

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

United States of America, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 City of Meridian; County of Lauderdale; Judge )  
 Frank Coleman, in his official capacity; Judge )  
 Veldore Young, in her official capacity; State )  
 of Mississippi; Mississippi Department of )  
 Human Services; and Mississippi Division of )  
 Youth Services )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Civil Action No.  
3:13-CV-978-HTW-LRA

**SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

- A. This Settlement Agreement (“Agreement”) is entered into by the United States of America through the Department of Justice (“United States”), the State of Mississippi; the Mississippi Department of Human Services; and the Mississippi Division of Youth Services (collectively, the “Parties”) to address youth probation services in the administration of juvenile justice for Children facing delinquency charges in the Lauderdale County Youth Court.
- B. On December 1, 2011, the United States opened an investigation into the administration of juvenile justice in Lauderdale County, Mississippi pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (“Section 14141”).
- C. On October 24, 2012, the United States filed a complaint against the City of Meridian, the Lauderdale County Youth Court Judges (“Youth Court Judges”), Lauderdale County, and the State of Mississippi alleging violations of the substantive and procedural due process rights afforded to youth who appear in Lauderdale County Youth Court.
- D. The Parties share the same interest in protecting the constitutional rights of Lauderdale County youth and have worked together cooperatively to develop this Settlement Agreement.
- E. This Agreement shall constitute the entire integrated agreement of the Parties. With the exception of the Letter of Findings, no prior contemporaneous communications, oral or

written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in an enforcement proceeding.

- F. This Settlement Agreement is executed in connection with the compromise and settlement of disputed claims in the Plaintiff's lawsuit. The Parties understand that by entering into this Settlement Agreement, the State does not admit legal liability of any sort, and it continues to dispute any legal liability in this matter.

## II. DEFINITIONS

- A. "Child" and "youth" and "juvenile" are synonymous and refer to all persons subject to the jurisdiction of the Lauderdale County Youth Court, as set forth in Miss. Code Ann. § 43-21-151, including all persons under the age of 18 taken into custody by a law enforcement officer.
- B. "Court" refers to the United States District Court for the Southern District of Mississippi.
- C. "DHS" refers to the Mississippi Department of Human Services.
- D. "DYS" refers to the Mississippi Division of Youth Services.
- E. "DOJ" or "United States" means the United States Department of Justice, which represents the United States in this matter.
- F. "Probation Services Independent Auditor" or "Independent Auditor" means an expert jointly selected by the Parties to assess compliance with this Agreement.
- G. "Effective Date" means the date that this Settlement Agreement is approved and entered by the Court.
- H. "Include" or "Including" means "include, but not limited to" or "including, but not limited to."
- I. "Judge," "Judges," "Youth Court Judge," or "Youth Court Judges" means the Judges of the Lauderdale County Youth Court.
- J. "Personally Identifiable" and/or "Confidential Information" means information that can be used to distinguish or trace a Child's identity, either alone or with other personal or identifying information. Covered information may include records maintained by the Youth Court, an educational institution or agency, a law enforcement agency or other governmental agency or a provider of services to youth and their families that contain identifying information, such as the individual's name, social security number, birth date, home or cellular telephone number, home address, parent's name, medical history, educational history, or health status or other information that the Parties agree should be deemed confidential.

- K. "Policies and Procedures" means the guiding principles or processes that staff are required to follow.
- L. "Shall" means that the provision imposes a mandatory duty.
- M. "Staff" means all individuals employed by the State who are involved in the implementation of this Agreement.
- N. "State" refers to the State of Mississippi, the Mississippi Department of Human Services, and the Mississippi Division of Youth Services.
- O. Throughout this Agreement, the following terms are used when discussing compliance: substantial compliance, partial compliance, beginning compliance, and non-compliance. "Non-compliance" means that the State has made no notable progress in achieving compliance on any of the key components of the provision. "Beginning compliance" means that the State has made notable progress in achieving compliance with a few, but less than half, of the key components of the provision. "Partial compliance" indicates that the State has made notable progress in achieving compliance with the key components of the provision, but substantial work remains. "Substantial Compliance" indicates that the State has met or achieved all or nearly all the components of a particular provision. The Probation Services Independent Auditor selected to evaluate the State's compliance may further refine the definition of compliance with the consent of all Parties.
- P. "Train" means to instruct in the skills addressed to a level that the trainee has the demonstrated proficiency to implement those skills as, and when, called for in the training. "Trained" means to have achieved such proficiency.
- Q. "Youth-appropriate language" means language suitable for children's developmental stage, age, education and cognitive abilities.
- R. "Youth Court" means Lauderdale County Youth Court.
- S. "Youth Services Counselor" means any person employed by the DYS who is involved in the administration of probation or parole services for juveniles in Youth Court.

