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United States District Court  
Southern District of Texas  
FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

DEC 11 1992

Michael N. Milby, Clerk

DAVID RUIZ, et al.,	§	CIVIL ACTION NO. H-78-987
	§	
Plaintiffs,	§	
	§	
UNITED STATES OF AMERICA,	§	FINAL JUDGMENT
	§	
Plaintiff-Intervenor	§	
	§	
v.	§	
	§	
JAMES A. COLLINS, et al.,	§	
	§	
Defendants.	§	

IT IS STIPULATED by the parties, pursuant to the court's order of March 6, 1990, and subject to the court's approval after appropriate proceedings pursuant to Fed. R. Civ. P. 23, as follows:

**I. Purpose and Scope of Final Judgment**

This Final Judgment is intended to consolidate previous stipulations, agreements and orders in this action, to meet the parties' obligations under the court's March 6, 1990, order to establish a timetable for the orderly termination of the court's jurisdiction of this case and to resolve all outstanding issues in *Gomez v. Collins*, Case No. L85-188-CA, which has been consolidated with *Ruiz*. Defendants hereby withdraw their Motion to Terminate Jurisdiction.

Except as otherwise stated, this Final Judgment supersedes all previous orders, plans and stipulations in this action; provided, however, nothing in this Judgment shall modify the court's orders of September 20, 1979, June 16, 1980 and April 30, 1982, relating to the protection of prisoner witnesses.

Ruiz v. Estelle



PC-TX-003-003

Upon the court's final approval of this Final Judgment, defendants shall be relieved of the operation of all extant orders, plans and stipulations with respect to classification, necessities and the Physically Handicapped Offender Program.

For most substantive areas, this document employs the following format:

A. a condensed statement of the specific injunctive relief ordered henceforth, if any;

B. the supplemental relief, if any, included in the relief set forth in paragraph A, and the reasons therefor;

C. monitoring and reporting requirements established herein in lieu of the monitoring and reporting obligations required by the Report of Special Master Recommending Timetable for Termination of the Mastership as ordered by the court on May 24, 1988; and

D. a timetable for relief from judgment pursuant to Fed. R. Civ. P. 60(b), and for termination of the court's jurisdiction.

In certain instances the condensed statement of the relief ordered henceforth includes both a requirement that defendants adhere to certain extant rules, policies, procedures or plans, and a provision that defendants may modify those rules, policies, procedures or plans after notice to plaintiffs and the court. In all of these instances, the proposed modification shall be deemed approved by the court thirty days following service on plaintiffs and filing with the court unless an objection to the proposed modification is filed during that thirty-day period. If an objection is filed, the court shall evaluate the proposed modification in light of the fundamental purposes of the rules, policies, procedures or plans required by this Final Judgment that defendants seek to modify, and shall approve the proposed modification unless those fundamental purposes would be substantially frustrated by the proposed modification.

## **II. Staffing**

A. Defendants shall employ sufficient trained security and non-security staff to provide for and maintain the security, control, custody and supervision of prisoners, taking account of the security and custody levels for the prisoner population and the design of defendants' facilities.

B. No supplemental relief is ordered.

C. Defendants shall have no additional monitoring or reporting obligations with respect to staffing.

## **III. Support Services Inmates**

A. No prisoner shall be permitted to exercise authority over another prisoner, to supervise another prisoner, to convey orders or instructions from TDCJ-ID employees to another prisoner, to discipline another prisoner, to count or assist in counting other prisoners, to obtain sensitive information about other prisoners absent a state or federal court order or, except as required or permitted by the nature of the prisoner's classification status or non-support service job or program assignment, to have special privileges such as special or extra clothing, food, property, cell assignments or recreation. The purpose of the restriction on sensitive information is to prevent a prisoner from gaining power or an advantage over another prisoner as a result of obtaining information about the other prisoner. "Sensitive information" is defined in Section I.G of the Stipulated Modification of Sections II.A and II.D of Amended Decree, but this definition may be modified by the Board of Criminal Justice as appropriate and consistent with the purposes of this paragraph III.

B. No supplemental relief is ordered.

C. Defendants shall have no additional monitoring or reporting obligations with respect to support service inmates.

#### **IV. Discipline**

A. Defendants shall comply with their own rules regarding the discipline of prisoners. Defendants' current rules are the TDCJ-ID Disciplinary Rules and Procedures for Inmates, revised May, 1991. Only the Board of Criminal Justice shall have the discretion to alter these rules. All disciplinary hearings that may result in sanctions of solitary confinement or a loss of class or good time shall be tape recorded and the tape preserved and made available to the prisoner or his counsel substitute for review on request for six months after the hearing. Furthermore, defendants shall maintain in effect a staff counsel substitute program and shall ensure that prisoners assigned to solitary confinement receive the full daily rations of food and that all other prisoners receive, consistent with security requirements.

