

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
v.)	
)	Civil No. _____
TERRITORY OF THE VIRGIN ISLANDS, et al.;)	
)	
DEFENDANTS.)	
_____)	

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is entered and between the United States of America (“United States”), acting through the United States Department of Justice, and the Territory of the Virgin Islands, et al. (“Defendants”).

II. INTRODUCTION

1. The purpose of this Agreement is to remedy the ongoing constitutional violations identified subsequent to the July 28, 2011 filing of Defendants’ Motion to Terminate pursuant to the Prison Litigation Reform Act, 18 U.S.C. § 3626(b) [Dkt. 565]. Through the provisions of this Agreement, the parties seek to ensure that the conditions at the Golden Grove Adult Correctional and Detention Facility (“Golden Grove”) respect the rights of prisoners confined there. By ensuring that the conditions in Golden Grove are constitutional, Defendants also will provide for the safety of staff and promote public safety in the community.
2. Defendants consent to the entry of findings that the conditions at Golden Grove necessitate the remedial measures contained in this Agreement. The parties recognize that the conditions at Golden Grove and the treatment of prisoners confined therein have an impact on whether prisoners will be successfully re-integrated on release, whether released prisoners will re-offend, and public confidence in the criminal justice system.
3. The parties stipulate that this Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a). The parties further stipulate and agree and the Court finds that the prospective relief in this Agreement is narrowly drawn, extends no further than necessary to correct the violations of federal rights agreed to by the parties, is the least intrusive means necessary to correct these violations, and will not have an adverse impact on

public safety or the operation of a criminal justice system. Accordingly, the parties agree and represent that the Agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a).

III. DEFINITIONS

1. "DOJ" shall refer to the United States Department of Justice, which represents the United States in this matter.
2. "Compliance" is discussed throughout this Agreement in the following terms: substantial compliance, partial compliance, and non-compliance. "Substantial Compliance" indicates that Defendants have achieved compliance with most or all components of the relevant provision of the Agreement. "Partial Compliance" indicates that Defendants achieved compliance on some of the components of the relevant provision of the Agreement, but significant work remains. "Non-compliance" indicates that Defendants have not met most or all of the components of the Agreement.
3. "Effective date" shall mean the date the Agreement is signed and entered by the Court.
4. "Defendants" refers to the Territory of the Virgin Islands and all of the agencies and individuals in their official capacities who will be involved in the implementation of remedial measures to address unconstitutional conditions at Golden Grove.
5. "Facility" or "Golden Grove" refers to the Golden Grove Adult Correctional and Detention Facility, located in St. Croix, Territory of the U.S. Virgin Islands, and includes all buildings located on the Golden Grove campus and any building that may replace or supplement such buildings in the future.
6. To "Implement" a policy means: the policy has been drafted and disseminated to all staff responsible for following or applying the policy; all relevant staff have been trained on the policy; compliance with the policy is monitored and tracked through audit tools; the policy is consistently applied, as demonstrated by audit tools approved by the Monitor; and there are corrective action measures to address lapses in application of the policy.
7. "Include" or "including" means "include, but not be limited to" or "including, but not limited to."
8. "Monitor" shall mean an individual selected to oversee implementation of the Agreement.
9. "Prisoners" or "Prisoner" shall be construed broadly to refer to one or more individuals detained at, or otherwise housed, held, in the custody of, or confined at either the existing facility or any institution that is built or used to replace or supplement the facility.

10. "Psychotropic medication" shall mean any substance used in the treatment of mental health problems or mental illness which exerts an effect on the mind and is capable of modifying mental activity or behavior.
11. "Qualified Medical Professional" shall mean a licensed physician, licensed physician assistant, or a licensed nurse practitioner, who is currently licensed to deliver those health care services he or she has undertaken to provide.
12. "Qualified Medical Staff" shall refer to Qualified Medical Professionals and Qualified Nursing Staff.
13. "Qualified Mental Health Professional" shall refer to an individual with a minimum of masters-level education and training in psychiatry, psychology, counseling, social work or psychiatric nursing, who is currently licensed to deliver those mental health services he or she has undertaken to provide.
14. "Qualified Mental Health Staff" shall refer to individuals with a minimum of a bachelor's degree and two years of experience providing mental health services who meets applicable Territory licensure and/or certification requirements and practices only within the scope of their training and licensure.
15. "Qualified Nursing Staff" means registered nurses and licensed practical nurses currently licensed to deliver those health care services he or she has undertaken to provide.
16. "Serious suicide attempt" means a suicide attempt that is considered to be either potentially life-threatening or that requires hospitalization for medical treatment.
17. "Special Management Housing Units" mean those housing units of the facility designated for prisoners in administrative or disciplinary segregation, in protective custody, on suicide precautions, or with mental illness.
18. "Staff" includes all persons who work at Golden Grove or provide services to prisoners at Golden Grove, including medical and mental health staff, whether employed by an agency of the Territory or any contractor, and including volunteers who provide services at the Facility without pay.
19. "Suicide Precautions" means any level of watch, observation, or measures to prevent suicide or harm from suicide attempts.
20. "Train" means to instruct in the skills addressed to a level at which the trainee has the demonstrated proficiency to implement those skills as, and when called for, in the training. "Trained" means a demonstration of staff proficiency.
21. "Use of force" means the application of physical or mechanical measures to compel compliance by an unwilling subject. "Use of force" shall include all force except

complaints of minor discomfort from un-resisted handcuffing or un-resisted shackling of prisoners for movement purposes.