### **III. SUBSTANTIVE REMEDIAL MEASURES**

#### **A. Due Process**

1. Protections Against Self-incrimination
  - a. Within 90 days of the Effective Date, DYS shall revise its policies, procedures, and practices to ensure that Youth Services Counselors provide youth at their initial meeting a notice using youth-appropriate language regarding the following:
    - i. the youth services process, including the role of the Youth Services Counselor;
    - ii. the potential consequences to youth for violating their probation contract, including the range of sanctions the youth may face;
    - iii. an explanation of the probation review and revocation process, including the youth's right to challenge allegations of probation violations, and the youth's right to counsel in revocation hearings.
  - b. DYS shall also make diligent efforts to provide the notice described above to the youths' guardians.
  - c. The DYS shall inquire into the Child's ability to understand the probation process and ensure that this process is explained in youth-appropriate language.
  - d. Lauderdale County Youth Services Counselors will set a fixed meeting schedule at the youth's initial meeting for all subsequent probation meetings, notify the youth's counsel of the meeting schedule and make best efforts to reschedule a probation meeting should the youth request the presence of counsel who is unavailable at the time of the previously scheduled meeting. Lauderdale County Youth Services Counselors will document their efforts to reschedule a probation meeting should the youth request the presence of counsel who is unavailable at the time of the previously scheduled meeting.
2. Probation Review and Revocation
  - a. Within 90 days of the Effective Date, the DYS shall, to the extent necessary, adopt or revise its policies, procedures, and practices to ensure that youths' probation status is adequately reviewed by Youth Services Counselors.
  - b. The DYS shall develop, at a minimum, a table of graduated responses and a risk assessment tool, which the Youth Services Counselors shall use when making recommendations to the Youth Court Judges regarding the appropriate

response to youth conduct.

c. Probation Contracts

- i. Within 90 days of the Effective Date, the DYS shall, to the extent necessary, adopt or revise policies, procedures, and practices to ensure that conditions of youths' probation are written in simple terms that are easily understandable to youths and prevent arbitrary and discriminatory enforcement.
- ii. Probation contracts shall:
  1. Include a clear explanation of the youth's rights in the contract; and
  2. Specify how Children can satisfy the mandatory school attendance requirement while on probation.
- iii. Youth Services Counselors shall not recommend incarcerating a youth for violations of their probation contract that would not otherwise amount to a detainable offense, unless and until all other reasonable alternatives to incarceration have been exhausted.

3. Review of Policies and Procedures

- a. Within 90 days of the Effective Date, the DHS/DYS shall revise its policies, procedures, practices, and existing agreements to ensure compliance with this Settlement Agreement.
- b. The DHS/DYS shall reassess the effectiveness of its policies, procedures, practices, and existing agreements annually and make necessary revisions to increase the effectiveness of its efforts to prevent violations of youth's constitutional rights with regard to the subject matter of this Agreement.

**B. Diversion and Treatment Options**

1. Lauderdale County Youth Services Counselors shall continue to recommend youth to existing diversion programs, where appropriate, and to monitor future opportunities and sources of funding for additional diversion programs should such programs become available.

**C. Training**

1. Within six months of the Effective Date, the DYS shall develop training plans for all Youth Court Counselors involved in providing delinquency and probation services in the Youth Court and shall submit the training plan to the Probation Services Independent Auditor and the United States for review and input.
2. The training plans shall ensure that appropriate staff are trained on topics relevant to their role and responsibilities in juvenile delinquency proceedings including:
  - a. Constitutional due process requirements;
  - b. Disposition planning;
  - c. Best practices in social service and therapeutic options for Children and families, including evidence-based practices;
  - d. The appropriate professional role of different players within juvenile proceedings; and
  - e. Any of the policies, procedures or practices that are created or revised pursuant to this Agreement.
3. The DYS shall begin implementing its first training plans within twelve months of the Effective Date and shall create subsequent training plans on an annual basis thereafter.
4. Training plans developed pursuant to this subsection shall be submitted to the Probation Services Independent Auditor and the United States subject to the review process set forth below in subsection VIII.A.