B. No supplemental relief is ordered.

C. Defendants shall have no additional monitoring or reporting obligations with respect to discipline.

#### **V. Administrative Segregation**

##### **A. Summary of Current Obligations**

1. Defendants shall comply with the Administrative Segregation Plan. Defendants shall have discretion to alter the Plan, but shall notify the court and plaintiffs' and plaintiff-intervenor's counsel no less than 30 days in advance of any proposed substantive modification and the rationale for the modification. In addition, defendants shall provide adequate shelving in each administrative segregation cell, which may consist of an empty bunk bed, and adequate lighting in each administrative segregation cell, which shall at a minimum provide 20 foot candles of light for all places in the cell in which reading is normally accomplished. Furthermore, all recreation yards at all Michael prototype units, extant or hereafter constructed, shall be at least the size of the administrative segregation recreation

yards at the Michael unit, at least 20 feet high if they are enclosed (and any enclosure shall be transparent), and equipped at least for the activities for which the administrative segregation recreation yards at the Michael unit are presently equipped. With respect to all units that are not of the Michael prototype design to which administrative segregation prisoners are assigned, defendants shall not reduce the present size of the administrative segregation recreation yards or the nature and amount of equipment presently provided to prisoners in administrative segregation recreation areas. Administrative segregation recreation periods may begin as early as 7 a.m. if the sun has risen or if adequate artificial lighting is provided. Except at the Michael Unit and all units thereafter constructed, immersion heaters may be denied to all Group A security detention prisoners and all pre-hearing detention prisoners. Prisoners assigned to the Michael Unit and all units thereafter constructed, protective custody prisoners, and Group B security detention prisoners shall retain all personal property items allowed to general population prisoners unless denied on a case-by-case basis pursuant to Section II.5.a of the Administrative Segregation Plan.

2. Each prisoner assigned to administrative segregation shall be housed in a single occupancy cell.

B. Defendants shall have no additional monitoring or reporting obligations with respect to administrative segregation.

C. In the absence of a pending motion or objection, or further order to the contrary, defendants shall be relieved of the operation of paragraph V.A.1 on December 31, 1992.

## **VI. Work Health and Safety**

A. Defendants shall provide a safe and healthful environment and work conditions for all prisoners, and shall comply with the revised TDCJ-ID 1988 Occupational Health and Safety Manual. Defendants have discretion to modify the

Manual but any modification must adhere to the codes and standards listed in Policy Number 01-A-1 of the Manual.

B. No supplemental relief is ordered.

C. Defendants shall serve on plaintiffs' counsel any report defendants receive from the Texas Department of Agriculture prior to May 1, 1992, on the storage, removal and use of pesticides in TDCJ-ID.

D. In the absence of pending motion or objection, or further order to the contrary, defendants shall be relieved of the operation of paragraph VI.A on May 1, 1992.

## VII. Use of Force

A. Defendants shall maintain and enforce written policies and procedures governing when and how force and chemical agents are permitted to be used by TDCJ-ID personnel against prisoners, reporting and internal investigation requirements when force is used or is alleged to have been used, and discipline of employees for violations of the policies and procedures. The policies and procedures shall require that only the minimum force and chemical agents reasonably believed to be necessary may be used, and shall establish reasonable policies, procedures and standards for the effective investigation of prisoners' allegations of unnecessary or excessive uses of force and discipline of employees determined to have violated the policies and procedures. Only the Texas Board of Criminal Justice shall have discretion to alter the written policies and procedures. Until December 31, 1992, defendants shall notify the court and counsel for plaintiffs no less than 30 days in advance of any proposed substantive modification of the policies and procedures and the rationale for the modification.

B. No supplemental relief is ordered.

C. Defendants shall have no additional monitoring or reporting obligations with respect to use of force.

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**VIII. Access to Courts**

A. Defendants shall maintain and enforce written policies and procedures permitting prisoners access to the courts, lawyers, and public officials and agencies and providing for investigations of allegations of retaliation for the exercise of such access. These policies and procedures shall be posted centrally in each prison and a copy shall be provided to each prisoner when the prisoner arrives in defendants' custody. Only the Texas Board of Criminal Justice shall have discretion to alter the policies and procedures.

B. No supplemental relief is ordered.

C. Defendants shall have no additional monitoring or reporting obligations with respect to access to courts.

**IX. Maintenance of Facilities**

A. Defendants shall conduct preventive and regular maintenance of all facilities and equipment affecting prisoners. They shall ensure that all such areas are maintained in a safe and sanitary condition. Defendants shall have a written maintenance program that ensures that all deficiencies are identified, reported, and corrected in a timely manner.

B. No supplemental relief is ordered.

C. Defendants filed quarterly reports on compliance with the requirements relating to preventive maintenance and to repairs of minor structural deficiencies on July 1, 1992, and August 5, 1992. Those reports in the aggregate, in combination with the previously filed October 1991 report, reported on compliance at all of the units listed in Section II.A of the Stipulation Modifying Crowding Provisions of Amended Decree ("Crowding Stipulation").

D. In the absence of a pending motion or objection, or further order to the contrary, defendants shall be relieved of the operation of paragraph IX.A on September 15, 1992.

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**X. Major Structural Deficiencies**

A. No later than December 31, 1992, defendants shall complete the renovations identified in the TDCJ-ID Inventory of December 1986, and the renovations required by the Stipulation of May 8, 1989 ("MSD Stipulation"), including the heating and ventilation repairs and renovations required by that stipulation, to the standards established by that stipulation.