IV. SAFETY AND SUPERVISION

As required by the Constitution, Defendants will take reasonable steps to protect prisoners from harm, including violence by other prisoners. While some danger is inherent in a jail setting, Defendants will implement appropriate measures to minimize these risks, including development and implementation of facility-specific security and control-related policies, procedures, and practices that will provide a reasonably safe and secure environment for all prisoners and staff.

A. Supervision

1. Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies regarding supervision of prisoners. These policies will include measures necessary to prevent prisoners from being exposed to an unreasonable risk of harm by other prisoners or staff and must include the following:
 - a. Development of housing units of security levels appropriately stratified for the classification of the prisoners in the institution, *see also* Section IV.F. re: Classification and Housing of Prisoners;
 - b. Post orders and first-line supervision of corrections officers in each housing unit (at least one officer per unit) based on an assessment of staffing needs;
 - c. Communication to and from corrections officers assigned to housing units (i.e. functional radios); and
 - d. Supervision by corrections officers assigned to cellblocks, including any special management housing units (e.g., administrative or disciplinary segregation) and cells to which prisoners on suicide watch are assigned, including:
 - (i) conducting of adequate rounds by corrections officers and security supervisors in all cellblocks; and
 - (ii) conducting of adequate rounds by corrections officers and security supervisors in areas of the prison other than cellblocks.

B. Contraband

1. Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies regarding contraband that are designed to limit the presence of dangerous material in the facility. Such policies will include the following:
 - a. Clear definitions of what items constitute contraband;
 - b. Prevention of the introduction of contraband from anyone entering or leaving Golden Grove, through processes including prisoner mail and package inspection and searches of all individuals and vehicles entering the prison;
 - c. Detection of contraband within Golden Grove, through processes including:

- (i) supervision of prisoners in common areas, the kitchen, shops, laundry, clinic, and other areas of Golden Grove to which prisoners may have access;
 - (ii) patdown, metal detector, and other appropriate searches of prisoners coming from areas where they may have had access to contraband, such as at intake, returning from visitation or returning from the kitchen, shops, laundry, or clinic;
 - (iii) regular and random searches of physical areas in which contraband may be hidden or placed, such as cells and common areas where prisoners have access (e.g., clinic, kitchen, dayrooms, storage areas, showers);
- d. Confiscation and preservation as evidence/destruction of contraband; and
 - e. Admission procedures and escorts for visitors to the facility.

C. General Security

1. Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies designed to promote the safety and security of prisoners and that include the following:
 - a. Clothing that prisoners and staff are required or permitted to wear and/or possess;
 - b. Identification that prisoners, staff, and visitors are required to carry and/or display;
 - c. Requirements for locking and unlocking of exterior and interior gates and doors, including doors to cells consistent with security, classification and fire safety needs;
 - d. Procedures for the inspection and maintenance of operational cell and other locks in Golden Grove to ensure locks are operational and not compromised by tampering; and
 - e. Pre-employment background checks and required self-reporting of arrests and convictions for all facility staff, with centralized tracking and periodic supervisory review of this information for early staff intervention.

D. Security Staffing

1. Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies and a staffing plan that provide for adequate staff to implement this Agreement, as well as policies, procedures, and practices regarding staffing necessary to comply with the Constitution that include the following:
 - a. A security staffing analysis, incorporating a realistic shift factor, for all levels of security staff at Golden Grove;
 - b. A security staffing plan, with timetables, to implement the results of the security staffing analysis; and
 - c. Policies and procedures for periodic reviews of, and necessary amendments to, Golden Grove's staffing analysis and security staffing plan.

2. Defendants will implement the staffing plan developed pursuant to D.1.

E. Sexual Abuse of Prisoners.

1. Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies that incorporate the definitions and substantive requirements of the Prison Rape Elimination Act (PREA) and any implementing regulations.