**IV. COMMUNITY INPUT**

- A. Within six months of the Effective Date, the DHS/DYS, in consultation with the Probation Services Independent Auditor and the United States, shall develop and implement a community input program to keep the community informed about the progress of its reforms and to hear ongoing community questions and concerns. The community input program shall include a process for receiving and responding to input from interested members of the community.
- B. The community input program shall require at least one open community meeting every six months for the duration of this Agreement. A representative for the DHS/DYS shall be required to attend the open meeting so long as this Agreement is in effect. Counsel for the State, or any other person chosen by the DHS/DYS, may serve as its representative. A representative for the United States will also attend. The open meetings shall inform

the public about the requirements of this Agreement and the DHS/DYS' progress in each substantive area of the Agreement, and address community concerns regarding this Agreement. The meetings shall be held in a location that is accessible to the public. At least one week before the open meetings, the DHS/DYS shall widely publicize the meetings using print media, radio, and the internet.

- C. The community meetings shall include summaries of the Action Plan and Compliance Reports required by this Agreement during the period prior to the meeting and any policy changes or other significant actions taken as a result of this Agreement. The DHS/DYS shall make any written summary of policy changes or other significant actions taken as a result of this Agreement publicly available on a public website it creates or maintains.

## V. IMPLEMENTATION AND MONITORING

- A. **Implementation.** The DHS/DYS shall begin implementing this Agreement immediately upon the Effective Date. If the DHS/DYS cannot fully implement the reforms required by this Agreement within the allotted time, it shall notify the United States in writing. All training and reform attempts initiated following issuance of the Report of Findings, but before the Effective Date, shall be considered in the Probation Services Independent Auditor's compliance assessments.
- B. **Notification.** Within two weeks of the Effective Date, the DHS/DYS shall communicate the provisions set forth in this Agreement to DHS/DYS officials, staff, agents, and independent contractors who are involved in the implementation of this Agreement.
- C. **Protection of Personally Identifiable and/or Confidential Information.** The Parties agree to protect any personally identifiable and/or confidential information that is obtained in the course of implementing this Agreement. The Parties further agree to use their best efforts to ensure that the Probation Services Independent Auditor protects any personally identifiable and/or confidential information that is obtained in the course of implementing this Agreement.
  - 1. All files and documents containing Personally Identifiable and/or Confidential Information, and any other materials containing Personally Identifiable and/or Confidential Information obtained during implementation of this agreement, shall be automatically treated as "Confidential" in accordance with the terms of this Order. Moreover, a party may choose to designate as "Confidential" any information that it has in good faith determined constitutes or contains Personally Identifiable and/or Confidential Information, and/or information that is subject to protection under the Privacy Act of 1974, 5 U.S.C. § 552a, Mississippi Code § 43-21-259 and § 43-21-261, or other applicable federal and/or state law.
  - 2. All Parties agree that any Personally Identifiable and/or Confidential Information may be made available only to the following:

- a. Counsel for the Parties, as well as counsel's staff, law clerks, partners, associates, paralegals, secretaries, and stenographic personnel;
  - b. Experts and consultants retained by the Parties;
  - c. The Probation Services Independent Auditor and his/her staff, partners, associates, secretaries, and stenographic personnel;
  - d. The Court and its staff, law clerks, secretaries and stenographic personnel; and
  - e. Any other person upon order of the Court or express agreement of the Parties.
3. Only Parties, counsel for the Parties, the Probation Services Independent Auditor, and individuals they expressly authorize to do so may make copies or create summaries of Personally Identifiable and/or Confidential Information.
  4. All Parties and their counsel agree that neither they nor their respective staffs, law clerks, associates, paralegals, secretaries, stenographic and support personnel, or other employees will use or disclose any Personally Identifiable and/or Confidential Information for any purpose other than for the implementation and enforcement of this and related actions. However, nothing in this Order shall be construed to restrict the Parties' or their counsel's use of Personally Identifiable and/or Confidential Information in the normal course of business, for example or as otherwise permitted pursuant to the Privacy Act of 1974 or other federal law.
  5. In any pleadings, motions, briefs, or exhibits filed with the Court containing Confidential Information, all Confidential Information shall be redacted in accordance with Fed. R. Civ. P. 5.2 and Local Civ. R. 5.2. Counsel for a party filing any documents containing redactions shall provide the other Parties with copies of the documents that do not contain redactions.

