto; will house inmates in cells of at least 120 square feet if inmates are housed in double occupancy cells; will provide inmates with full-time work of at least 25 hours per week, full-time education of at least 20 hours per week, or a combination of work and education of at least 25 hours per week; will apply applicable NMCD Policies on classification and discipline; and will not house inmates in day rooms unless such housing is required to avoid housing inmates out of state and unless such housing complies with section II.B.4, 5, and 6 and II.C.2 of the 1991 Settlement Agreement and this Amended Stipulation. If

the parties disagree on whether day room housing is required to avoid out of state housing, paragraph F.3 of this Amended Stipulation will be employed to resolve the dispute.

3. The provisions of ¶E.2 of this Amended Stipulation will apply to any prison beds authorized and funded by the New Mexico legislature between the date of execution of this Amended Stipulation and December 31, 1998 (such new prison beds, which may be New NM Beds, new NMCD Beds, or some combination thereof, are referred to hereinafter as "1998 Beds"). Moreover, defendants will take the following steps with respect to such 1998 Beds:

- a. NMCD will (i) calculate the total number of jobs available throughout NMCD (all custody categories) for inmates in prison industries at the time this Amended Stipulation is executed ("Current Job Slots"); (ii) calculate the total authorized daily census for vocational education available throughout NMCD (all custody categories) at the time this Amended Stipulation is executed ("Current Voc. Ed. Slots"); (iii) calculate the combined total of Current Job Slots and Current Voc. Ed. Slots ("Total Current Slots"); and (iv) compare the Total Current Slots to the current NMCD inmate population (in all custody categories), thereby creating the "Current Ratio";
- b. Defendants will request sufficient funding from the 1998 New Mexico legislature to provide new or expanded prison industry jobs, vocational education opportunities, or both, to inmates in order to maintain (within a 5% range) the Current Ratio for all 1998 Beds (*i.e.*, if Total Current Slots exist for one in ten inmates, and if the total number of 1998 Beds is 1,000, defendants will be obligated to request sufficient funding for a combined



- total of least 95 new or expanded prison industry jobs, vocational education opportunities, or some combination thereof);
- c. Defendants will make the budget request to the 1998 New Mexico legislature for new or expanded prison industry jobs, new or expanded vocational education opportunities, or some combination thereof, to inmates in order to maintain (within a 5% range) the Current Ratio for all 1998 Beds a budget priority, consistent with other budget priorities related to *Duran*;
  - d. Defendants also may create new or expanded prison industries opportunities, vocational education opportunities, or both, without complete reliance on state funding (*i.e.*, through a joint venture with private enterprise), and such opportunities will count toward maintaining the Current Ratio for 1998 Beds;
  - e. New prison industries jobs, and new vocational education opportunities, include all programs not operational at the time this Amended Stipulation is executed (*i.e.*, programs that are not authorized and funded at the time this Amended Stipulation is executed), at any facility housing inmates (*i.e.*, not just facilities housing medium, close, or maximum custody inmates);
  - f. Expanded prison industries jobs and expanded vocational educational opportunities include all increases in authorized inmate personnel levels at prison industry operations extant at the time this Amended Stipulation is executed, and all increases in the authorized daily census of vocational

education due to expansion of existing programs that occurs after this Amended Stipulation is executed, at any facility housing inmates (*i.e.*, not just facilities housing medium, close, or maximum custody inmates);

- g. For the purpose of determining if the Current Ratio is maintained for 1998 Beds, prison industry jobs and vocational education opportunities will be evaluated in the same manner as they presently are by the special master in his audits of inmate activity (*i.e.*, a part time job or assignment to part time education count separately as Current Slots, and count separately in evaluating the maintenance of the Current Ratio, if the part time positions together result in full time programming). For NMCD prison industry/vocational education programs that combine hands-on vocational training with work study, for which NMCD can demonstrate implementation of legitimate vocational education curriculum plans, NMCD may count positions in such programs as separate vocational education slots and prison industry slots, so long as these positions meet the other requirements of this subparagraph (*i.e.*, so long as positions that are part time [less than 20 hours per week of education and less than 25 hours per week of work] would, if combined as is presently done in the special master's inmate activity audits such as the 54<sup>th</sup> Report, together result in full time programming ).

4. Any dispute over the implementation of ¶E.3 of this Amended Stipulation will be addressed using the dispute resolution mechanisms of ¶F.3 prior to the filing of any enforcement motion, whether for contempt or otherwise.

F. Other Agreements

1. Plaintiffs have withdrawn, without prejudice, their January 29, 1996 Motion for Temporary Restraining Order and Motion For Injunctive and Other Remedial Relief.