F. Classification and Housing of Prisoners

1. Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies that will appropriately classify, house, and maintain separation of prisoners based on a validated risk assessment instrument in order to prevent an unreasonable risk of harm. Such policies will include the following:
 - a. The development and implementation of an objective and annually validated system that classifies detainees and sentenced prisoners as quickly after intake as security-needs and available information permit, and no later than 24-48 hours after intake, considering the prisoner's charge, prior commitments, age, suicide risk, history of escape, history of violence, gang affiliations, history of victimization, and special needs such as mental, physical, or developmental disability;
 - b. Housing and separation of prisoners in accordance with their classification;
 - c. Systems for preventing prisoners from obtaining unauthorized access to prisoners in other units;
 - d. The development and implementation of a system to re-classify prisoners, as appropriate, following incidents that may affect prisoner classification, such as prisoner assaults and sustained disciplinary charges/charges dismissed for due process violations;
 - e. The collection and periodic evaluation of data concerning prisoner-on-prisoner assaults, prisoners who report gang affiliation, the most serious offense leading to incarceration, prisoners placed in protective custody, and reports of serious prisoner misconduct; and
 - f. Regular review of prisoners in segregation to minimize time in segregation, and provision of adequate opportunities for out-of-cell time for prisoners in segregation.

G. Incidents and Referrals

1. Defendants will develop and submit to USDOJ for review and approval facility-specific policies to alert facility management of serious incidents at Golden Grove so they can take corrective, preventive, individual, and systemic action. Such policies will include the following:
 - a. Reporting by staff of serious incidents, including
 - (i) fights;

- (ii) serious rule violations;
 - (iii) serious injuries to prisoners;
 - (iv) suicide attempts;
 - (v) cell extractions;
 - (vi) medical emergencies;
 - (vii) contraband;
 - (viii) serious vandalism;
 - (ix) fires; and
 - (x) deaths of prisoners;
- b. Review by senior management of reports regarding the above incidents to determine whether to refer the incident for administrative or criminal investigation and to ascertain and address incident trends (e.g., particular individuals, shifts, units, etc.);
 - c. Requirements for preservation of evidence; and
 - d. Central tracking of the above incidents.
2. The policy will provide that reports, reviews, and corrective action be made promptly and within a specified period.

H. Use of Force by Staff on Prisoners

1. Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies that prohibit the use of unnecessary or excessive force on prisoners and provide adequate staff training, systems for use of force supervisory review and investigation, and discipline and/or re-training of staff found to engage in unnecessary or excessive force. Such policies, training, and systems will include the following:
- a. Permissible forms of physical force along a use of force continuum;
 - b. Circumstances under which the permissible forms of physical force may be used;
 - c. Impermissible uses of force, including force against a restrained prisoner, force as a response to verbal threats, and other unnecessary or excessive force;
 - d. Pre-service training and annual competency-based and scenario-based training on permitted/unauthorized uses of force and de-escalation tactics;
 - e. Training and certification required before being permitted to carry and use an authorized weapon;
 - f. Comprehensive and timely reporting of use of force by those who use or witness it;
 - g. Supervision and videotaping of planned uses of force;
 - h. Appropriate oversight and processes for the selection and assignment of staff to armory operations and to posts permitting the use of deadly force such as the perimeter towers;
 - i. Prompt medical evaluation and treatment after uses of force and photographic documentation of whether there are injuries;
 - j. Prompt administrative review of use of force reports for accuracy;

- k. Timely referral for criminal and/or administrative investigation based on review of clear criteria, including prisoner injuries, report inconsistencies, and prisoner complaints;
- l. Administrative investigation of uses of force;
- m. Central tracking of all uses of force that records: staff involved, prisoner injuries, prisoner complaints/grievances regarding use of force, and disciplinary actions regarding use of force, with periodic evaluation for early staff intervention;
- n. Supervisory review of uses of force to determine whether corrective action, discipline, policy review or training changes are required; and
- o. Re-training and sanctions against staff for improper uses of force.

I. Use of Physical Restraints on Prisoners

- 1. Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies to protect against unnecessary or excessive use of physical force/restraints and provide reasonable safety to prisoners who are restrained. Such policies will address the following:
 - a. Permissible and unauthorized types of use of restraints;
 - b. Circumstances under which various types of restraint can be used;
 - c. Duration of the use of permitted forms of restraints;
 - d. Required observation of prisoners placed in restraints;
 - e. Limitations on use of restraints on mentally ill prisoners, including appropriate consultation with mental health staff; and
 - f. Required termination of the use of restraints.

J. Prisoner Complaints

- 1. Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies so that prisoners can report, and facility management can timely address, prisoners' complaints in an individual and systemic fashion. Such policies will include the following:
 - a. A prisoner complaint system with confidential access and reporting, including assistance to prisoners with cognitive difficulties;
 - b. Timely investigation of prisoners' complaints, prioritizing those relating to safety, medical and/or mental health care;
 - c. Corrective action taken in response to complaints leading to the identification of violations of any departmental policy or regulation, including the imposition of appropriate discipline against staff whose misconduct is established by the investigation of a complaint;
 - d. Centralized tracking of records of prisoner complaints, as well as their disposition; and
 - e. Periodic management review of prisoner complaints for trends and individual and systemic issues.