Any personally identifiable information about any Child in the Probation Services Independent Auditor's reports that is filed with the Court shall be obscured by pseudonym (but the identity of the Child will be known to the Parties and, at its discretion, the Court) or filed under seal.

6. If the Parties expect to use Personally Identifiable and/or Confidential information in an evidentiary hearing or other proceeding open to the public, they will work with the Court to address the use of such information.
7. The Parties will discuss and make their best efforts to reach agreement on how to guard against disclosure of Personally Identifiable and/or Confidential Information in connection with the Community Input provisions of this Agreement.



8. In the event that the Parties receive a subpoena or other process or order to produce Personally Identifiable and/or Confidential Information, the Parties will comply with their standard operating procedures to defend against disclosure of Confidential Information to the fullest extent permitted by law and regulation. In the event that the Confidential Information is sought from the United States under the Freedom of Information Act, 5 U.S.C. § 522 *et seq.* (FOIA), the United States shall employ good faith efforts to ensure that Confidential Information is, to the fullest extent permitted by law, protected from disclosure under FOIA. If, despite good faith efforts, a party is ordered to disclose Confidential Information and complies with that order, it shall not be deemed in violation of this Agreement.

**D. Probation Services Independent Auditor.** Compliance with this Agreement shall be assessed by the Probation Services Independent Auditor jointly selected by the Parties.

1. The United States and the DHS/DYS shall agree upon the Probation Services Independent Auditor within sixty (60) days of the Effective Date. In the event the Parties are unable to agree on the Independent Auditor within 60 days, each party may submit to the Court, within 14 days thereafter, the names and curricula vitae of up to two individuals as candidates for this position. The Parties will request that the Court select the Independent Auditor from among those nominated.
2. The DHS/DYS shall bear all reasonable fees and costs related to the Probation Services Independent Auditor.
3. The Probation Services Independent Auditor shall be permitted to initiate and receive *ex parte* communications with all Parties and with the Court.
4. The Probation Services Independent Auditor shall not make any oral or written public statements – including but not limited to statements to the press, conference presentations, lectures, or articles – with regard to: the status of the State’s compliance or non-compliance with this Agreement; any act or omission of the State or its agents, representatives or employees; or the terms of his/her employment as the Independent Auditor unless authorized by all Parties.
5. The Probation Services Independent Auditor shall not testify in any other litigation or proceeding with regard to the status of the DHS/DYS’ compliance or non-compliance with this Agreement; any act or omission of the State or its agents, representatives or employees; or the terms of his or her employment as the Independent Auditor, unless otherwise lawfully compelled to do so. The Independent Auditor may testify in this litigation concerning the State’s compliance or non-compliance with this Agreement.
6. Unless such conflict is waived by the Parties, the Probation Services Independent Auditor shall not accept employment or provide consulting services that would present a conflict of interest with his or her responsibilities under this Agreement

or breach the highest ethical standards, 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 the State or its departments, officers, agents or employees concerning matters relevant to this Agreement.

7. No Party, nor any employee or agent of any Party, shall have any supervisory authority over the Probation Services Independent Auditor's activities, reports, findings, or recommendations.
8. The Probation Services Independent Auditor may be terminated if the Parties agree and upon good cause shown. Good cause shall include any violation of State or federal law which reasonably calls into question his/her fitness to continue serving as Independent Auditor. In the event the Parties do not agree upon the need for termination, the Parties agree to work in good faith to resolve their differences.
9. Within 30 days of the receipt of written questions from the United States or the State regarding the Probation Services Independent Auditor's activities in assessing compliance with this Agreement and/or the State's compliance with this Agreement, the Independent Auditor shall provide the United States or the State with written answers.
10. The Probation Services Independent Auditor, and later the United States should the United States assume the role of Monitor pursuant to Section V.F., shall be solely responsible for assessing compliance with the terms of this Agreement.

