

Settlement Agreement

New Times, Inc., Association of Alternative Newsweeklies, Dark Night Press, Clay Douglas, Larry Rice, Doret Kollerer, Christine Donner, Maoist International Movement, and the Barrio Defense Committee (the “Publisher Plaintiffs”) and Anthony Lucero, Maxwell Thomas, Daniel Hernandez, Arthur McCray, George Moore, Travis Colvin, and Martin Williams (the “Inmate Plaintiffs”) (collectively “Plaintiffs”), and Joe Ortiz (“Ortiz”) in his official capacity as Executive Director of the Colorado Department of Corrections (“DOC”), execute this Settlement Agreement on this ____ day of June, 2004.

I. Recitals

A. Plaintiffs filed a Complaint in the United States District Court for the District of Colorado on March 22, 2000, alleging under 42 U.S.C. § 1983 that the DOC violated their rights under the First and Fourteenth Amendments to the United States Constitution in connection with the DOC’s censorship of reading materials directed to the Inmate Plaintiffs at various facilities of the DOC throughout Colorado, largely under Administrative Regulation 300-26 (“AR 300-26”) (the “Lawsuit”);

B. The Plaintiffs and Ortiz desire to resolve the Lawsuit without further litigation and have agreed to the following terms in full settlement of the claims alleged by the Plaintiffs.

II. Agreement

In consideration of the mutual promises set forth below, Plaintiffs and Ortiz agree as follows:

A. Definitions:

1. “Reading material” means any publication, book, pamphlet, correspondence, picture, photograph, personal writing, or other similar document or material.

2. “Administrative Head” means the Warden, Superintendent, or equivalent position at any DOC facility.

3. “DOC Facility” means all facilities within the DOC at which offenders are housed, whether operated in whole or in part by the DOC or by an independent contractor, including those facilities identified within the DOC as “contract facilities.”

B. General Provisions

1. Within thirty days of the execution of this Settlement Agreement, Ortiz will cause the DOC to promulgate the document attached hereto as Exh. A as the new version of AR 300-26.

2. For two years from the date of execution of this Agreement, Ortiz agrees not to adopt or implement a version of AR 300-26, or any other regulations referenced in Exh. A to the extent they relate to the substance of AR 300-26, that varies from Exh. A, without the express written agreement of Plaintiffs’ counsel. Plaintiffs’ counsel agrees not to unreasonably withhold its consent to any changes that do not materially alter the substance or procedures in Exh. A.

3. The parties recognize that inmates retain a First Amendment right to read materials that express a wide variety of religious, philosophical, political and social views, as well as material that may contain criticism of government policies or may be critical of government authority or Department policies or practices, as long as those materials do not

violate the standards set forth in Exh. A. Thus, there will be no general prohibition of publications such as Cry Justice Now, Dark Night Field Notes, Free America, MIM Notes, North Coast Xpress, Voz del Barrio Atzlan, and newsletters of the National Prison Project, or similar organizations, unless matter in a specific issue is found to violate the standards set forth in Exh. A. In addition, the fact that a publication contains hand signs, tattoos, styles of dress, or other depictions that some would generally associate with street gangs shall not be grounds for withholding a publication, unless the publication also contains material that specifically violates the standards established in ¶ IV.B.3 of AR 300-26.

4. Within 240 days from the date this Agreement is executed, the DOC shall institute a training program to instruct all persons involved in the mail review process, including all present and future mail room personnel, Reading Committee members, Intelligence or STG Officers, Administrative Heads, Central Reading Committee members and the Deputy Director of Prison Operations, in the requirements of AR 300-26. The training program shall be implemented within 180 days, and no employee will be permitted to serve on a Reading Committee or on the Central Reading Committee without first completing the training by 420 days after the execution of this Agreement. The curriculum and training materials will be prepared by the DOC Training Academy in conjunction with the Office of Correctional Legal Services and provided to the ACLU and Plaintiffs' counsel within 180 days of the execution of this Agreement. The ACLU and Plaintiffs' counsel will then have 30 (thirty) days within which to suggest revisions and additions to the same, consistent with the terms of this Agreement and the intent of the revised AR 300-26. The training will be implemented within 30 days of receipt of the comments of Plaintiffs' counsel.

