IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

JAIME BRAVO et al.,

Plaintiffs,

v.

CV 08-10 WJ/KBM

BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF DOÑA ANA et al.,

Defendants.

STIPULATED SETTLEMENT AGREEMENT

Plaintiffs Jaime Bravo, et al., and Defendants, Board of County Commissioners for the County of Doña Ana, the Doña Ana County Detention Center (DACDC), Christopher Barela in his individual and official capacities, Todd Garrison in his official capacity, the Doña Ana County Sheriff's Office, John and Jane Does 1 and 3-10 hereby enter this settlement agreement. The Sheriff, the Sheriff's Office, and any law enforcement John and Jane Does enter into this agreement to acknowledge that Plaintiffs forever release any and all claims resulting, or to result, from the events giving rise to the above-captioned action. No part of this agreement requires any action or change in policy, procedure, or conduct by the Sheriff, the Sheriff's Office, and law enforcement John and Jane Does. This settlement agreement becomes generally effective immediately, though Defendants have 90 days to implement any portions that require adjustments to current contracts with agents working in DACDC.

I. STAFFING

The primary purpose of mental health services at DACDC is to provide supportive treatment, provide suicide prevention, and reduce the frequency and duration of psychiatric

crises, using individual and/or group treatment and psychotropic medications guided by a treatment plan that addresses the individuals' specific mental health needs by identifying mental health issues, planning a course of intervention, providing clinical justification for the intervention and identifying next steps.

A. General Principles for Staffing:

DACDC will staff the facility with the mental health professionals and staff designated below. Any unforeseeable vacancy in mental health treatment staff in DACDC will be filled within a reasonable period to not exceed two weeks, at least on a temporary basis such as by a locum tenens position, and will be filled permanently within 120 days. DACDC will have at least 1.7 full-time employees (FTEs) of qualified mental health professionals (QMHP) licensed to prescribe mental health medications. DACDC will at all times have a QMHP available on-call to respond to detainee needs that arise. The full complement of mental health staff available to DACDC detainees will also include the treatment staff at the inpatient hospital or equivalent when individuals with acute symptoms are transferred to such settings as clinically indicated.

1. At least 0.2 FTE psychiatrist, with on-site work in the facility preferred, though some use of telemedicine will be permitted.

2. Remaining FTE time of QMHP may be licensed psychologists and/or certified nurse practitioners licensed according to the Certified Nurse Practitioner Act, § 61-3-23.2 NMSA 1978 or Professional Psychologist Act, 61-9-1 et seq. Any QMHP in DACDC must meet the statutory requirements to practice independently, make decisions regarding people's health care needs, and have fulfilled the requirements for prescriptive authority, including the distribution of dangerous drugs and controlled substances, as authorized by law.

3. At least 1.0 FTE mental health counselor, whose licensure allows the person to make independent clinical decisions, who may be a licensed psychologist, psychiatric nurse practitioner, licensed independent social worker, licensed marriage and family therapist or a licensed professional clinical counselor.

4. At least 1.0 FTE of a "mental health technician" qualified to work with DACDC detainees with mental health diagnosis and treatment needs.

5. DACDC will review mental health services' staffing periodically to assure that the facility is staffed sufficiently to provide the mental health services described herein.

6. Job Functions of Qualified Mental Health Professionals (QMHP):

The QMHP will conduct routine assessment following referrals which will be generated primarily by the intake screening, but also by self referral, custody referral, collateral referral (such as community treatment provider, family member or other significant other). The QMHP shall document the initial assessment on the Psychosocial Assessment agreed to by the parties in the Appendix. The assessment will result in the development of an individualized treatment plan that identifies the level of care, and the type and frequency of mental health intervention necessary. The QMHP shall:

a. Coordinate treatment planning with other relevant treatment providers, as clinically indicated;

b. Provide follow-up individual and group treatment, as clinically indicated and as identified in the individualized treatment plan;

c. Conduct rounds or see patient detainees;

d. Maintain data and complete charting documentation in accordance with policy and professional standards;

e. Be responsible for crisis intervention in the facility when on site;

f. Conduct screenings regarding suitability for segregation;

g. Conduct assessments of detainees deemed by the qualified mental health counselor to be in need of assessment for psychotropic medication(s), including but not limited to those who report current treatment with psychotropic medications upon admission;

h. Provide clinically appropriate follow up for those detainees for whom medications are clinically indicated (including assessment of capacity for those who refuse or exhibit poor adherence to mental health treatment);

i. Assess suicide risk for those referred for this purpose, and determining placement when risk is confirmed;

j. Assess placement and care for patients returning from a higher level of care;

k. Participate in crisis intervention, as clinically indicated;

l. Obtain consultation with regard to detainee patients with complex medical/psychiatric needs;

m. Provide on-call services when not on-site; and

n. Other duties as assigned.