B. No supplemental relief is ordered.

C. Audits and Reports

1. Repairs and renovations accomplished pursuant to the inventory of December 1986 and the MSD Stipulation shall be audited and repaired in accordance with the letter of June 28, 1991, attached hereto as Exhibit A and incorporated herein by reference.

2. As the heating and ventilation renovations are completed at any unit, defendants shall employ an outside contractor to balance the renovated heating and ventilation systems at that unit.

3. The individual or entity performing the balancing of the renovated heating and ventilation system at a unit shall prepare a written report of its activities and findings immediately upon concluding those activities, a copy of which shall be submitted to plaintiffs' counsel and to experts employed by the Special Master.

4. The experts employed by the Special Master shall review each balancing report prepared pursuant to Paragraph X.C(3). At ten units, which shall include the Beto 2, Eastham, Ellis 1 and the Ferguson units plus six units selected by plaintiffs' counsel, the experts employed by the Special Master shall conduct whatever additional investigation they and the Special Master deem necessary to determine that the heating and ventilation renovations are in compliance with the provisions of the MSD Stipulation. This investigation may include but is not limited

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to hiring an independent balancing contractor. Upon completion of this review and investigation, if any, the experts employed by the Special Master shall prepare a written report of their findings.

5. Based on the results of the audits at the ten units selected pursuant to Paragraph X.C.(4), defendants may request that the parties meet and confer in good faith to determine whether the auditing process could be limited or modified and still serve the purpose of ensuring that all completed heating and ventilation renovations comply with the requirements of the MSD Stipulation. In the event that the parties cannot reach agreement, the process established in Paragraph X.C(4) shall continue for an additional four units selected by plaintiffs' counsel.

6. If the reports on the heating and ventilation renovation required by Paragraphs X.C(4) and (5) show substantial compliance with the MSD Stipulation at that unit, and if plaintiffs do not object in writing within 45 days of their receipt of a report, no further audits of the heating and ventilation renovations at that unit shall be conducted by the experts; provided, however, that no renovation may be deemed to be in substantial compliance with the MSD Stipulation unless the standard for ventilation established for that unit, (i.e., the required air flow expressed in cubic feet per minute) and for air temperature control are met. If the report indicates that any portion of the heating and ventilation renovations is not in substantial compliance with the MSD Stipulation, and defendants do not object in writing within 45 days of their receipt of the report, defendants shall promptly initiate and complete whatever renovations are necessary to come into compliance with the MSD Stipulation and shall submit to counsel for plaintiffs and plaintiff-intervenor and to the experts employed by the Special Master a report on the renovations initiated and completed. The Special Master's experts then shall spot check the repairs reported in defendants' report and notify counsel for the parties of

their findings. If any such expert spot check report finds substantial noncompliance in connection with defendants' repairs, defendants shall file a final report in response to the expert's report, objecting to the findings in the expert's report, setting forth the remedial actions defendants intend to take in response to the findings, or a combination thereof.

D. In the absence of a pending motion or further order to the contrary, defendants shall be relieved of any further obligations under this paragraph X forty-five days following the filing of the last report required by paragraph X.C, or upon resolution by the court of any objection to the report, whichever occurs later.

**XI. Programmatic and Recreational Activity**

A. Defendants shall provide substantially full-time work, educational, vocational or on-the-job training opportunities, or some combination thereof, to all general population prisoners who are medically capable of participating in these activities. In addition, each general population prisoner shall be given the opportunity to be involved in recreational and other non-programmatic activity no fewer than four hours a day on each non-holiday weekday, out of his cell or dormitory sleeping area. Each prisoner shall be given an opportunity to spend at least two of those four hours in a gymnasium, an outdoor recreation yard, or in some form of in-shop hobby and crafts activity if the prisoner is enrolled in such activity; provided, however, that each such prisoner shall be given an opportunity to spend at least one of those two hours in a gymnasium or an outdoor recreation yard. The balance of the prisoner's non-programmatic time may be spent in a day room, library, law library, chapel or other recreational facility or activity; provided, however, that the prisoner must have alternatives to the day room for a substantial portion of that time. Time spent by a prisoner in a day room during population counts or awaiting access to a dining room or to commissary shall not be regarded as programmatic, non-programmatic, or recreational activity. Any medically-capable

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general population prisoner who is not afforded substantially full-time work, educational, vocational or on-the-job training opportunities, or some combination thereof, shall be provided additional non-programmatic and recreational opportunities commensurate with the shortfall in his opportunity for programmatic activities.

On each scheduled non-work day (Saturday, Sunday and holidays for most prisoners), each general population prisoner shall be given the opportunity to spend at least three hours in a gymnasium or an outdoor yard, or in some form of in-shop hobby and crafts activity if the prisoner is enrolled in such activity; provided, however, that each such prisoner shall be given an opportunity to spend at least two of those three hours in a gymnasium or an outdoor recreation yard. In addition, he shall be given the opportunity to spend at least four hours in a day room, library, law library, chapel or other recreational facility or activity; provided, however, that the prisoner must have alternatives to the day room for a substantial portion of that time. Time spent by a prisoner in a day room during population counts or awaiting access to a dining room or to commissary shall not be regarded as programmatic, non-programmatic or recreational activity.

Each general population prisoner who is not under cell restriction imposed as a valid disciplinary punishment shall be afforded a reasonable time for a least hourly, two-way ingress to and egress from the day room.

