

APPENDIX E

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

No. CIV-77-721P

DWIGHT DURAN, LONNIE DURAN, and SHARON TOWERS,
and all others similarly situated,
Plaintiffs,

-vs-

JERRY APODACA, Governor of the State of New Mexico,
CHARLES BECKNELL, Secretary of Criminal Justice,
EDWIN MAHR, Director of Corrections Division, LEVI
ROMERO, Warden of the Penitentiary of New Mexico,
ROBERT MONTOYA and JOSEPH LUJAN,
Defendants.

[Filed July 6, 1978]

FIRST AMENDED COMPLAINT

Plaintiffs state:

PRELIMINARY STATEMENT

1. This amended complaint is a class action brought by Plaintiffs on behalf of all prisoners who are presently, or will be, confined in the Penitentiary of New Mexico (hereinafter referred to as "PNM"). Plaintiffs contend that the totality of the overcrowding and other conditions at PNM fall beneath standards of human decency, inflict needless suffering on prisoners and create an environment which threatens prisoners' mental and physical well-

being, and results in the physical and mental deterioration and debilitation of the persons confined therein which is both unnecessary and penologically unjustifiable.

2. Plaintiffs ask this Court, after hearing the evidence on the allegations in this amended complaint, to declare that the totality of conditions and certain specific conditions presently existing at the PNM are unconstitutional under the Constitutions of the United States and New Mexico and further are in violation of certain statutes of the United States and New Mexico. Consequently, the Plaintiffs ask that the Defendants, and each of them, be permanently enjoined from operating and administering the Penitentiary of New Mexico, or any other facility to which the class members may be assigned, except in compliance with acceptable constitutional and statutory standards as are established by this Court.

JURISDICTION AND VENUE

3. The first claim for relief is filed under 42 U.S.C. sec. 1983 to redress injuries suffered by Plaintiffs and the class they represent for deprivation under color of state law of rights secured by the First, Sixth, Eighth, Ninth, and Fourteenth amendments. Accordingly, this Court has jurisdiction over the first claim pursuant to 28 U.S.C. secs. 1331, 1343(3).

4. Plaintiff's first, second, third and fourth claims for relief are derived from common nuclei of operative facts involving substantially identical issues of fact and law, such that the entire action constitutes a single case which would ordinarily be judicial economy, convenience and fairness, and in order to avoid unnecessary duplication and multiplicity of actions, this Court's jurisdiction over the second, third, and fourth claims, which are based in part upon state law, is pendent to the Court's jurisdiction over the first claim.

5. The fourth claim for relief arises under 49 U.S.C. sec. 3750(b) and the amount in controversy exceeds \$10,000.00. Therefore this Court has jurisdiction pursuant to 28 U.S.C. sec. 1331.

6. Venue is proper in this Court.

PARTIES

7. Each of the named Plaintiffs is presently a prisoner incarcerated in the Penitentiary of New Mexico. Several of them are now or have been confined in segregation facilities at PNM. Others are now or have been incarcerated in protective custody facilities. The named Plaintiffs are:

Dwight Duran, Lonnie Duran, and Sharon Towers.

8. Defendant Jerry Apodaca is the Governor of the State of New Mexico. He appoints the Secretary of Criminal Justice and consents to the appointment of the Director of the Corrections Division. He approves any action by the Secretary to apply for and receive funds. He either sits on the state's Criminal Justice coordinating council or designates a representative to do so.

9. Defendant Charles Becknell is the Secretary of Criminal Justice. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

10. Defendant Edwin Mahr is the Director of the Corrections Division and his numerous duties are set out N.M.S.A. 42-9-6. (effective March 31, 1978).

11. Defendant Levi Romero is the warden of the PNM and, as such, is responsible for the overall daily operation and management of the PNM.

12. Defendant Robert Montoya is Deputy Warden/Programs of the PNM and, as such, is responsible for the execution of programs in the PNM as well as other management duties.

13. Defendant Joseph Lujan is Deputy Warden/Operations of the PNM and, as such, is responsible for the operation of the PNM and general management duties.

CLASS ACTION ALLEGATIONS

14. This is a class action brought pursuant to Rule 23(a) and 23(b)(1), (2) of the Federal Rules of Civil Procedure. Plaintiffs are representative parties of the class which is composed of all persons presently confined in the PNM or who may be so confined in the future. Plaintiffs are members of the class and their claims are typical of the claims of all class members. Plaintiffs are represented by competent counsel and will fairly and adequately protect the interests of the class. The class is so numerous that joinder of all members is impracticable. The questions of law and fact presented by the Plaintiffs are common to the class. The Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

FACTUAL ALLEGATIONS

15. The totality of the conditions of confinement at PNM violates the constitutional and statutory rights of the Plaintiffs and has caused and is causing persons incarcerated therein irreparable harm.