7. A minimally acceptable level of mental health staffing shall allow time for the following:

a. A complete initial psychiatric assessment;

b. A complete psycho-social assessment; and

c. When documenting the delivery of the foregoing assessments, the QMHP will enter the time spent providing those services for use in the Quality Improvement process described in Section VI below.

8. The intensity of mental health follow-up will vary based upon clinically determined levels of care responsive to individual acuity and need. Levels of care will minimally address routine, urgent and emergent need.

a. All caseload detainees shall receive mental health treatment at a level of care providing the frequency and a modality of treatment prescribed in accordance with a clinically driven treatment plan reviewed by the patient.

b. All caseload detainees housed in the general population shall have at least monthly contact with mental health staff; all detainees housed in mental observation housing shall have at minimum weekly contact with a mental health clinician beginning with more frequent contact upon admission and tapering as clinically indicated.

c. Treatment plans will be reviewed as clinically indicated and revised based upon an individual's level of care; if there is a mental health unit, treatment plans for those housed in a mental health unit will be reviewed more frequently.

d. Initial orders for psychotropic medications will not exceed two weeks in duration and will be re-ordered upon clinical exam for periods not to exceed 30 days. All required blood and laboratory work shall be performed in a timely manner, the results of which shall be reviewed by the treating QMHP.

B. DACDC will hire additional staff as necessary with adequate credentials and training to focus on mental health care and case management.

C. DACDC will designate the qualified medical professional who will provide the single point of clinical and administrative responsibility for overall mental health care delivered in or by the facility, and assure that mental health services in the facility are staffed at all times with the minimum staffing level described in Subsection I.A. above.

II. POLICIES AND PROCEDURES

A. All staff shall receive training on the revised policies and procedures to assure implementation. All staff shall be certified in CPR.

B. All health care staff shall receive training which will include: screening, initial assessment, on-going treatment, treatment planning (all including time-lines and relevant disciplines), access to the full continuum of care, rounds, screening related to placement in segregation, consultation regarding rules violations, reentry planning, contact of relevant collateral sources of information regarding the patient, admission and discharge to the Mental Health Unit (MHU), verification of psychotropic medications, bridge orders, laboratory testing, treatment adherence, documentation requirements, data collection, assessment regarding capacity when treatment is refused, and procedures for people without capacity needing treatment.

C. DACDC shall conduct periodic audits of the implementation of the revised policies and procedures governing the care of detainees with mental illness.

III. INTAKE

Doña Ana County Detention Center shall develop intake and triage procedures that shall include the Prison Health System Catalyst Intake Screen, or its equivalent, the New York Suicide Screen and the Brief Jail Mental Health Intake Screen (Steadman, et al.). In addition, Mr. Henry Dlugacz and Dr. Susan Stone, the parties' respective experts, have created a psychosocial assessment questionnaire, in addition to the aforementioned screens, which looks for major

mental illness and suicide risk, and accounts for variations between male and female detainees (including low sensitivity of some normed instruments to depression and anxiety related to PTSD). It will be included in the intake process for detainees if it can be added to the Catalyst system, or the Parties will reconvene to negotiate an acceptable alternative. The psychosocial assessment screen is attached as the Appendix. The screens shall be administered by appropriately trained staff that includes:

A. Specific training in detecting signs of mental illness and suicide risk and training in the use of the standardized intake instruments which shall include:

1. The ability to conduct a basic risk assessment, detect signs of mental illness;

2. Consideration of data from previous incarceration(s), including without limitation, suicide risk limitation;

3. Guidelines for completion and scoring which include mandatory referrals under certain defined circumstances;

4. The ability to refer based upon clinical judgment regardless of score; and

5. The facility shall place posters in intake, booking, and all women's housing units, which are commonly used in physicians' offices and other public places, describing signs and symptoms of domestic violence and offering the ability to self-refer to assessment. Attorneys for the Plaintiffs will provide a sample and/or model language to use in the posters.