**E. Probation Services Independent Auditor's compliance reviews and access to the State and records.** To assess the DHS/DYS' implementation of each substantive provision of this Agreement, the Probation Services Independent Auditor will regularly conduct compliance reviews to ensure the State's implementation of this Agreement.

1. The first compliance review will be conducted within sixty (60) days of the Probation Services Independent Auditor's appointment. Thereafter, routine compliance reviews will be conducted by the Independent Auditor every six months until this Agreement is terminated. Such routine compliance reviews will assess the DHS/DYS' compliance with each of the substantive remedial measures set forth above. The United States and the Independent Auditor shall consult with the DHS/DYS to schedule mutually acceptable dates for the compliance reviews.
2. The United States may determine that additional compliance reviews are necessary due to emergent issues concerning the DHS/DYS. If the United States believes that such additional compliance reviews are necessary, the United States and the Probation Services Independent Auditor shall consult with the DHS/DYS to schedule mutually acceptable dates for such additional compliance reviews.

3. At each compliance review, the Probation Services Independent Auditor shall have the responsibility and authority to independently observe, assess, review, and report on the DHS/DYS' implementation and compliance with the provisions of this Agreement. To accurately assess the DHS/DYS' progress, the Independent Auditor shall: observe meetings between children and youth services counselors; observe any relevant trainings; individually interview a sample of Children privately; and conduct detailed reviews of DHS/DYS youth services records, case files, or other pertinent documents. The Independent Auditor shall spend a sufficient amount of time at the Youth Court to accurately assess interactions between youth services counselors and youth. The Independent Auditor shall be responsible for independently verifying representations from the State regarding progress toward compliance, examining supporting documentation where applicable.
4. The DHS/DYS shall grant the Probation Services Independent Auditor full and complete access to the DHS/DYS's documents, records and premises, and its officials, employees, agents and contractors whose responsibilities are affected by this Agreement. The DHS/DYS shall also allow the Probation Services Independent Auditor access to Children in any phase of the juvenile probation process, including the ability to meet privately with youth.
  - a. The Probation Services Independent Auditor shall be permitted to ask questions about the youth's experiences in the probation system.
  - b. The Probation Services Independent Auditor cannot discuss with the youth the facts or evidence of any pending case or the Independent Auditor's views of the youth's counsel or the youth services counselors.
  - c. Prior to meeting with youth, the Probation Services Independent Auditor shall advise youth and, if possible, their counsel and parents that:
    - (i) The Independent Auditor will not release the child's identity to the public without the parent and child's permission.
    - (ii) Any information that the parent or the child provides to the Independent Auditor will be used solely for the purpose of assessing compliance with this Settlement and will not be used against the child in any unrelated proceeding.
    - (iii) The Independent Auditor does not have the authority to represent individuals in legal matters and cannot provide legal opinions or legal assistance.
  - d. The DHS/DYS shall not use any information obtained by the Probation Services Independent Auditor against children in their individual proceedings.

5. The Probation Services Independent Auditor shall file with the Parties a final report which describes the steps taken by the DHS/DYS to implement this Agreement, evaluates the extent to which the DHS/DYS has complied with each substantive provision of the Agreement, cites the evidence upon which such evaluation is based, and provides recommendations. The Independent Auditors' reports should indicate whether the DHS/DYS is in "Substantial compliance," "Beginning compliance," "Partial compliance," or "Non-compliance" with each provision of the Agreement. Each report shall be provided to the Parties in draft form for comment within 30 days after each compliance review, and the Parties shall have 20 days after receipt of the draft report to comment on the report before it is finalized by the Independent Auditor. Neither Party, however, shall have authority over the Independent Auditors' reports, findings, or recommendations. The Reports shall be made publicly available on the DYS website and the website of the United States.
6. Once finalized, the Probation Services Independent Auditor's reports shall be filed with the Court.

**F. Annual Parties' Meeting Regarding the Continued Need for External Monitoring.**

To preserve resources and to promote the efficient implementation of this Agreement, the Parties shall meet on an annual basis regarding the possibility of transferring supervision of provisions of the Agreement from external monitoring to monitoring by the United States with self-reporting by the State.