K. Administrative Investigations

1. Defendants will develop and submit to USDOJ for review and approval facility-specific policies so that serious incidents are timely and thoroughly investigated and that systemic issues and staff misconduct revealed by the investigations are addressed in an individual and systemic fashion. Such policies will address the timely, adequate investigations of alleged staff misconduct; violations of policies, practices, or procedures; and incidents involving assaults, sexual abuse, contraband, and excessive use of force. Such policies will provide for:
 1. Timely, documented interviews of all staff and prisoners involved in incidents;
 2. Adequate investigatory reports that consider all relevant evidence (physical evidence, interviews, recordings, documents, etc.) and attempt to resolve inconsistencies between witness statements;
 3. Centralized tracking and supervisory review of administrative investigations to determine whether individual or systemic corrective action, discipline, policy review, or training modifications are required;
 4. Pre-service and in-service training of investigators regarding policies (including the use of force policy) and interviewing/investigatory techniques; and
 5. Disciplinary action of anyone determined to have engaged in misconduct at Golden Grove.

V. MEDICAL AND MENTAL HEALTH CARE

Defendants shall provide constitutionally adequate medical and mental health care, including screening, assessment, treatment, and monitoring of prisoners' medical and mental health needs. Defendants also shall protect the safety of prisoners at risk for self-injurious behavior or suicide, including giving priority access to care to individuals most at risk of harm and who otherwise meet the criteria for inclusion in the target population for being at high risk for suicide.

1. Accordingly, Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies regarding the following:
 - a. Adequate intake screenings for serious medical and mental health conditions, to be conducted by qualified medical and mental health staff;
 - b. Comprehensive initial and/or follow-up assessments, conducted by qualified medical and mental health professionals within three days of admission.
 - c. Prisoners' timely access to and provision of adequate medical and mental health care for serious chronic and acute conditions, including prenatal care for pregnant prisoners;
 - d. Continuity, administration, and management of medications, that address:
 - (i) timely responses to orders for medications and laboratory tests;
 - (ii) timely and routine physician review of medications and clinical practices;
 - (iii) review for known side effects of medications; and

- (iv) sufficient supplies of medications upon discharge for prisoners with serious medical and mental health needs;
- e. Maintenance of adequate medical and mental health records, including records, results, and orders received from off-site consultations and treatment conducted while the prisoner or detainee is in Golden Grove custody;
- f. Prisoners' timely access to and the provision of constitutional medical and mental health care to prisoners including but not limited to:
 - (i) adequate sick-call procedures with timely medical triage and physician review along with the logging, tracking, and timely responses to requests by qualified medical and mental health professionals;
 - (ii) an adequate means to track, care for, and monitor prisoners identified with medical and mental health needs;
 - (iii) chronic and acute care with clinical practice guidelines and appropriate and timely follow-up care;
 - (iv) adequate measures for providing emergency care, including training of staff:
 - (1) to recognize serious injuries and life-threatening conditions;
 - (2) to provide first-aid procedures for serious injuries and life-threatening conditions;
 - (3) to recognize and timely respond to emergency medical and mental-health crises;
 - (v) adequate and timely referral to specialty care; and
 - (vi) adequate follow-up care and treatment after return from referral for outside diagnosis or treatment;
- g. Adequate care for intoxication and detoxification related to alcohol and/or drugs;
- h. Infection control, including guidelines and precautions and testing, monitoring, and treatment programs;
- i. Adequate suicide prevention, including:
 - (i) the immediate referral of any prisoner with suicide or serious mental health needs to an appropriate mental health professional;
 - (ii) a protocol for constant observation of suicidal prisoners until supervision needs are assessed by a qualified mental health professional;
 - (iii) timely suicide risk assessment instrument by a qualified mental-health professional within an appropriate time not to exceed 24 hours of prisoner being placed on suicide precautions;
 - (iv) readily available, safely secured, suicide cut-down tools;
 - (v) instruction and scenario-based training of all staff in responding to suicide attempts, including use of suicide cut-down tools;
 - (vi) instruction and competency-based training of all staff in suicide prevention, including the identification of suicide risk factors;
 - (vii) availability of suicide resistant cells;
 - (viii) protocol for the constant supervision of actively suicidal prisoners and close supervision of other prisoners at risk of suicide;