B. The facility shall be staffed so that individuals are processed through admission in a time period not to exceed 72 hours. Capacity of the holding cells and data regarding levels of intake activity shall guide intake staffing.

C. Booking shall contain cells to house females separately from males.

D. Medical staff should routinely inquire of transport officers concerning their observations of the new admission with a focus on issues of:

1. Intoxication: Is the person apparently under the influence of alcohol or drugs? Is the person incoherent or showing signs of withdrawal or mental illness?;

2. Medical needs;

3. Mental health needs: Was there evidence of mental health issues at the time of arrest or transport?; and

4. Suicide: Did the arresting or transport officer believe the subject may be a suicide risk?

These observations should be documented in medical records and made available to medical staff conducting the intake screening.

E. DACDC shall provide a means by which detainees in the booking unit may request mental health services. Such services must be provided to requesting detainees in the booking unit when appropriate.

F. Detainees must have the ability to request mental health services 365 days a year regardless of location, including booking. These requests must be triaged in a timely manner and responded to according to clinical acuity including crisis response capability 24 hours a day, seven days a week. Emergent referrals (regardless of source including self referral) shall be assessed immediately, urgent referrals within 24 hours and routine referrals within 3 business days. This must include, but shall not be limited to locked, confidential boxes for referral requests which are picked up regularly by medical staff. Requests for services and responses shall be logged by designated mental health staff.

G. DACDC shall establish systems to avoid placing anyone on a mattress on the floor, unless requested by a detainee.

IV. POST-ADMISSION MENTAL HEALTH SERVICES

DACDC shall adopt placement options which establish a continuum of care, including:

A. Develop criteria, tools, and a system to conduct more comprehensive mental health and psychosocial assessments for detainees with positive indicators on the intake screening, for detainees without a history of mental illness but who are to be placed in administrative segregation, and for detainees who otherwise exhibit the need for such and who remain in the facility for a set period of time, as described above in Section III, Intake.

B. Develop an organization structure and protocols that guide triage, assessment, clinical determinations of levels of care and referral.

C. Create a system to develop and review individualized treatment plans for residents in need of on-going mental health care to organize and guide care.

D. DACDC has established and will maintain a mechanism for transferring individuals with acute symptoms to an inpatient hospital or equivalent setting when clinically indicated. At this time, Doña Ana County has entered into a contract with Mesilla Valley Hospital for this purpose.

E. DACDC has created, and will maintain, a separate mental health unit (MHU) for men and another for women, who for periods of time throughout their detention will not manage adequately in general population due to psychological vulnerabilities or behavioral health issues related to a mental disorder. The mental health units will include:

1. Specially trained corrections officers (see Section VII, Officer Training) assigned to the unit providing direct supervision of residents;

2. A system enabling mental health staff to admit and discharge a resident to the mental health caseload and for tracking same;

3. Clinically indicated treatment planning;

4. Individual treatment shall occur on a schedule established by the mental health professional and at minimum, patients housed on this unit will be assessed on an individualized schedule established by the qualified mental health professional;

5. Daily rounds conducted by medical or mental health staff in consultation with officers and other detainees, with the ability to conduct confidential interviews as clinically indicated;

6. Team meetings, including the Facility Administrator, health care Lieutenant, classification Lieutenant, day room officer, qualified mental health professional, mental health counselor, and Inmate Program Worker to assess each detainee's status and classification;

7. Opportunity for out-of-cell activities as appropriate, including recreation, outdoor recreation, education, in-unit community meetings, patient education, and therapeutic groups;

8. Opportunity for programming at least similar to that provided to people in general population;

9. Office space for private therapeutic interventions as clinically indicated; and

10. A method for assessing a resident's capacity to accept or reject proposed treatment and for following the New Mexico Mental Health Code regarding seeking a treatment guardian in appropriate instances when less intrusive means of securing informed consent have not been successful.

V. SECLUSION AND RESTRAINT

DACDC has in place, and will continue to utilize, a Use of Force and Restraints Policy that includes the following elements applicable to individuals who have been diagnosed with or

suspected of having a mental illness (see Policy Number 2b-03, March 30, 2009 comporting with ACA Standard: 4-ALDF-2B-02 and 4-ALDF-2B-03).