5. Within 60 days of the execution of this Agreement, Ortiz shall instruct all Administrative Heads that they must adopt and implement practices within each facility to ensure the following:

- a. Each member of a Reading Committee must independently review reading material before a decision is made to withhold all or a part of the reading material;
- b. The Administrative Head or his/her immediate subordinate must independently review at least the portion of the reading material that the Reading Committee recommends be withheld before signing an Offender Reading Material Evaluation Form with respect to that material;
- c. If the Administrative Head or his/her immediate subordinate determines to permit reading material that the Reading Committee has suggested be withheld, each member of the Reading Committee and the mail room staff responsible for reviewing incoming mail shall be notified of the Administrative Head's decision;
- d. If the Central Reading Committee determines to permit reading material that the Administrative Head or his/her immediate subordinate has determined to withhold, each member of the Reading Committee and the mail room staff member responsible for reviewing incoming mail shall be notified of the Central Reading Committee's decision and the basis for that decision.
- e. An Administrative Head or other facility employee serving on the Central Reading Committee shall not participate in the Committee's review and decision with respect to any reading material decision made at that member's facility.

6. Any limit imposed by the DOC or any facility on the number of items of reading material that an inmate may possess in his cell shall at all times be only that number necessary for fire, rehabilitation, health or safety reasons.

7. No facility shall be permitted to adopt an Implementation/Adjustment to AR 300-26 or to any other related Administrative Regulation that contains more permissive criteria for censorship or that contains more relaxed procedures than Exh. A. Ortiz shall revise

and adopt the appropriate regulation to implement the provisions of this paragraph within 60 days of the execution of this Agreement.

C. Monitoring and Compliance

1. Within 240 days of the execution of this Agreement, the DOC shall establish procedures enabling it to monitor the overall censorship process, both procedurally and substantively, to ensure general compliance with the terms of this Agreement. When it comes to the attention of the DOC that a particular facility is consistently withholding a type of reading material that does not violate the guidelines of AR 300-26, and the decision of the Administrative Head to withhold the reading material is not objectively reasonable with respect to specific circumstances at the facility, that fact must be communicated to the Chair of the facility's Reading Committee and the facility's Administrative Head with instructions on the correct application of AR 300-26.

2. For two years from the date of this Settlement Agreement, Plaintiffs' counsel will be permitted to monitor compliance with the terms of this Agreement (the "Monitoring Period"). Throughout the Monitoring Period, the DOC will provide to Plaintiffs' counsel on a quarterly basis a printout of the Offender Reading Material Database of censorship decisions, referenced in section IV.H.2. of Exh. A. Additionally, the DOC will make available for review by Plaintiffs' counsel at the applicable facility all completed forms regarding materials which have been censored in the prior 2 years, including all contraband or mail slips, dated to indicate the routing of reading material to a Reading Committee; all Offender Reading Material Evaluation Forms, with whatever attachments are required to be maintained by the DOC; all completed appeal forms submitted by an inmate or publisher relating to the withholding of

reading material, and all responses thereto; and a copy of all reading material withheld during the Monitoring Period. Any records maintained by the Central Reading Committee may be reviewed at the central office of the DOC.

D. Attorneys Fees and Costs

1. Ortiz stipulates that Plaintiffs have incurred attorneys' fees and costs in achieving this settlement. For the purposes of 42 U.S.C. §1988, the parties stipulate that Plaintiffs are the prevailing parties in this litigation, and that Plaintiffs are entitled to recovery of their reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

2. The parties shall attempt to agree on the amount of attorneys' fees and costs to be paid to Plaintiffs' counsel by Defendant. If the parties are unable to reach an agreement on an amount of this fee payment, then within forty-five days of the date the Court approves this Agreement, the parties will submit their fee dispute to Judge Figa. Plaintiffs will submit their application for attorneys' fees and costs with supporting documentation and briefs. Ortiz will have thirty days after the filing of Plaintiffs' application to respond, and Plaintiffs fifteen days thereafter to file a reply. Based on these filings, any evidence that the Court would like to consider, and the law governing attorneys fee awards under 42U.S.C. §1988, the Court will make a final decision with respect to the amount of reasonable attorney's fees and costs to be awarded to Plaintiffs' counsel. There shall be no appeal of the District Judge's decision.

E. Enforcement

1. Upon execution of this Agreement, the parties will file a Joint Motion for Entry of Stipulated Judgment and Order, incorporating the terms of this Settlement Agreement as an Order of the Court.

2. The Court shall have the power to enforce this Settlement Agreement upon appropriate motion, after due notice and hearing. The prevailing party in any such enforcement action, in addition to all other legal or equitable remedies, shall be entitled to recover attorneys' fees and costs in accordance with the standards set forth in 42 U.S.C. § 1988 as determined by the Court.