- (ix) procedures to assure implementation of directives from a mental-health professional regarding:
 - (1) the confinement and care of suicidal prisoners;
 - (2) the removal from watch; and
 - (3) follow-up assessments at clinically appropriate intervals;
- j. Clinically adequate professional staffing of the medical and mental health treatment programs, as indicated by implementation of periodic staffing analyses and plans;
- k. Adequate staffing of correctional officers with training to implement the terms of this agreement, including how to identify, refer, and supervise prisoners with serious medical and mental health needs;
- l. A protocol for periodic assessment of the facility's compliance with policies and procedures regarding the identification, handling, and care of detainees and prisoners with serious medical and mental health conditions;
- m. Adequate dental care;
- n. Morbidity or mortality reviews of all prisoner deaths and of all serious suicide attempts or other incidents in which a prisoner was at high risk for death within 30 days of the incident triggering the review;
- o. A protocol for medical and mental health rounding in isolation/segregation cells to provide prisoners access to care and to avoid decompensation;
- p. A prohibition on housing prisoners with serious mental illness in isolation, regular review of prisoners in segregation to minimize time in segregation, and provision of adequate opportunities for out-of-cell time of prisoners in segregation;
- q. Review by and consultation with a qualified mental health provider of proposed prisoner disciplinary sanctions to evaluate whether mental illness may have impacted rule violations and to provide that discipline is not imposed due to actions that are solely symptoms of mental illness;
- r. Medical facilities, including the scheduling and availability of appropriate clinical space with adequate privacy;
- s. Mental health care and treatment, including:
 - (i) timely, current, and adequate treatment plan development and implementation;
 - (ii) adequate mental health programs for all prisoners with serious mental illness;
 - (iii) adequate psychotropic medication practices, including monitoring for side effects and informed consent;
 - (iv) comprehensive correctional and clinical staff training and a mechanism to identify signs and symptoms of mental health needs of prisoners not previously assigned to the mental health caseload; and
 - (v) ceasing to place seriously mentally ill prisoners in segregated housing or lock-down as a substitute for mental health treatment.

VI. FIRE AND LIFE SAFETY

Defendants will protect prisoners from fires and related hazards by providing constitutionally adequate living conditions.

1. Accordingly, Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies regarding the physical plant, emergency preparedness, and fire and life safety equipment, including the following:
 - a. An adequate fire safety program with a written plan reviewed by the Local Fire Marshall;
 - b. Adequate steps to provide fire and life safety to prisoners including maintenance of reasonable fire loads and fire- and life-safety equipment that is routinely inspected to include fire alarms, fire extinguishers, and smoke detectors-in housing units;
 - c. Comprehensive and documented fire drills in which staff manually unlock all doors and demonstrate competency in the use of fire and life safety equipment and emergency keys that are appropriately marked and identifiable by touch;
 - d. Regular security inspections of all housing units that includes checking:
 - (i) that cell locks are functional and are not jammed from the inside or outside of the cell; and
 - (ii) that all facility remote locking cell mechanisms are functional;
 - e. Testing of all staff regarding fire- and-life safety procedures;
 - f. Reporting and notification of fires, including audible fire alarms;
 - g. Evacuation of prisoners threatened with harm resulting from a fire;
 - h. Fire suppression;
 - i. Medical treatment of persons injured as a result of a fire; and
 - j. Control of highly flammable materials.

VII. ENVIRONMENTAL HEALTH AND SAFETY

Defendants will protect prisoners from environmental health hazards by providing constitutionally adequate living conditions.

1. Accordingly, Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies regarding the physical plant and environment, including the following:
 - a. Written housekeeping and sanitation plans that outline the proper routine cleaning of housing, shower, and medical areas along with an appropriate preventive maintenance plan to respond to routine and emergency maintenance needs;
 - b. Adequate ventilation throughout the facility;
 - c. Adequate lighting in all prisoner housing and work areas;
 - d. Adequate pest control for housing units, medical units, and food storage areas;
 - e. Prisoner and clinic staff access to hygiene and cleaning supplies;
 - f. Cleaning, handling, storing, and disposing of biohazardous materials;
 - g. Mattress care and replacement;

- h. Control of chemicals in the facility, and supervision of prisoners who have access to these chemicals;
- i. Laundry services and sanitation that provide adequate clean clothing, underclothing, and bedding at appropriate intervals;
- j. Safe and hygienic food services, including adequate meals maintained at safe temperatures along with cleaning and sanitation of utensils, food preparation and storage areas, and containers and vehicles used to transport food; and
- k. Sanitary and adequate supplies of drinking water.

VIII. TRAINING

Defendants will take necessary steps to train staff so that they understand and implement the policies and procedures required by this Agreement, which are designed to provide constitutional conditions.

1. Accordingly, Defendants will develop and submit to USDOJ and the Monitor for review and approval facility-specific policies regarding the following:
 - a. The content (i.e. curricula) and frequency of training of uniformed and civilian staff regarding all policies developed and implemented pursuant to this order;
 - b. Pre-service training for all new employees;
 - c. Periodic in-service training and retraining for all employees following their completion of pre-service training;
 - d. Documentation and accountability measures to ensure that staff complete all required training as a condition of commencing/continuing employment.