A. Restraints may be ordered only after less restrictive measures have been considered or attempted.

B. Restraint shall be used only to prevent imminent harm to self or others, only until appropriate medical intervention is obtained within no more than 30 minutes, and in no case for longer than four hours.

C. Any detainee with a history of mental health treatment needs or who is suspected of having mental health treatment needs shall be assessed by a qualified mental health professional within 72 hours of a restraint.

D. Seclusion of any detainee in a padded or isolation cell requires assessment by a qualified mental health professional within 24 hours, either to release the detainee back to a housing pod or to permit continued seclusion in a padded or isolation cell. Any continued seclusion in a padded or isolation cell shall be re-assessed every 24 hours until release back to a housing pod.

E. Restraint is only appropriate for the period of time necessary to effectuate appropriate medical intervention to prevent imminent harm to self or others. Treatment plan review is required subsequent to each use of restraint to determine whether a change in treatment approach is in order. Regular use or multiple instances of restraint, defined as two times in one week or three times in a given month, require elevation of the detainee to a higher level of care.

VI. QUALITY IMPROVEMENT

DACDC shall maintain a mechanism for assessing the quality of mental health care provided within DACDC which systematically examines key indicators of quality and provides recommendations for focused remedial action when indicated.

A. DACDC will conduct a weekly staffing of detainees assigned to the mental health units to determine continued housing in mental health or general population. The participants shall include the Facility Administrator, health care Lieutenant, classification Lieutenant, day room officer, qualified mental health professional and social worker. Participants shall review incident reports and daily logs and request information on any concerns, potential problems, unusual situations or irregularities in mental health care witnessed by corrections officers.

B. The committee developed to implement continuous quality improvement will include mental health, medical, and corrections staff as required; meet quarterly; and keep minutes.

C. Results of continuous quality improvement assessments will be presented at least quarterly to the clinical director and the jail administrator or designee, and shall examine key indicators as follows:

- Number of intakes;
- Number of positive mental health screens (Mental Health Flag on either BJMHS or NYS Suicide Screen);
- Findings on medical intake mental health screen;
- Number of referrals to mental health services in each category based upon screening (urgent, emergent, routine);
- Number of referrals to mental health services by other sources (e.g. correctional officers, medical, self, collateral sources);
- Whether detainees are seen within specified timeframes in each category (for those beyond the timeframe, broken down 1-3 days late, 3-7 days late, over 7 days late, due but not completed);
- Number of detainees referred to Qualified Mental Health Professional (QMHP);

• Whether detainees are seen by QMHP within specified timeframe (24 hours for urgent and 5 business days for routine for initial; subsequent as clinically determined by treatment plan);

• Number of detainees referred to hospital or other higher level of care;

• Number of detainees on psychotropic medications (anti-psychotics, mood stabilizers, anti-depressants);

• Number of detainees with on-going scheduled contact with mental health services;

• Number of suicide attempts;

• Number of suicide gestures;

• Number of suicides;

• Instances of use of restraint or forced medications;

• Detainees with disciplinary charges on mental health rolls at time;

• Number of detainees with a known or suspected mental health condition screened for segregation;

• Number of detainees without a known mental health condition assessed before placement in administrative segregation;

• Number of detainees on mental health rolls or screened as positive for likely mental health diagnosis;

• Number of those on mental health rolls or screened as positive for likely mental health diagnosis placed in segregation; and

• Of category above, what exception reason was used to justify placement.

VII. OFFICER TRAINING

A. The mental health units will be staffed by specially trained officers who can observe and report behavioral health concerns to the mental health professionals.

B. DACDC will establish specialized training for officers who will be regularly assigned to those units housing people with mental disorders and for those officers assigned to detainees transferred to the Mesilla Valley Hospital (see Subsection VII.D. below).

C. All health care unit corrections officers shall receive training using an approved modified Memphis model CIT program or an equivalent, which will include recognizing signs and symptoms of mental illness and suicide risk; de-escalation techniques; access to mental health care; cut-down techniques and other procedures related to suicide attempts.