B. No supplemental relief is ordered.

C. No later than June 1, 1992 defendants shall file a comprehensive report on compliance with Paragraph XI.A.

D. If plaintiffs file no objections to or motions based on the report required by paragraph XI.C that result in a further order to the contrary, defendants shall be relieved of the operation of paragraph XI.A forty-five days after the report is filed. If plaintiffs file objections to or a motion based on the report required by

paragraph XI.C, defendants shall be relieved of the operation of paragraph XI.A upon resolution of the objections and motion.

**XII. Visiting**

Except as provided herein, defendants shall be relieved of the operation of all extant orders, plans and stipulations with respect to visiting upon the court's final approval of this Final Judgment; provided, however, that defendants shall continue to maintain a contact visiting program.

**XIII. Crowding**

**A. Acknowledgements**

In entering into this Final Judgment, the parties acknowledge that they have had more than six years of experience under the Stipulation Modifying Crowding Provisions of Amended Decree ("Crowding Stipulation"); that there has been substantially more demand for prison space than the supply of space available throughout that period and before, and that this imbalance may or may not continue; that House Bill 93 may or may not have substantial impact on sentencing practices and the use of options to incarceration, including diversion programs; and that prisoners sentenced to defendants' custody have been and may or may not continue to be held in county jails. The parties further acknowledge that they have, in connection with the negotiation of this Final Judgment, assessed the capacity of each of the prison units named in paragraph XIII.B, taking into consideration the experience gained from operating under the Crowding Stipulation, the design of the units and the modifications and improvements to the units made pursuant to the Crowding Stipulation. The parties further acknowledge that the maximum system population established by paragraph XIII.B permits a level of spatial density in the prisons that exceeds the spatial density at which those prisons were originally designed to operate and, in most instances, exceeds the spatial densities of the other prison systems in the United States. Under the maximum population permitted by

paragraph XIII.B, the maximum population of the prison system in existence at the time of this Final Judgment is being increased by 2,300 prisoners.

**B. Maximum Population**

1. The maximum system population of the TDCJ-ID is the total number of prisoners who may be assigned to TDCJ-ID units. At the time of this Final Judgment, the maximum system population of existing units, including the Beto I, Beto II, Briscoe, Central, Clemens, Clements, Coffield, Daniel, Darrington, Diagnostic, Eastham, Ellis I, Ellis II, Ferguson, Gatesville, Goree, Hobby, Hightower, Hilltop, Hughes, Huntsville, Jester I, Jester II, Jester III, Lewis, Michael, Mt. View, Pack I, Pack II, Ramsey I, Ramsey II, Ramsey III, Retrieve, Roach, Wynne units, and 20 trusty camps, is 51,067; provided, that defendants must meet the terms and conditions in Exhibit B hereto prior to permitting the maximum system population of the units listed in this paragraph B.1 to reach 51,067, and all adjustments to population referred to in that exhibit are included within the maximum system population of 51,067 permitted by this paragraph. This 51,067 is 2,300 more than the maximum population permitted to these units under the applicable orders that are being superseded by this Final Judgment.

2. Except as permitted by paragraph XIII.D.2, defendants shall not house more than a total of 38,790 prisoners on the units listed in Section II of the Crowding Stipulation (the Beto I, Beto II, Central, Clemens, Coffield, Darrington, Diagnostic, Eastham, Ellis I, Ellis II, Ferguson, Gatesville, Goree, Hilltop, Huntsville, Jester I, Jester II, Jester III, Mt. View, Pack I, Pack II, Ramsey I, Ramsey II, Ramsey III, Retrieve, Wynne units), and the trusty camps located adjacent thereto. This number is 2,136 more than the maximum population permitted on these units under the applicable orders that are being superseded by this Final Judgment.

Except as permitted by paragraph XIII.D.2 or Exhibit B, defendants shall not permit the population of the following individual units to exceed:

Darrington	1610
Ferguson	2100
Wynne	2300
Beto I	3150
Clemens	894
Coffield	3150
Eastham	2153
Ellis I	1995
Ramsey II	893
Retrieve	809
Huntsville	1705.

3. Prisoners assigned to dedicated free-standing psychiatric in-patient facilities (currently the Skyview unit and, upon its completion, the Sugarland psychiatric facility), or to any dedicated free-standing psychiatric in-patient facilities hereafter constructed, and prisoners assigned to designated boot camps operated by defendants, are not included in the maximum system population, and the facilities housing such prisoners are not included in any calculation of capacity or maximum population. From a capacity standpoint, any such facility, and any trusty camp, may be operated at 100% of the population defendants have established for that facility.

4. The maximum population of any unit, and the maximum system population, shall be reduced if any facility, including cellblocks, dormitories, or any portion thereof is, for any reason, closed or converted to any use other than the housing of prisoners. The unit and system population shall be reduced by the total number of beds in the closed facility (e.g., two times the number of two-person cells, the number of single occupancy partitioned bed spaces in dormitories).

Defendants may restore unit and system maximum population lost pursuant to this paragraph by reopening the closed or converted housing after any necessary renovations.