16. The PNM is presently and has been for some time grossly and inhumanely overcrowded. The main buildings at PNM were built over twenty years ago. Some of the original space allocated for housing has been converted to other uses. On information and belief, the Plaintiffs allege that the present space used for housing prisoners was originally designed to house a capacity of approximately seven hundred prisoners. Although Plaintiffs maintain that the "design capacity" would not meet constitutional standards for living space for prisoners, the PNM presently houses over 1000 prisoners.

17. A portion of the prisoners at PNM live in cells, most of which are approximately 6' by 9' in size. Although cells of that size do not meet any modern recognized standards for space needed for human beings in prison, the problem is exacerbated by having two or more people housed in many of them, with one or more persons having to sleep on the floor, often without a mattress.

18. The majority of the population at PNM are housed in dormitories which are grossly and inhumanely overcrowded with bunks packed together so tightly in many places that there is no space in between them and with many prisoners being forced on occasion to sleep on the floors. The dormitories are filthy and impossible to clean under such conditions. Similarly, security is impossible to provide, thereby endangering the lives of the prisoners confined there.

19. The overcrowding in PNM in and of itself destroys any possibility of privacy for the persons housed there. It also causes tension, anxiety, frustration and emotional and psychological problems. In addition, the overcrowding exacerbates virtually every other constitutionally deficient aspect of PNM which has existed and will continue to exist in spite of the overcrowding.

20. The PNM living quarters are totally unfit for human habitation from the standpoint of health and sanitation. Mice, roaches and other vermin are commonplace. Toilets often do not work properly and are not properly cleaned. The plumbing in the institution and the sewage disposal system pose serious threats to the health of the persons incarcerated there. Inadequate lighting throughout the living areas is physically and mentally harmful to the prisoners. The lack of minimally adequate ventilation is likewise harmful to the inhabitants. Temperatures are often unbearably hot in the summer and cold in the winter.

21. The food service facilities at PNM do not meet minimal public health and sanitation standards. Proper methods are not used in preparing and handling the food served to prisoners. The food served is nutritionally inadequate.

22. Persons incarcerated at PNM are forced to live in constant fear for their lives. Physical attacks upon prisoners are commonplace. Sexual assaults also regularly occur and the refusal to submit to such assaults often results in serious physical injury. The fear of such assaults and injuries is so great that many prisoners have requested to give up what little freedom or access to programs they have in the general population to be locked up and segregated in single-cell "protective custody." This "protective custody" cell block is the most overcrowded area of the PNM with two or more prisoners confined in a cell with an area of fifty four (54) square feet. Prisoners are so confined twenty four hours a day except for two hours per week allotted for exercise or showers. Prison officials have not instituted such programs or practices as will reasonably guarantee the physical safety of prisoners from violent criminal acts against them.

23. The PNM is severely understaffed in professional, educational and security personnel. This understaffing contributes to the inability of the PNM to meet minimal constitutional standards as are described in this complaint. The staff that is available is inadequately trained.

24. The classification of persons incarcerated at PNM so that rehabilitation may take place is required by New Mexico law. Nonetheless, prisoners are not effectively classified according to their educational, vocational or health needs. Most prisoners are assigned based solely upon where space is available. Therefore, many prisoners are housed in more restrictive settings than security considerations require which is contrary to the needs of the corrections system and the prisoners and contributes to

the physical and mental deterioration of many of the prisoners. Even if the prisoners were appropriately classified, there are insufficient programs and opportunities for them at the prison. Many of the problems at PNM, including the high levels of tension, anxiety, idleness and violence, result from, or are contributed to, by the lack of a meaningful or effective classification system.

25. Idleness is the hallmark of the PNM. Most prisoners are not engaged in any regular meaningful industrial or institutional employment, training, or other constructive activity. Neither are there adequate basic, vocational or other educational programs to meet the needs of those incarcerated who desire to participate in meaningful educational training. The forced idleness contributes to a deterioration of whatever work habits and skills the prisoners may have possessed when they entered prison.

26. Recreational opportunities are inadequate. Recreational facilities, equipment, programs and staff are insufficient, thereby increasing idleness, tension and violence at the prison and contributing to the physical and mental deterioration and debilitation of those incarcerated there.

27. Visitation at the PNM is so restricted as to be either non-existent for many prisoners or meaningless to others. The lack of a reasonable visitation policy at PNM contributes to tension, anxiety and frustration, destroys ties with families and friends and contributes to mental deterioration and debilitation without any penological justification.

28. Correspondence policies at PNM are also extremely restrictive, go beyond any legitimate penological rationale, and do not further any governmental interest of security, order or rehabilitation. Once again, prisoners' abilities to maintain meaningful contact with the outside world are lessened. Further, the correspondence rules are illegally, arbitrarily and irrationally drawn and are discriminatorily applied.