D. DACDC will assure that an experienced officer is trained as a trainer in the CIT or equivalent and CPI (Crisis Prevention Institute, a method of restraint which incorporates de-escalation techniques). This officer will train all officers receiving training through the DACDC academy and provide refresher training at one year intervals.

VIII. SEGREGATION UNITS AND CONDITIONS OF CONFINEMENT

A. Placing detainees with a mental health condition in administrative segregation other than the mental health unit should be an unusual and rare event, and should only be utilized if the detainee:

1. is acting violently or is engaging in menacing conduct which causes another person to reasonably believe that he or she is in danger of receiving an immediate battery (*see* 30-3-3 NMSA 1978);

2. requires protective custody administrative segregation to guarantee his or her own safety; or

3. makes an informed choice to be housed in a segregated cell.

B. If a detainee on the mental health caseload or suspected of having a mental health condition is placed in administrative segregation other than the mental health unit, a note shall be placed in the detainee's medical record describing the nature of the violent or menacing conduct that justified the segregation, the nature of the circumstances that require the detainee to be placed in protective custody, or a clear statement of the detainee's desire for the segregated housing. The decision to segregate the detainee shall be reviewed periodically, at least weekly for violent or menacing conduct and for a self-reported preference for segregation, with corresponding updated notes in the detainee's medical record.

C. When a detainee not on the mental health caseload or suspected of having a mental health condition is placed in administrative segregation for an emergency situation as in Subsection VIII.A. above, the detainee will be provided with a mental health and psychosocial assessment by a qualified mental health professional (QMHP) within one business day of the segregation. If this assessment indicates that the detainee does have a mental health condition, the detainee will not be placed in administrative segregation unless the requirements of both Subsections VIII.A. and VIII.B., above, are met.

D. Before any detainee not on the mental health caseload or suspected of having a mental health condition is classified to administrative segregation for a non-emergency situation, a QMHP will conduct a mental health and psychosocial assessment. If this assessment indicates that the detainee does have a mental health condition, the detainee will not be placed in administrative segregation unless the requirements of both Subsections VIII.A. and VIII.B., above, are met.

E. DACDC will staff the segregation units with officers trained to identify signs of suicidality, the monitoring of which will be "particularly intensive" during the first 8 weeks of placement in such a unit and during times of psychosocial stress.

F. Rounds shall be conducted three times per week by a qualified mental health professional for individuals housed in administrative segregation who are not on the mental health caseload to monitor for potential deterioration in their mental health. These rounds should be staggered in a reasonable way to minimize gaps between visits.

G. Individuals on the mental health caseload housed in administrative segregation shall be monitored daily by the mental health team, with the opportunity for an interview in a private setting, when indicated.

H. DACDC will conduct a structured periodic review of inhabitants' mental health status as well as suitability for continued housing in these units.

I. Every detainee housed in the mental health unit shall be provided individualized opportunities for out-of-cell time, including recreation, time outdoors and pro-social activities such as support groups, psychosocial education and other community activities for a minimum of one hour per day. Individuals on the mental health caseload who are housed in administrative segregation shall be provided opportunities for out-of-cell time, for a minimum of one hour per day.

J. DACDC will provide a comprehensive one-time assessment of each individual housed in Fox I, Fox II, Echo II, or "Supermax," including diagnosis, treatment plan, mental health status and length of stay, to assure that any inmate with a mental health condition housed in those units is identified. DACDC will develop an individualized treatment plan for each person and take

prompt action to address residents' unmet mental health needs. This assessment shall be conducted within two weeks of signing this settlement agreement.

K. As is currently the practice of DACDC, no inmate known to have a mental health condition shall be housed in the Bravo ("Supermax") unit. If at any time a corrections officer or any other DACDC staff member or contractor has reason to believe a detainee housed in Bravo is exhibiting signs of mental health condition, the mental health services staff shall be notified and an assessment shall be provided to that detainee promptly.

L. Individuals who are placed in the mental health unit shall be provided individualized treatment in scope and duration as governed by the standards of the reasonable and prudent practice of psychiatry.

