

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

LASHAWN JONES, <i>et al.</i> , Plaintiffs, and)	
)	
)	
UNITED STATES OF AMERICA, Plaintiff in Intervention)	
)	
v.)	Civil Action No. 2:12-cv-00859
)	Section I, Division 5
MARLIN GUSMAN, Defendant.)	Judge Lance M. Africk
)	Magistrate Judge Michael B. North
)	
MARLIN GUSMAN, Third-Party Plaintiff)	
)	
v.)	
)	
THE CITY OF NEW ORLEANS, Third-Party Defendant.)	
)	

**PLAINTIFFS’ MOTION FOR AN ORDER TO SHOW CAUSE AND FOR
APPOINTMENT OF A RECEIVER TO IMPLEMENT CONSENT JUDGMENT**

The Plaintiff Class and the Plaintiff in Intervention United States (collectively, “Plaintiffs”) hereby file this Motion for an Order to Show Cause Why Defendant Sheriff Marlin N. Gusman Should Not be Held in Contempt and for Appointment of a Receiver to Implement the Consent Judgment. In support of this Motion, Plaintiffs state the following:

1. Although the Court ordered the Consent Judgment more than two years ago, the Sheriff remains dangerously non-compliant with numerous substantive provisions that immediately impact the safety and health of men, women and youth in the Orleans Parish jail system (“the Jail”), and is not making adequate progress towards compliance.

2. Significantly, the most recent Court Monitors' report confirms not only the Sheriff's non-compliance, but also regression from the small degree of progress previously achieved.

Independent Monitors' Report No. 5, ECF No. 996, Mar. 17, 2016 ("5th Monitors' Rpt.") at 21.

3. Plaintiffs issued a notice of non-compliance with regard to the Consent Judgment provisions on prisoner supervision (§ IV.A.5-6); suicide precautions (§ IV.B.5); use of force (§§ IV.A.1-4); incident reporting and tracking (§ IV.A.7); grievance system (§ IV.A.11); investigations (§ IV.A.8); classification (§ IV.A.10); youthful prisoners (§ IV.G); and sanitation and environmental health (§ IV.D. 1-4). The Sheriff has not cured these deficiencies and the record in this case demonstrates that the Sheriff and the Orleans Parish Sheriff's Office ("OPSO") are incapable of implementing sustainable and durable reform.

4. The Sheriff's non-compliance affects nearly every aspect of safety and security for Orleans Parish prisoners. The level of violence, use of force, and self-harm at the Jail is unacceptable. Transcript of Status Conference, April 7, 2016, at 19:12-14. The Jail is still insufficiently staffed by deputies who are insufficiently trained and insufficiently supervised. *Id.* at 23:7-9. Grievous harm continues to be inflicted on prisoners as a result of the Jail's unconstitutional conditions.

5. As detailed in the attached Memorandum in Support of this Motion, the Sheriff's non-compliance with core Consent Judgment provisions makes it difficult to move forward on compliance with many other provisions in the Consent Judgment and impossible to comply with the constitutional duty to provide a reasonably safe environment for prisoners. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994), *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993).

6. The Court Monitors believe that there is "no realistic strategy, or way forward, proposed by OPSO, even with the assistance of the Monitors, to accomplish timely compliance with the

Consent Judgment.” 5th Monitors’ Rpt. at 18. As the recent Court Monitors’ Report noted, “there is not a universally shared commitment toward compliance within OPSO’s leadership.” *Id.* at 16.

7. In light of the Court Monitors’ conclusions about the Sheriff’s inability to achieve compliance and OPSO’s leadership shortcomings, Plaintiffs request that the Court appoint a receiver to administer operations of the Orleans Parish Jail. Given the findings of the Court Monitors, top-to-bottom staffing deficiencies, and the Sheriff’s apparent inability to implement the changes required to achieve compliance, a receiver is necessary to implement the system-wide reforms essential to ensuring a constitutional Jail in Orleans Parish.

8. The receiver should have the full authority to administer operations of the Jail, including the ability to discipline, reassign, terminate, and promote Jail employees; develop and implement policies and procedures; allocate Jail budget funds; and enter into contracts for Jail services.

9. When the Monitors find that the receiver has enabled the Jail to achieve substantial compliance with the Consent Judgment, authority to operate the Jail system will return to the Sheriff to demonstrate that compliance can be sustained throughout the two-year compliance period required by the Consent Judgment. Consent Judgment § XI.C.

WHEREFORE, Plaintiffs respectfully request that this Court order Sheriff Gusman to show cause why he should not be held in contempt of the Consent Judgment Sections IV.A.1-8, 10-11, IV.B.5, IV.D.1-4, and IV.G, and ORDER (1) a briefing schedule for the parties to submit proposals for the logistics pertaining to the appointment of a receiver with full authority to administer operations of the Orleans Parish Jail, including the ability to discipline, reassign, terminate, and promote Jail employees; develop and implement policies and procedures; allocate

Jail budget funds; and enter into contracts for Jail services, and (2) any additional relief that the Court deems necessary.

Respectfully submitted,

FOR THE UNITED STATES:

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DATED: April 25, 2016

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2016, I served the foregoing via the Court's CM/ECF system, which will automatically provide notice to all counsel of record.

s/ Kerry Krentler Dean
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