C. Defendants shall take reasonable steps to ameliorate the effects of crowding on each of their prison units. For each unit, they shall examine the impact of crowding on timely access to medical care and on opportunities to participate in meaningful work, education, substance abuse rehabilitation and nonprogrammatic activities. Further, defendants shall take reasonable steps to provide opportunities for prisoners to engage in programmatic and non-programmatic activities outside of their cells, dormitories, and day rooms.

**D. New Facilities**

1. Defendants may increase the maximum system population established by paragraph XIII.B.1 by adding facilities pursuant to the terms of this paragraph XIII.D, when the facilities are opened and occupied. Defendants shall not permit TDCJ-ID's total prisoner population to exceed the maximum system population established by paragraph XIII.B.1, as adjusted pursuant to paragraph XIII.B.4 and by the addition of the maximum population of facilities added pursuant to the terms of this paragraph XIII.D.

✓ 2. Defendants may increase maximum system population by building new prisons modeled on the Michael, Hobby or trusty camp prototypes, as well as new types of confinement facilities, provided that any such new construction, regardless of design or architectural style, shall proceed based on architectural and engineering designs, drawings and specifications of a quality and scope similar to the designs that have been the basis of the Michael, Hobby and trusty camp prototypes, prepared under the direct supervision of and approved by a registered architect and professional engineers trained in the appropriate discipline for each aspect of the design (i.e., civil, structural, mechanical and electrical). Such newly constructed

facilities shall be designed to promote sound classification and security practices and the safety, health and well-being of both prisoners and staff, and shall provide adequate living space for prisoners.

3. Defendants shall establish the maximum unit population for any newly constructed unit, at the time its construction is commenced, taking into account the need for inter- and intra-unit flexibility for classification and prisoner movement. Defendants may adjust the maximum unit population of any unit constructed and opened after the date of entry of this Final Judgment, as permitted by state law, provided that the unit contains adequate space to provide for the matters listed in Section 499.102(a) (1)-(15) of House Bill 124 (as enacted June 16, 1991).

4. Defendants may increase maximum system population by acquiring facilities or contracting for the operation of facilities. For any such facility, defendants shall do the following: (a) establish a maximum unit population for such new facility at the time they acquire or contract for the operation of the facility, taking into consideration the need for inter- and intra-unit flexibility for classification and prisoner movement; (b) insure that prisoners in dormitories with more than 8 prisoners per dormitory in a facility for prisoners who are likely to remain in defendants' custody more than 120 days, and with more than 24 prisoners per dormitory in facilities for prisoners who are expected to be released from defendants' custody within 120 days, shall be provided with single occupancy privacy partitions; and that only minimum custody male prisoners and minimum or medium custody female prisoners may be housed in dormitories with more than six prisoners; (c) insure that prisoners in cells or cell-like housing are provided with substantially similar cell space as in the Michael and Hobby unit prototypes, if the facility houses prisoners who are expected to remain in defendants' custody for more than 120 days; and (d) insure that the facility shall contain adequate space to



provide for the matters listed in Section 499.102(A) (1)-(15) of House Bill 124 (as enacted June 16, 1991), recognizing that less space may be needed for facilities where the length of stay is limited to less than 120 days than for facilities where the length of stay may be longer than 120 days.

5. Defendants may increase unit and system population by constructing permanent additions to or renovating portions of future units and existing units other than the Darrington, Clemens, Ramsey I, Ramsey II, Wynne, Eastham, Ellis I, Hunstville and Retrieve units. No addition or renovation that is not substantially self-contained like trusty camp shall be undertaken if its operation would impair the provision of the services, facilities and conditions to the prisoners assigned to the addition or to the unit to which the addition or renovation is added. Any addition or renovation shall be a permanent structure and construction or renovation shall proceed based on architectural and engineering designs, drawings and specifications of a quality and scope appropriate to the size of the project, prepared under the direct supervision of and approved by a registered architect and professional engineers trained in the appropriate discipline for each aspect of the design (i.e., civil, structural, mechanical and electrical) as appropriate considering scope of the designs, drawings and specifications prepared. Defendants shall not renovate for the purpose of housing prisoners any spaces constructed or used as common spaces for prisoners without first replacing the common space to be renovated.

6. Defendants currently are operating two boot camps in trusty camp prototype facilities. If and when either or both of these boot camps are converted to regular prisoner housing, defendants may add to maximum unit and system population the 200 beds in each converted facility (or up to 214 beds pursuant to paragraph 1 of Exhibit B).

7. In newly constructed or acquired units or portions of units, solitary, pre-hearing detention, infirmary, hospital, and transient beds other than those for incoming prisoners in the diagnostic process are not and shall not be included in maximum system population because prisoners only pass through them temporarily on their way to and from their regular housing assignments.

8. Defendants shall not use, even on a temporary basis, any tents (except as provided in Section 9 below) or facilities not constructed or renovated for the purpose of housing of prisoners, including but not limited to runs, hallways, converted dayroom space and gymnasiums, provided that defendants shall not be precluded from using tents or other temporary facilities in the case of a natural disaster or *bona fide* emergency (unrelated to population pressures) for only so long as is necessary under the circumstances, or for not more than six months to house roving construction crews or prisoners temporarily displaced from their regular housing units because of housing renovation.