IX. MEDICAL RECORDS / CLINICAL DOCUMENTATION

Medical records, whether electronic or paper, should be organized and accessible to clinical staff that will use them. Medical records shall:

A. Be dated, timed and have a signature block and the printed name and discipline of the person making the entry;

B. Entered in chronological order;

C. Contain an easily identifiable problem oriented record with a problem list containing major issues with the date they were addressed or resolved;

D. Contain an individualized treatment plan which includes short and long terms goals which are measurable and clinically relevant and contain a discussion of progress made towards achievement of that goal and next steps to be taken in support of that goal; and

E. Enable all computerized medical records, and all paper medical records created within the last 180 days, from previous admissions to be accessible upon admission or shortly thereafter to help complete the medical and mental health screen.

F. DACDC has established, and is using, an electronic system through its medical services contractor, PHS. To assure continuity of care, DACDC will have access to the records created and stored in the electronic system regardless of which entity provides mental health services in the facility.

X. GRIEVANCE SYSTEMS AND ACCESS TO MEDICAL CARE

A minimally adequate grievance system shall:

A. Be readily available to all residents;

B. Gather all grievance forms promptly and in a confidential manner;

C. Notify the detainee that the grievance has been received no later than two business days after receipt;

D. Log and track each grievance;

E. Promptly address each grievance;

F. Properly notify each resident of the action taken in response to the grievance within seven business days of receipt of the grievance;

G. Afford a timely and adequate appeal; and

H. Be used as part of a quality assurance mechanism overseeing the provision of adequate medical and mental health care.

XI. MONITORING

A. The Parties, in consultation with their respective experts, shall choose a neutral expert to monitor the implementation of this settlement agreement. Defendants will pay the fees and costs of the monitoring.

1. This neutral expert shall make three monitoring visits through DACDC in the first year after the implementation of this settlement agreement, at approximately four, eight, and 12 months after implementation.

2. The neutral expert shall make another monitoring visit through DACDC at approximately 18 months after implementation if s/he decides that visit to be necessary based on a determination of the substantial compliance by Defendants with this settlement agreement.

3. The neutral expert shall make a final monitoring visit through DACDC at approximately 24 months after implementation.

4. For each of the neutral expert's monitoring visits, the expert will prepare a report, indicating the findings of the monitoring, for both Defendants and Plaintiffs, and will offer cure letters where appropriate.

5. The total costs and fees for each of the monitoring visits will be capped at a maximum of $10,000.

B. Attorneys from Disability Rights New Mexico (DRNM) will perform additional monitoring on behalf of the Plaintiffs.

1. Plaintiffs' monitor from DRNM may make up to six visits through DACDC in the first year after implementation of this settlement agreement.

2. Defendants will reimburse DRNM for reasonable costs of the monitoring visits, and for up to a total of 60 hours of attorney monitoring time at $175/hour.

C. This settlement agreement shall terminate on February 1, 2012.

XII. FINANCIAL TERMS OF SETTLEMENT

Doña Ana County will pay a total of $400,000 for Plaintiffs' attorneys' fees, costs, and any damages to be paid to the Plaintiffs.

XIII RELEASES

Plaintiffs will file a Dismissal of Action, covering all Plaintiffs and all claims relating to the above-captioned case, under Rule 41 of the federal rules of civil procedure. A notarized executed release of all claims is being provided by Plaintiffs' counsel to the County Defendants on behalf of all Plaintiffs, except for Plaintiff Bravo who is currently unavailable. Mr. Bravo's release of claims will be provided at such time as he becomes available.

On behalf of all Plaintiffs:

Tim Gardner — 1/15/10

Tim Gardner
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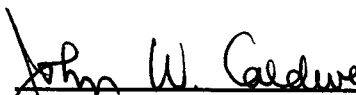
On behalf of the County Defendants:



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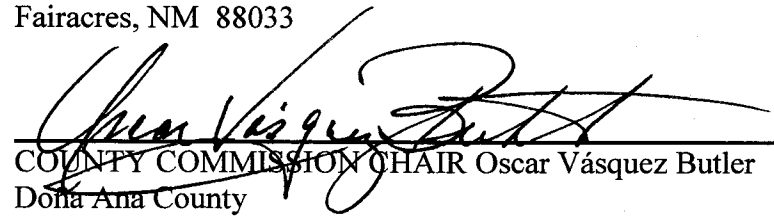

1/22/10

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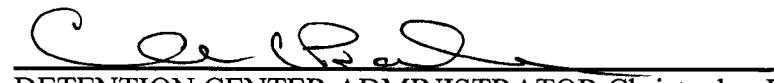

1/22/2010

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