IX. IMPLEMENTATION

1. Defendants will begin implementing the requirements of this Agreement immediately upon the effective date of the Agreement. Within 30 days after the effective date, Defendants will propose, after consultation with the Technical Compliance Consultants ("TCCs"), a schedule for policy development, training, and implementation of the substantive terms of this agreement. The schedule shall be presumptive and enforceable until the Monitor is appointed.
2. Upon appointment, the Monitor will adopt the schedule as proposed or as amended by the Monitor after consultation with the parties and the TCCs. Either party may seek a modification to the schedule by making a request to the Monitor, or the Monitor may modify the schedule as necessary. If the parties disagree with each other or with the Monitor and cannot resolve it with the Monitor, either party may submit the dispute to the district court.
3. Defendants will implement every policy, procedure, plan, training, system, and other item required by this Agreement. Each policy required by this Agreement will become effective and Defendants will promulgate the policy to all staff involved in its implementation within 45 days after it is submitted to the United States, unless the United

States or the Monitor provides written objections. The Monitor will assist the parties to resolve any disputes regarding any policy, procedure, or plan referred to in this document. If the parties still cannot resolve a dispute, either party submit the dispute to the district court.

4. Defendants will conduct a semi-annual impact evaluation to determine whether the policies, procedures, protocols, and training plan are achieving the objectives of this Agreement and to plan and implement any necessary corrective action. The Monitor will assist Defendants in identifying and analyzing appropriate data for this evaluation. The evaluation and all recommendations for changes to policies, procedures, or training will be provided to the United States and the Monitor.
5. Defendants may propose modifying any policy, procedure, or plan, provided that the United States is provided with the 14 days' notice in advance of the action. If the United States or the Monitor provides written objections, the Monitor will assist the parties to resolve any disputes regarding these items. If the parties still cannot resolve a dispute, the parties agree to submit the dispute to the district court.
6. Defendants shall provide status reports every four months reporting actions taken to achieve compliance with this Agreement. Each compliance report shall describe the actions Defendants have taken during the reporting period to implement each provision of the Agreement.
7. Defendants shall promptly notify the Monitor and the United States upon any prisoner death, serious suicide attempt, or injury requiring emergency medical attention. With this notification, Defendants shall forward to the Monitor and the United States any related incident reports and medical and/or mental health reports and investigations as they become available.
8. Defendants shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available to the Monitor and USDOJ at all reasonable times for inspection and copying. In addition, Defendants shall also provide all documents not protected by the attorney-client or work product privilege reasonably requested by USDOJ. The parties will discuss a protective order for other documents over which Defendants may claim privilege.
9. USDOJ and its attorneys, consultants, and agents shall have sufficient access to Golden Grove, prisoners, and documents to fulfill its duties in monitoring compliance and reviewing and commenting on documents pursuant to this Agreement. Except to the extent that contact would violate the Rules of Professional Conduct as they apply in the Territory of the Virgin Islands, USDOJ and its attorneys, consultants, and agents shall have sufficient access to Golden Grove's staff.
10. Excluding on-site tours, within 30 days of receipt of written questions from USDOJ concerning Defendants' compliance with the requirements of this Agreement, Defendants shall provide USDOJ with written answers and any requested documents unless the Defendants obtain relief.

X. MONITORING

A. Selection of the Monitor

1. The parties will jointly select a person to serve as the Monitor to oversee the implementation of the Agreement. The selection of the Monitor will be conducted solely pursuant to the procedures set forth in this Agreement. The parties stipulate and, upon presentation of this Settlement Agreement to the Court for its approval, will urge the Court to find that the appointment of a monitor in this case is a public exigency within the meaning of 31 V.I.C. §239(a)(2). The selection is subject to Court approval, and the Monitor will serve at the pleasure of the Court.
2. In selecting a Monitor who has the skill, background, and experience to perform the duties of the position, the parties will seek someone who:
 - a. is independent and can perform the duties of the Monitor free from undue influence;
 - b. has the confidence of the parties, the Court and the community;
 - c. can perform the services in a cost effective manner; and
 - d. has experience in: institutional reform, monitoring, dispute resolution, executive leadership, government service, or other relevant positions..

USDOJ has expressed a preference for a monitor with experience in corrections. The Defendants have expressed a preference for a monitor from the Virgin Islands. Each party will consider anyone nominated by the other party if the nominee otherwise meets the qualifications listed above. If the monitor does not have corrections experience, he or she will engage a corrections expert for monitoring the provisions in Section IV.

3. The Monitor will be selected through the following process. Within 30 days of this Agreement being signed by the parties, each party will nominate up to three persons to serve as Monitor, and each party may strike one of the other party's nominees. Should the parties fail to reach agreement on a person to serve as Monitor within 30 days after exchanging nominations, the parties will recommend their remaining nominees to the Court and the Court will appoint the Monitor from the names submitted by the parties. The same procedures will be followed if the position of Monitor later becomes vacant and the parties cannot agree on a replacement.