2. Effective April 15, 1997, so long as defendants comply with the provisions of this Amended Stipulation and with paragraphs II.A, B, and C of the June 10, 1991 Settlement Agreement, plaintiffs will not file any legal action challenging the assignment of inmates to Texas facilities or the assignment of up to 70 inmates to day room beds at SNMCF and CNMCF, respectively, and plaintiffs will continue to refrain from filing any such action until the opening and funding of New NM Beds or additional NMCD Beds that results in the availability of at least 600 new prison beds (funding of new beds that results in the creation of at least 600 beds is hereinafter referred to as the "Dayroom Triggering Event"). Upon the Dayroom Triggering Event and thereafter defendants will not assign inmates to day room beds at those two units or to Texas facilities so long as this Amended Stipulation is in effect. In addition, so long as defendants comply with the provisions of this Amended Stipulation and with paragraphs II.A, B, and C of the June 10, 1991 Settlement Agreement, defendants may assign up to 45 inmates to day room beds at the RDC; provided, however, that if defendants move the RDC from WNMCF, up to 45 inmates may be assigned to beds in day rooms at the new location of the RDC, except that no day room beds may be employed at the PNM complex; provided further that if the RDC is moved to CNMCF or SNMCF, and if the Dayroom Triggering Event has not occurred, defendants will assign no more than a total of 100 inmates to beds in day rooms at such unit (including inmates at the RDC), provided that the number of inmates assigned to day room beds at the RDC located at such facility may exceed 45 so long as the total number of inmates assigned to day room beds at that facility does not exceed 100. After the Dayroom Triggering

Event has occurred, defendants may assign up to 45 inmates to beds in dayrooms at the RDC facility wherever it is located even though defendants may not assign inmates to beds in dayrooms at other facilities because the Dayroom Triggering Event has occurred.

3. In the event plaintiffs' counsel believe defendants are in noncompliance with a provision of this Amended Stipulation, they may file a legal action, for contempt or otherwise, challenging the assignment of inmates to Texas facilities or to CADC or the assignment of inmates to day room beds, but only following the exhaustion of all of the following steps:

- a. Based upon information received from the special master pursuant to Section D.1 of this Amended Stipulation, or upon information received from other sources, plaintiffs' counsel formally request an investigation and written report by the special master concerning defendants' alleged noncompliance with any provision of this Amended Stipulation.
- b. The special master conducts an investigation, which he has represented to the parties he will accomplish as promptly as possible, and issues a written report containing a finding of noncompliance with this Amended Stipulation.
- c. The parties, within ten business days following the special master's issuance of a written report containing a finding of such noncompliance, fail to reach agreement during the course of good faith negotiations regarding instances of noncompliance found by the special master.
- d. No provision of this Amended Stipulation abrogates the provision in section II.E of the 1991 Settlement Agreement that plaintiffs will not move the court to prohibit all use of day room beds.

4. If plaintiffs file a legal action pursuant to paragraph F.3 of this Amended Stipulation, defendants will be free to raise all available defenses in response to such action, including challenging the special master's finding of non-compliance.

5. Defendants may continue to use beds at CADC as follows: (a) if beds are not available in New Mexico to house all class members in cells (except for class members who may be housed in day rooms pursuant to this Amended Stipulation); (b) if defendants have utilized all other internal mechanisms available for reducing the population in NMCD facilities (*e.g.*, steps taken pursuant to this Amended Stipulation); and (c) only until the opening and funding of New NM Beds or additional NMCD Beds that results in the availability of at least 1,200 new prison beds in addition to the 600 beds referenced in paragraph F.2 above.

6. The undersigned parties hereby agree that each retains, and does not by signing this Amended Stipulation waive, their legal positions with respect to the transfer of inmates out of state; provided, however, that defendants agree that in any litigation activity that occurs in connection with this Amended Stipulation or the transfers that take place hereunder they will not assert that, solely as a result of the inmates' physical absence from the state of New Mexico or as a result of plaintiffs' consent to this Amended Stipulation the court does not have jurisdiction (if it had any) over the inmates in CADC or over the transfers that take place under this Amended Stipulation.


7. No provisions of the court's orders in this cause relating to conditions of confinement, apart from the provisions of this Amended Stipulation, will apply to prisoners while they are housed in a Texas facility.


8. No part of the court's orders in *Duran vs. Johnson* except the applicable portions of this Amended Stipulation will apply to NMCD inmates while they are housed in CADC.


9. No part of the court's orders in *Duran vs. Johnson* except the applicable portions of this Amended Stipulation will apply to NMCD inmates while they are housed in New NM Beds.

10. This Amended Stipulation will remain in effect until December 31, 1998, and the court's enforcement powers with respect to this Amended Stipulation will not extend beyond that date.

11. The parties will file this Amended Stipulation for the court's review and approval.

  
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Assistant Attorney General  
Counsel for Defendants

  
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