F. Miscellaneous

1. Ortiz, his successors, and the DOC shall not implement or enforce any regulation, including AR 300-26, policy or practice that is inconsistent with the intent or requirements of this Settlement Agreement.

2. The Private Prison Monitoring Unit will confirm in writing on a quarterly basis that each contract facility is implementing and adhering to AR 300-26 and the provisions of this Settlement Agreement with respect to inmates who were Colorado residents or who were sentenced by a Colorado court before their incarceration.

3. The following reading materials identified in the Complaint will be provided to the specified Inmates within 30 days of the date of this Agreement:

- a. Cry Justice Now, Vol. 16 – Martin Williams and Anthony Lucero;
- b. Cry Justice Now, Vol. 22 – Martin Williams;

- c. Dark Night Field Notes, Number 11 (with pages 25-37 and back cover removed) – Michael Poorbear;
- d. Dark Night Field Notes, Numbers 12/13 – Michael Poorbear;
- e. Hidden Faces of Eve by Nawal El Saadawi – Anthony Lucero;
- f. MIM Notes, No. 187 (with pages 2, 4, 10, 11 removed) – Anthony Lucero;
- g. MIM Notes, No. 188 (with pages 2, 6, 7, 10, 11 removed) – Anthony Lucero;
- h. MIM Notes, No. 189 (with pages 2, 10, 11 removed) – Anthony Lucero;
- i. MIM Notes, No. 190 (with pages 2, 9, 10, 11 removed) – Anthony Lucero;
- j. Resource Guide, – Daniel Hernandez;
- k. Scenario, Vol 4, No. 1 – Maxwell Thomas;
- l. Shut Them Down – Vol. II; No. 1 (with page re Juniper Valley slave labor removed) – Malcom Perkins;
- m. The Source, No. 100 (with page 49 removed) -Arthur McCray
- n. Vibe – September 1999 (with page 182 removed) – George Moore;
- o. Voz Del Barrio Aztlan, August 1999 – Roy Saldivar and Billy Hankins.

4. The parties stipulate that the terms of the Settlement Agreement are narrowly drawn, extend no further than necessary to correct the alleged violation of Plaintiffs’ constitutional rights, are the least intrusive means necessary to correct the alleged violation of Plaintiffs’ constitutional rights, and that the Proposed Order submitted to the District Court pursuant to Paragraph E.1 of this Settlement Agreement will include these findings.

5. Plaintiffs release and forever discharge Ortiz and his successors from any and all claims, demands, causes of action (at law, in equity or otherwise), rights of action and remedies of any nature whatsoever and for any and all obligations, duties liabilities, damages,

costs and expenses relating to the Defendants censorship of the specific issues and volumes of the publications identified in the Complaint.

6. This Settlement Agreement does not constitute an admission of liability against the interest of any party. It is a compromise of a disputed claim for the sole purpose of avoiding the expense, hardship and uncertainty of litigation. Similarly, this Settlement Agreement does not constitute an admission or acknowledgement by any party that the censorship decisions reflected in paragraph II.F.3 are consistent with the new regulations which will be adopted pursuant to paragraph II.B.1. This paragraph shall not apply to or affect the obligations created in Paragraph II.D of this Settlement Agreement.

7. This Settlement Agreement constitutes the final written expression of all of the terms of settlement and is a complete statement of those terms. No other agreements, written or oral, bind the parties with respect to the Lawsuit.

8. This Settlement Agreement may be executed in several counterparts, each of which shall be an original as against any party who signed it, and all of which will constitute one and the same document.

9. The execution date of this Agreement for the purposes of the various deadlines established herein is June___, 2004.

Hugh Q. Gottschalk
Gwen J. Young
1801 California Street, Suite 3600
Denver, Colorado 80202
Telephone: (303) 292-2525
Fax: (303) 294-1879
DC Box 19

Mark Silverstein

Legal Director
American Civil Liberties Union of Colorado
400 Corona St.
Denver, CO 80218-3915
Telephone: (303) 777-5482
Fax: (303) 777-1773

ATTORNEYS FOR PLAINTIFFS

Paul S. Sanzo, Esq.
James X. Quinn, Esq.
Office of the Colorado Attorney General
Corrections Unit, Litigation Section
1525 Sherman Street, 5th Floor
Denver, CO 80203

ATTORNEYS FOR DEFENDANT

325316v11