B. Termination of the Monitor

1. Neither party, nor any employee or agent of either party, will have any supervisory authority over the Monitor's activities or findings. The Monitor may be terminated only for good cause unrelated to the Monitor's findings and only with prior notice to, and approval of, the parties acting jointly or by the Court's order. Should all the parties agree that the Monitor is not fulfilling his or her duties in accordance with this Agreement, the parties may petition the Court for the Monitor's immediate removal and replacement.

One party may unilaterally petition the Court for the Monitor's removal for good cause, and the other party will have the opportunity to respond to the petition.

C. Fees and Expenses of the Monitor

1. The cost for the Monitor's fees and expenses will be borne by Defendants. The parties recognize, however, that every effort should be made to control these fees and expenses in order to conserve funds for compliance. Therefore, the reasonableness of the fees and travel expenses of the Monitor will be considered in the choice of a person to serve. The Monitor will submit a proposed 12-month budget for the operation of the Monitorship, which will be subject to approval by the parties, and will identify any experts, consultants, and other individuals the monitor anticipates hiring. In the absence of joint approval, the proposed budget will be submitted to the Court for its review and approval. The Monitor will submit detailed monthly statements of fees and expenses to the parties, and either party may object to any statement the Monitor submits. In the absence of agreement, the Court will determine the appropriate amount to be paid.
2. Within the constraints set forth above in this section, Defendants will provide the Monitor with a budget sufficient to allow the Monitor to carry out the responsibilities described in this Agreement. In order to fulfill these responsibilities, it is foreseeable that the Monitor will be required to employ one or more subject matter experts. To the extent possible, the Monitor will rely for this purpose on appropriate agencies in the United States Virgin Islands, *e.g.*, local fire department officials, sanitation inspectors, food service inspectors, and other local entities with expertise in evaluating the sufficiency of the defendants' relevant compliance efforts. The Monitor may consult with or request the assistance of the Technical Compliance Consultants.
3. If the Monitor wishes to contract with or consult other persons or entities to assist in the evaluation of compliance, the Monitor must submit nominees and their qualifications to all parties for review and joint approval within 14 days; any disagreement between the parties on these persons or their proposed rate of compensation will be submitted to the Court for resolution. The Monitor will pay for the services out of his or her budget. Such persons or entities will be subject to all the same rights, limitations, and restrictions set forth in this Agreement as the Monitor. The parties reserve the right to object for good cause either to the necessity of the contract or consultation or to the person with whom the Monitor proposes to contract or consult.

D. Monitor's Access

1. Within 30 days of appointment by the Court, the monitor will conduct the first site visit and submit to the parties for their review and comment a description of how the Monitor will assess compliance with each of the Compliance Measures, how the monitor intends to gather information necessary for the assessment, and what information the Monitor will require the defendants to routinely report and with what frequency.

2. With reasonable advance notice, the Monitor will have full and complete reasonable access to the Golden Grove Correctional Facility and Detention Center, all facility non-privileged records, prisoners' medical and mental health records, staff members, and prisoners. Defendants will direct all employees to cooperate fully with the Monitor. Reasonable advance notice must be provided to the Bureau of Corrections prior to conducting any on-site compliance reviews. Other than as expressly provided in this Agreement, this Agreement shall not be deemed a waiver of any privilege or right the Territory or Defendants may assert against a third party, including those recognized at common law or created by statute, rule, or regulation against any other person or entity with respect to the disclosure of any document. All nonpublic information obtained by the Monitor will be maintained in a confidential manner.

E. Limitations on Public Disclosures by the Monitor

1. Except as required or authorized by the terms of this Agreement or as the parties may otherwise agree, the Monitor will not make any public statements except as specifically authorized in this Agreement with regard to any act or omission of Defendants or their agents, representatives, or employees. Any media statement made by the Monitor regarding the monitoring of this Agreement or his or her employment as Monitor must first be approved in writing by all parties. The Monitor will not testify in any other litigation or proceeding with regard to any act or omission of Defendants or any of their agents, representatives, or employees related to this Agreement, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Agreement. Unless such conflict is waived by the parties, the Monitor will not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against Defendants, their departments, officers, agents or employees regarding the subject matter of this case. The Monitor is not a state, territorial, or local agency or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection. Neither the Monitor nor any person or entity employed or otherwise retained by the Monitor to assist in furthering any provision of this Agreement will be liable for any claim, lawsuit or demand arising out of the Monitor's performance pursuant to this Agreement. This provision does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.
2. The Territory, the Government of the Virgin Islands, and Defendants shall not be responsible for indemnification of the Monitor or any person or entity employed or otherwise retained by the Monitor to assist in furthering any provision of this Agreement and shall not bear responsibility for any attorney's fees or costs in connection with any suit or claim brought by a third party against the Monitor or any person or entity employed or otherwise retained by the Monitor to assist in furthering any provision of this Agreement.

