

**STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE**

**STATE OF NEW MEXICO, ex rel.
AMERICAN CIVIL LIBERTIES UNION
OF NEW MEXICO, NEW MEXICO WOMEN'S
JUSTICE PROJECT, and, REPRESENTATIVE
MIMI STEWART,**

Petitioners,

Case No.

vs.

**JOE R. WILLIAMS, in his official capacity
as Secretary of the New Mexico Corrections
Department and the CORRECTIONS
POPULATION CONTROL COMMISSION,**

Respondents.

VERIFIED PETITION FOR WRIT OF MANDAMUS

COMES NOW, Petitioners, American Civil Liberties Union of New Mexico, New Mexico Women's Justice Project, and Representative Mimi Stewart, through the undersigned counsel, and file this petition for writ of mandamus pursuant to NMSA 1978, §§ 44-2-1 to 44-2-14 (1953). As alleged more particularly below, Petitioners allege that Respondents have failed to comply with the Corrections Population Control Act, NMSA 1978, §§ 33-2A-1 to 33-2A-8 (2002), by failing to convene the Corrections Population Control Commission, as well as other required measures under the Act, when the New Mexico Women's Correctional Facility in Grants, NM, exceeded its inmate capacity for the time period established by the Act.

JURISDICTION AND VENUE

1. Jurisdiction is proper pursuant to Article VI, § 13 of the New Mexico Constitution.
2. The unlawful acts alleged herein were committed within Santa Fe and Cibola Counties, in New Mexico.
3. The acts complained of arise out of Respondents' failure to comply with the Corrections Population Control Act. As this case involves a suit against state officers, venue of the Court is appropriate pursuant to NMSA 1978, § 38-3-1 (1988).

PARTIES

4. Petitioner American Civil Liberties Union of New Mexico (hereinafter "the ACLU") is a non-profit corporation located in Albuquerque, New Mexico.
5. Petitioner American Civil Liberties Union of New Mexico is a non-profit organization with standing to vindicate the public interest in matters of great public interest and importance.
6. Petitioner American Civil Liberties Union of New Mexico has members who are affected by the Respondents' failure to convene the Corrections Population Control Act, NMSA 1978, §§ 33-2A-1 to 33-2A-8 (2002), and who have incurred a concrete, actual injury as a result of Respondents' violation of the Act.
7. Petitioner New Mexico Women's Justice Project is a non-profit corporation which

advocates on behalf of incarcerated women and their children.

8. Petitioner New Mexico Women's Justice Project has standing to bring this action on behalf of those for whom they advocate and to vindicate the public interest in matters of great public interest and importance.

9. Petitioner Mimi Stewart is a resident of Bernalillo County and a State Representative for the district in which she lives.

10. As a legislator, Petitioner Stewart has standing to vindicate the public interest in this matter of great public interest and importance.

11. As required by NMSA § 44-2-5 (1953), Petitioners are beneficially interested persons in the issues of this case.

12. Defendant Joe R. Williams is the Secretary of the New Mexico Corrections Department and is sued in his official capacity.

13. Defendant Corrections Population Control Commission is an entity created under the Corrections Population Control Act, NMSA 1978, § 33-2A-4 (2002).

14. The New Mexico Women's Correctional Facility (hereinafter "NMWCF"), located in Grants, New Mexico, is a privately operated prison run by the Corrections Corporation of America (hereinafter "CCA").

15. Under the Correction Population Control Act, a facilities' rated capacity is defined as "the actual general population bed space, included only individual cells and areas designed for

the long-term housing of inmates.”

16. The NMWCF has a rated capacity of 597 inmates.

17. Upon information and belief, the current inmate population is approximately 660 inmates, which is in excess of the rated capacity for the facility.

18. Upon information and belief, the facility has been in excess of one hundred percent of its rated capacity for over 60 days.

19. According to the Corrections Population Control Act, NMSA 1978, §§ 33-2A-1 to 33-2A-8 (2002), if the inmate population of the NMWCF “exceeds one hundred percent of rated capacity for a period of thirty consecutive days,” the following steps shall be taken:

A. the corrections department shall engage in all lawful and professionally appropriate efforts to reduce the inmate population to one hundred percent of rated capacity;

B. if the inmate population is still in excess of one hundred percent of rated capacity after sixty days, the secretary of corrections shall notify the commission. Included in the notification shall be a list of nonviolent offenders who are within one hundred eighty days of their projected release date;

C. the commission shall convene within ten days to consider the release of nonviolent offenders on the list provided by the secretary of corrections. The commission shall also discuss with the corrections department the impact on the inmate population of possible changes in the classification system and expanding incarceration alternatives;

D. for nonviolent offenders approved by the commission for release, the commission shall grant emergency release credits in ten-day increments that will be applied to the sentences being served by the nonviolent offenders. The commission shall order release of the appropriate number of nonviolent offenders to reduce the inmate population.

NMSA 1978, § 33-2A-6(A)-(D) (2002).

20. Upon information and belief, the New Mexico Corrections Department and the Corrections Population Control Commission have taken none of the required steps listed in NMSA 1978, § 33-2A-6(A)-(D) (2002).

21. The failure of Respondents to comply with NMSA § 33-2A-6(A)-(D)(2002) poses a threat to the essential nature of state government guaranteed to New Mexico citizens and affects in a fundamental way the liberties of the people of New Mexico.

22. Pursuant to the Corrections Population Control Act, NMSA 1978, § 33-2A-6 (2002), NMWCF exceeds its rated capacity and the Corrections Population Control Commission should be convened to take the required steps under the Act.

23. When the inmate population of the NMWCF exceeds one hundred percent of its rated capacity for a period of time set forth in the Corrections Population Control Act, NMSA 1978, § 33-2A-6 (2002), Respondents have a mandatory non-discretionary duty to follow the statutory requirements of the Act.

24. Respondents have breached this duty by taking none of the required actions under the Corrections Population Control Act.

25. The issues raised herein constitute issues of great public interest and importance.

26. Failure to follow the provisions of the New Mexico Corrections Population Control Act and take appropriate action when inmate population levels exceeds its rated capacity poses a clear threat to the essential nature of state government guaranteed to New Mexico

citizens under the New Mexico Constitution.

27. The continued overcrowding at New Mexico Corrections Facility poses severe health and safety risks for those incarcerated at the facility. Inmates are being housed in public community areas not designed for long-term housing of inmates. Many inmates have no private space and tensions amount inmates has increase with some fights resulting. Furthermore, the plumbing system is unable to handle the increased population backup into the living areas is occurring.

28. Petitioners have no plain, speedy and adequate remedy in the ordinary course of law.

WHEREFORE, Petitioners pray that the Court:

A. Issue a Writ of Mandamus ordering Respondents to comply with their mandatory, non-discretionary duty to follow the statutory requirements of the Corrections Population Control Act, as enumerated in NMSA 1978, § 33-2A-6(A)-(D) (2002);

B. Award Petitioners their costs and disbursements pursuant to NMSA § 44-2-12 (1978); and,

C. Such other and further relief as the Court deems just and proper.

Respectfully Submitted,

SANDERS & WESTBROOK, P.C.

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