9. To the extent permitted by state law, defendants may use tents or tent-like structures for particular correctional programs that they may create such as work camps, wilderness camps, forestry camps or boot camps, when such structures are practical and appropriate for the particular program, if: (a) the Board of Criminal Justice enters a finding that utilization of such structures is cost-effective; (b) defendants decide to operate or contract for the operation of such a particular program, define the program in writing, and establish a maximum population for the structures; and (c) the structures are certified as fire-safe by the state Fire Marshal for up to the maximum population that defendants have established for them. Tents may not be used simply to increase the population of an existing or future unit; increasing unit population is covered by paragraph XIII.D.5 above.

10. This Final Judgment shall not apply to any contract facility not operated by defendants, and nothing herein shall restrict the operation of any prisons that defendants may contract for, except that defendants shall contract for and enforce on any contractor the space standards and requirements set forth in paragraphs XIII.D.2, 4 and 9.

**XIV. Gomez**

Defendants shall implement and maintain a program to ensure that prisoners seeking to use or using the law library will have access to Spanish-English interpreters as necessary. Defendants shall implement and maintain a program to ensure that prisoners seeking to use or using the grievance process will have access to Spanish-English interpreters as necessary. Defendants shall implement and maintain a program to ensure that prisoners participating in the disciplinary system will have access to Spanish-English interpreters as necessary. In the absence of a pending motion or further order to the contrary, defendants shall be relieved of the operation of this paragraph upon the court's approval of this Final Judgment.

**XV. Special Master**

Absent further order of the court, the Amended Order of Reference, dated July 24, 1982, shall be vacated at the time that plaintiffs' counsel are relieved of their obligations to the class. As has been true since the closure of his Houston office, the Special Master no longer has affirmative monitoring and reporting obligations, but he or a monitor on his staff shall perform such tasks as are agreed to by the parties or following a motion by a party. In particular, the parties agree that the Special Master shall continue to participate actively in the evaluations of major structural deficiencies conducted by outside consultants (paragraph X.C. *supra*) and that he will assist the parties in resolving other remaining compliance issues. In order to provide the parties with that assistance, the Special Master may, upon the request of either party and following consultation with all counsel, select one or

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more expert consultants to provide their guidance and expertise to all parties. Any expert selected by the Special Master pursuant to this paragraph will prepare report(s) as required by the circumstances, will make himself available to counsel for either party to respond to questions about his reports or the underlying findings, and will be compensated for his time and expenses by the Special Master as part of the Special Master's usual monthly expense statements. By agreeing to the employment of expert consultants selected by the Special Master, neither plaintiffs nor defendants waive their respective positions concerning the direct retention and compensation of expert consultants by a party.

**XVI. Reporting; Monitoring by Plaintiffs' Counsel**

A. The reports required of defendants by this Final Judgment shall be the only remaining reporting requirements imposed on defendants.

B. Until December 31, 1992, defendants shall file all reports required by the Report of the Special Master Recommending Certain Reports by the Defendants Relating to TDC Units to be Constructed in the Future, as ordered by the court on June 7, 1989.

C. In addition, defendants shall submit to plaintiffs' counsel on a timely basis, as they are prepared, the reports or documents referred to throughout this Final Judgment.

D. Until the date of relief from the operation of this Final Judgment, by its terms as to a particular matter, or until plaintiffs' counsel are relieved by the court of their obligations to the class as to a particular matter, whichever occurs earlier, plaintiffs' counsel and any experts retained by them shall have reasonable access to all facilities governed by this Final Judgment, for the purpose of viewing such facilities and interviewing prisoners on any matter applicable to that unit for which relief from judgment has not been obtained and, with the consent of defendants' counsel (which consent shall not be unreasonably withheld), shall be

allowed to speak with defendants' employees in connection therewith, at reasonable times upon ten days' advance notice to defendants' counsel. Advance notice shall include an itinerary. Defendants may deny plaintiffs' counsel access to any facility on *bona fide* grounds of security. Defendants' counsel may accompany plaintiffs' counsel or expert on any such visit provided that plaintiffs and plaintiff-intervenor's counsel may conduct confidential interviews with prisoners. Upon request, until plaintiffs counsel are relieved by the court of their obligations to the class, defendants shall furnish to plaintiffs' and plaintiff-intervenor's counsel all documents otherwise discoverable that are relevant to matters for which relief from judgment has not been obtained.

E. Plaintiffs' counsel will be relieved of their obligations to the class with respect to issues as to which relief from judgment has been or will be granted pursuant to the terms of this Final Judgment as of date of such relief and, except as to a matter on which a motion or objection is pending, they will be relieved of their obligation to the class on all other issues on June 1, 1993.

F. Plaintiffs' attorneys' fees, costs and expenses shall be paid pursuant to the Judgment entered on January 10, 1983, which is incorporated herein by reference. The parties acknowledge that that Judgment does not obligate defendants to pay any fees, costs or expenses for services rendered by plaintiffs' counsel on any issue or matter with respect to which they do not have an obligation to represent the class.

#### **XVII. Defendants' Internal Monitoring and Enforcement**

Defendants shall continue to employ an adequate number and type of staff, whether denominated as monitoring, auditing, administrative or other staff, at levels sufficient to ensure effective monitoring of all TDCJ-ID rules, regulations, policies and practices related to each area addressed by this Final Judgment.