F. Monitor's Reports

1. The Monitor will issue an initial report to the parties within four months after the effective date of his or her appointment and then every four months thereafter until Defendants have reached at least partial compliance with every provision. At that point, the Monitor will issue reports every six months. These reports will be written with due regard for the privacy interests of individual prisoners and staff and for the interest of Defendants in protecting against disclosure of non-public information (*e.g.*, security-sensitive information). The Monitor's reports will indicate a compliance rating for each provision (both with regard to policy formulation and implementation) and may provide non-binding recommendations for achieving compliance with any provisions not in compliance at the time of the Report.
2. These reports will be filed in the record of this case under such conditions as the Court may order. The reports will be provided to counsel for comment in draft form at least two weeks prior to their filing, and the draft reports and any comments thereto shall be neither publicly disclosed nor filed on the record in this case.
3. Reports of the Monitor will be admissible in evidence to the extent permitted by the Federal Rules of Evidence.

G. Compliance Assessments

1. In his or her reports, the Monitor will evaluate the status of compliance for each relevant provision of the Agreement using the following standards: (1) Substantial Compliance; (2) Partial Compliance, and (3) Noncompliance. In order to assess compliance, the Monitor will review a sufficient number of pertinent documents to accurately assess current conditions; interview all necessary staff; and interview a sufficient number of prisoners to accurately assess current conditions. The Monitor will be responsible for independently verifying representations from Defendants regarding progress toward compliance and for examining supporting documentation, where applicable. Each Monitor's report will describe the steps taken to analyze conditions and assess compliance, including documents reviewed, individuals interviewed, and the factual basis for each of the Monitor's findings.

H. Technical Assistance

1. The Monitor shall provide specific recommendations to the Defendants with regard to each substantive requirement of this Agreement, in order to assist Defendants in achieving and maintaining substantial compliance. Defendants also may consult with the Technical Compliance Consultants regarding the development of policies required by this Agreement. However, under no circumstances will any of them order or purport to order Defendants to take any specific step to achieve substantial compliance. The Monitor shall not, and is not intended to replace or take over the role and duties of the Governor of the Territory, the Director of the Bureau of Corrections, or the Warden of the Golden Grove Adult Correctional Facility and Detention Center.

I. Monitor's Testimony

1. In accordance with the Federal Rules of Evidence, either party or the Court may call the Monitor to testify as a witness. Regardless of who calls the Monitor, each party may cross examine. The Monitor's testimony will be admissible as permitted by the Federal Rules of Evidence.

J. Monitor's *Ex Parte* Communications

1. Absent agreement by both parties, the Monitor may not initiate nor receive *ex parte* communications with the Court. Either party may initiate or receive *ex parte* communications with the monitor. However, the Monitor may not initiate or receive *ex parte* communications with the Defendant Governor, Defendant Director, and officers and employees of any Territorial agency or office other than Golden Grove, unless their counsel are afforded the right to be present.

XI. ENFORCEMENT AND TERMINATION

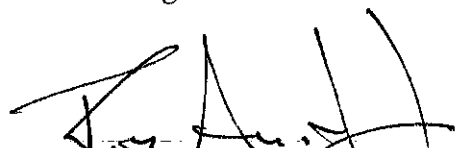
1. The District Court of the Virgin Islands will retain jurisdiction over this matter for the purposes of enforcing this Settlement Agreement.
2. This Agreement shall terminate when Defendants achieve compliance with the substantive provisions of this Agreement and maintain compliance for one (1) year.
3. Failure by either party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines or provisions of this Agreement.
4. If any unforeseen circumstance occurs that causes a failure to timely carry out any requirements of this Agreement, Defendants shall notify the Monitor and USDOJ in writing within 20 calendar days after Defendants become aware of the unforeseen circumstance and its impact on Defendants' ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. Defendants shall implement all reasonable measures to avoid or minimize any such failure.
5. The Agreement shall be applicable to, and binding upon, all parties, elected officials and their respective officers, agents, employees, assigns, and their successors in office.
6. In the event that any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, that finding shall not affect the remaining provisions of this Agreement.

For the UNITED STATES OF AMERICA:

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Attorney General

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

RONALD W. SHARPE
United States Attorney
District of the Virgin Islands

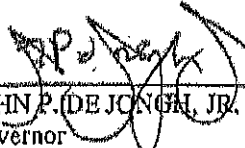

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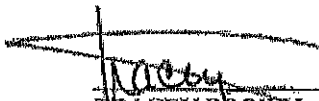
JOHN P. DE JONGH, JR.
Governor



VINCENT P. FRAZER
Attorney General



JULIUS C. WILSON
Director
Bureau of Corrections



TRACEY BROWN
Warden
Golden Grove Adult Correctional Facility

SO ORDERED this _____ day of _____, 2012.

UNITED STATES DISTRICT JUDGE