29. Medical and dental care and treatment is totally inadequate at PNM and constitutes deliberate indifference to prisoners' serious medical needs. Prisoners suffering from emotional and physical disabilities do not receive the special attention and treatment they require. Neither do the mentally retarded or aged and infirm receive adequate care.

30. Access to legal books and resources do not meet constitutional and other legal standards. In addition, law books and other legal materials are grossly insufficient. Attorney-client mail is often illegally inspected and read outside the presence of the prisoner.

31. Defendants MAHR and BECKNELL have refused to allow the implementation of a program designed to provide legal services for prisoners through the utilization of law students under the active supervision of licensed attorneys in violation of Plaintiffs' right of access to the Courts.

32. Fundamental tenets of due process are not followed in disciplinary proceedings at PNM. As a result of disciplinary actions by prison officials, prisoners are frequently placed in segregation cells under conditions which are barbaric and tortuous. They are subjected to shocking overcrowding and filth with no exercise, no fresh air, inadequate heat and light, and are forced to sleep on cold, hard floors under inhumane conditions.

FIRST CLAIM FOR RELIEF

33. Paragraphs 1-32 above are incorporated herein.

34. The totality of the conditions at the PNM violates the rights of persons incarcerated therein under the Eighth and Fourteenth Amendments to the United States Constitution. These conditions also violate the prisoners' rights to freedom of religion, expression and association, access to the Courts, family integrity, privacy, equal protection and due process of law guaranteed by the First,

Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments to the United States Constitution.

SECOND CLAIM FOR RELIEF

35. Paragraphs 1-32 above are incorporated herein by reference.

36. The totality of conditions at the PNM which makes rehabilitation by prisoners impossible and causes the unnecessary deterioration of them violates the cruel and unusual punishment clause of the New Mexico Constitution. Article II, sec. 13. These conditions and practices as described also violate the prisoners' rights to freedom of speech, religion, equal protection, due process and other rights guaranteed by Article II, secs. 11, 17, and 18, of the New Mexico Constitution.

THIRD CLAIM FOR RELIEF

37. Paragraphs 1-32 above are incorporated herein by reference.

38. Defendants have failed to exercise their duties to operate the PNM in accord with Article II, sec. 4 of the *New Mexico Constitution and N.M.S.A. 42-1-38, 42-1-1.1, 42-1-31.2, 42-9-6 (g) and 42-9-6 (h)*.

FOURTH CLAIM FOR RELIEF

39. Paragraphs 1-32 are incorporated herein by reference.

40. Upon information and belief, the Defendants have received funds from the United States Law Enforcement Assistance Administration (LEAA) under 49 U.S.C. sec. 3750(b) for the planning acquisition or construction of correctional facilities. The amount of funds received by Defendants from LEAA exceeds \$10,000.

41. As a condition of the receipt of such federal funds, the Defendants contractually agreed pursuant to 42 U.S.C.

sec. 3750(b) that the programs and facilities of the correctional institutions in New Mexico, including the PNM would reflect advanced practices and standards; that advanced techniques would be used in the design of institutions and facilities; and that necessary arrangements would be provided for the development and operation of narcotic and alcohol treatment programs.

42. Plaintiffs are third party beneficiaries of the contractual arrangements between LEAA and Defendants.

43. The Defendants have failed and refused to carry out their contractual obligations under 42 U.S.C. sec. 3750 (b).

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs request that this Court do as follows:

1. Certify this action as a class action pursuant to Rule 23, F.R.C.P. with the named Plaintiffs representing a class of all persons presently incarcerated in PNM or who may be in the future.

2. Enter a declaratory judgment declaring that the totality of conditions and practices at PNM, as well as certain specific aspects thereof, violate the rights of the Plaintiffs and members of their class under state and federal constitutional and statutory standards as are specified in this complaint.

3. Enter a preliminary injunction pending the final disposition of this case, enjoining Defendants from crowding prisoners into the PNM in excess of the minimum space standards established by the United States Court of Appeals for the Tenth Circuit.

4. Enter a permanent injunction to the Defendants and each of them enjoining them from continuing to incarcerate persons in the PNM or other facilities unless and until the conditions and practices at PNM or other facili-

ties are brought into compliance with constitutional and statutory standards as specified by this Court.

5. Require the Defendants to pay the costs of this action, including a reasonable attorneys' fee for counsel for the Plaintiffs pursuant to 42 U.S.C. sec. 1988.

6. Grant such other and further relief as is proper.

7. At the appropriate time, if the Court desires, Plaintiffs' counsel will submit proposed standards and procedures to assist the Court in fashioning appropriate relief.

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