**XVIII. Mentally Retarded Offender Program**

A. Defendants shall maintain and operate a Mentally Retarded Offender Program consistent with the terms of the Mentally Retarded Offender Plan [hereinafter "MROP"], as modified and approved pursuant to the Order of April 5, 1985.

B. No supplemental relief is ordered.

C. Defendants shall evaluate their compliance with the requirements of the MROP pertaining to individual habilitation plans, treatment teams, behavior modification and training in daily living skills (which include appropriate pre-release programs). A report setting forth the results of the evaluation has been submitted to plaintiffs' counsel and shall be filed with the court no later than March 9, 1992. In addition, defendants shall retain an expert consultant who shall, through a review of records as well as on site evaluation of prisoners and a review of services, assess:

- (a) the appropriateness of the current placement of prisoners who carry a dual diagnosis of mental retardation and mental illness in the MROP program for males;
- (b) the appropriateness and sufficiency of treatment and habilitation programs for such prisoners; and
- (c) the staff resources (considering both numbers of staff and credentials, training and experience of staff) necessary to meet the treatment and habilitation needs of such prisoners.

A written report of the expert consultant's assessment, conclusions and recommendations, together with defendants' response, has been submitted to plaintiff's counsel and shall be filed with the court no later than May 1, 1992.

D. In the absence of a pending motion or objection, or further order to the contrary, defendants shall be relieved of the operation of paragraph XVIII.A. upon court approval of this Final Judgment.

**XIX. Health Services**

A. Defendants shall comply with the provisions of the Consent Decree, April 20, 1981, pertaining to medical and dental care, and shall maintain a system for the delivery of medical and dental care and other health care services consistent with the provisions of the Comprehensive Medical Health Care Plan, as modified and approved, Order on Defendants' Comprehensive Health Care Plan, January 2, 1985; Order Concerning Defendants' Psychiatric Services Plan and Comprehensive Health Care Plan, January 3, 1986; Stipulation and Order - - Accreditation of the Health System, May 29, 1985.

B. No supplemental relief is ordered, provided that: (1) defendants shall carefully monitor the timeliness of access to unit health services (including medical, dental and psychiatric services) by walk-in and written sick call procedures; such monitoring shall measure access against the guidelines set forth in the "Discussion" of Standard P-35, Standards for Health Services in Prisons, January 1987, National Commission on Correctional Health, unless the guidelines are revised, in which case the monitoring shall measure access against the revision; defendants promptly shall take corrective action on units that fail to afford access consistent with these guidelines, which corrective action may, if necessary, include reducing the number of prisoner population at units where no other steps succeed in bringing the unit into compliance with the sick call standards; provided, however, deviations from these guidelines which result from exercise of sound medical judgment shall not be deemed grounds for corrective action; (2) because TDCJ-ID has chronically had a severe shortage of nurses, defendants promptly shall take all steps legally available to them to offer competitive terms and conditions of employment and compensation to nurses and maximize their ability to attract nurses to accept employment; and (3) defendants shall continue developing the Health Services Patient Liaison Program, including the development of comprehensive policies and procedures for it, the

assignment of sufficient staff to ensure that timely investigation of inquiries concerning the health care needs and treatment of individual prisoners and the notification to TDCJ-ID staff and prisoners of the function of the Patient Liaison Program.

C. Defendants shall prepare the following health services reports:

1. Defendants shall file a report on the availability of timely specialty consultations to TDCJ-ID prisoners. The report shall examine all urgent referrals for TDCJ-ID units to the University of Texas Medical Branch -- Galveston, and to Palestine Memorial Hospital, made during the month of August, 1991, and shall include a review of a random sample of system-wide routine referrals for specialty consultations made in March, 1991. The report shall be filed with the court no later than March 1, 1992.

2. Defendants shall conduct a self-audit, using the standard self-audit instrument used by TDCJ-ID in its quality assurance program, of dental services provided at the outpatient clinics at the Ramsey III, Jester III, Huntsville, Darrington, Beto I and Gatesville units. A report setting forth the results of the self-audit shall be submitted to plaintiffs' counsel no later than April 15, 1992 and shall be filed with the court no later than June 15, 1992.

3. Defendants shall conduct an audit of medical emergencies occurring during August 1991, at ten units. The audit shall evaluate whether the emergency was promptly recognized and whether the treatment rendered was appropriate and timely. The report shall also assess the timeliness of emergency vehicle response in the audited cases. Defendants have submitted a report setting forth the results of the audit to plaintiffs' counsel and shall file the report with the court no later than April 1, 1992.

4. By May 1, 1992 defendants shall serve and file the 1992 Annual Report required pursuant to the Termination Report.



D. In the absence of a further order to the contrary, defendants shall be relieved of the operation of paragraphs XIX.A and B on December 31, 1992, except that defendants shall:

1. obtain and maintain accreditation of all its unit health care and regional medical facilities with the National Commission on Correctional Health Care ("NCCCHC") or a comparable and recognized accreditation organization.

2. ensure that no prisoner is assigned to do work that is contraindicated for his or her medical condition.

3. ensure full access to health care for all prisoners, regardless of segregation status.

4. ensure that no nonmedical staff may countermand any medical order regarding a prisoner's treatment, work or other related circumstances.

5. maintain health services (including medical, dental, rehabilitation and psychiatric) staffing and facilities that enable timely delivery of health care to all prisoners received into their custody, consistent with contemporary professional standards for correctional health care, and shall vigorously recruit for employment the required health services staff and take all reasonable steps to keep TDCJ-ID competitive in the recruitment of staff.

**XX. Psychiatric Services**

A. In addition to complying with the provisions of Section XIX that are applicable to psychiatric and psychological services, defendants shall comply with the provisions of the Consent Decree, April 20, 1981, pertaining to psychological and psychiatric services, and shall maintain a system for the delivery of psychiatric and psychological services consistent with the provisions of the Psychiatric Services Plan, February, 1984, as approved by the Order Concerning Defendants' Psychiatric Plan and Comprehensive Health Care Plan, January 3, 1986.

B. No supplemental relief is ordered, provided that:

1. Defendants shall maintain a program of administrative segregation pre-admission screening and ongoing observation and evaluation sufficient to ensure that psychiatric illness is promptly recognized and diagnosed and that psychiatrically ill prisoners are not housed in administrative segregation when their diagnosis or history indicates a risk that segregation may precipitate decompensation, when they might benefit from inpatient structured care or any other inpatient care, or when the prisoner could be maintained in general population with appropriate outpatient care; provided that TDCJ-ID may occasionally have custody of an inmate who is psychiatrically ill but who cannot be effectively managed or safely housed in any environment more therapeutic and less restrictive than administrative segregation, and further that no psychiatrically ill inmate will be housed in administrative segregation unless the treating psychiatrist states in writing that housing in administrative segregation is consistent with the patient's treatment plan, and that this is the least restrictive alternative appropriate for this patient;

2. defendants shall improve the quality of individualized treatment plans so that they are more individualized and professionally adequate and integrate the use of individualized plans and the treatment plan process in the delivery of psychiatric care; and

3. defendants shall strengthen TDCJ-ID's psychiatric services quality assurance mechanisms, including the mechanism of regular peer review. Between February 15, 1992 and December 31, 1992, defendants shall involve outside auditors in audits similar to those that have been done by the Office of the Special Master and by defendants in lieu of the Office of the Special Master, of: (a) the inpatient facilities at the Mountain View and Ellis II units; and (b) outpatient psychiatric services at the Michael, Coffield, Mountain View, Ellis I, Darrington and

Ferguson units, measuring services against the criteria and principles of the Psychiatric Services Plan.

C. Defendants shall prepare the following psychiatric services reports:

1. The results of the audits required by Section XX.B.3., *supra*, shall be reported to counsel for plaintiffs no later than thirty days following completion.

2. Defendants shall, with the assistance of expert consultants, conduct an audit of the operation of the Clements unit psychiatric services facility, measuring services against the criteria and principles of the Psychiatric Services Plan. The audit shall be conducted at least ninety days after and within 210 days of the opening of the new program building that is to be a part of the facility. A report setting forth the findings of the audit shall be served upon counsel for plaintiffs no later than thirty days following completion, and the report shall be filed with the court sixty days from the date of service upon plaintiffs' counsel. Defendants shall consult in good faith with counsel for plaintiffs in the selection of consultants.

3. The parties contemplate that the Sugarland Psychiatric Facility will open on or before July 1, 1993. In the event the Sugarland Psychiatric Facility does not open by such date, defendants shall file a report with the court setting forth the reasons for the delay, and stating the anticipated opening date.

D. In the absence of a pending motion or further order to the contrary, defendants shall be relieved from the operation of Section XX.A and B. on the later of December 31, 1992, or 45 days after any report required by Subsection XX.C., above, is served upon plaintiffs' counsel or filed with the court, or upon resolution by the court of any objection to any such report, whichever is later, except that (1) relief specified in subsection XIX.D., above applies to psychiatric services as well as to other areas of health care; and (2) defendants shall be enjoined for an additional period of twenty-four months to engage the services of one or more outside board

certified psychiatrists who shall consult on a regular basis with TDCJ-ID psychiatrists respecting diagnosis, treatment plans and medication practices. Defendants semi-annually shall certify to the Court that the consultation required by Section XX.D.2. has been provided, providing the identity and credentials for the consultants and a brief description of the services rendered.

**XXI. Death Row**

A. Defendants shall maintain a work and activity program for eligible death row prisoners and an activity program for death row segregation prisoners. Death row segregation prisoners shall be assigned to single occupancy cells. Defendants shall maintain an appropriate mix of single and double occupancy cells for work capable death row prisoners; provided that a death row work capable prisoner not assigned to a single cell may only be assigned to a double occupancy cell that is no less than 80 square feet.


B. No supplemental relief is ordered.

C. Defendants shall have no additional monitoring and reporting requirements with respect to death row.

**XXII. Enforcement**

This Final Judgment shall be enforceable in the United States District Court for the Southern District of Texas.

DATED: \_\_\_\_\_

  
\_\_\_\_\_  
Donna Brorby

  
\_\_\_\_\_  
William Bennett Turner

Richard S. Fischer  
~~Calix Salazar~~ Richard S. Fischer  
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DATED: \_\_\_\_\_

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