1. In each meeting, the Parties shall discuss the Probation Services Independent Auditor's views regarding the status of the DHS/DYS' compliance with the provisions of the Agreement, and any additional information brought forth for discussion by the Parties.
2. The Parties' first annual meeting will occur 30 days after the Probation Services Independent Auditor files his/her first report.
3. If the DHS/DYS has made significant progress in achieving compliance with the Settlement Agreement, but is not yet in substantial compliance, the United States shall consider transitioning the State from external monitoring to monitoring by the United States. The transfer from external monitoring shall only occur with the State's consent.
4. Should the DHS/DYS fail to continue making progress in achieving compliance with the Settlement Agreement or regress in its overall status of compliance, the United States may require that the State return to external monitoring. If the State has been the subject of a motion to enforce by the United States, it shall be ineligible for monitoring by the United States with self-reporting for a period of two years.

5. Monitoring by either the Probation Services Independent Auditor or the United States shall terminate when the DHS/DYS has achieved substantial compliance with all provisions in the Settlement Agreement and maintained substantial compliance with all provisions for a period of one year.

**G. Settlement Agreement Coordinator.** The DHS/DYS shall appoint an official or employee to serve as the Settlement Agreement Coordinator, whose duties shall include:

1. Developing reports regarding compliance with this Agreement and providing such reports to the United States and the Probation Services Independent Auditor every six months until this Agreement is terminated. The first report shall be provided four months after the Effective Date.
2. Providing to the United States and the Probation Services Independent Auditor the raw data upon which each compliance report is based, any reports prepared by the State's technical consultants regarding compliance with this Agreement, and any other reports routinely submitted to the Settlement Agreement Coordinator regarding compliance with this Agreement.

**H. United States' Access to the State and Records.** The United States and its staff and agents shall have full and complete access to:

1. The DHS/DYS' documents and records relevant to the implementation of this Agreement;
2. The DHS/DYS' officials, employees, agents, and independent contractors whose responsibilities are affected by this Agreement; and
3. Children in any phase of the juvenile probation process, including the right to meet with Children privately.

Such access shall continue until this Agreement is terminated in accordance with the termination provisions herein.

## **VI. OUTCOME MEASURES**

The DHS/DYS shall maintain a record of the documents necessary to facilitate a review by the Probation Services Independent Auditor and the United States of the metrics and other information described below. In order to ensure that reforms are conducted in accordance with the Constitution, the Probation Services Independent Auditor and/or the United States shall assess the State's progress in implementing these provisions and the effectiveness of these reforms. In addition to assessing the policies, procedures, practices, and training, the Probation Services Independent Auditor and/or the United States shall undertake an analysis of metrics related to due process reforms, as follows:

1. Review the Youth Services Counselors' document explaining the probation process and the number of Children provided with that document.
2. Review the Youth Services Counselors' documentation of whether a Child's attorney was notified about the probation conference, the number of Children who elected to meet with the Youth Services Counselors without their attorney present, and any efforts taken to reschedule a probation meeting should the youth request the presence of counsel who is unavailable at the time of the previously scheduled meeting.
3. Review the Youth Service Counselors' recommendations to the Youth Court, including recommendations to either detain or not detain a youth following a probation violation.
4. Review the Youth Service Counselors' recommendations to the Youth Court regarding youth who are alleged to have violated probation through failure to attend school or other educational programming, or suspension or expulsion.
5. Review the alternatives to detention that the Youth Services Counselor recommended to the Youth Court prior to recommending detention for each youth.
6. Review the DYS records of youth on informal adjustment who are supervised by the Youth Services Counselors and any recommendations the Youth Services Counselors make to the court regarding those youth.

## **VII. ENFORCEMENT AND TERMINATION**

- A. Notice Prior to Judicial Action.** With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of a Child, if the United States believes that the State has failed to substantially comply with any obligation under this Agreement, the United States shall give written notice of the failure prior to seeking judicial enforcement of the Agreement.
- B. Termination.** This Agreement shall terminate in accordance with the following provisions:
1. This Agreement shall terminate when the DHS/DYS has achieved substantial compliance with all substantive provisions of this Agreement and has maintained that substantial compliance for 12 consecutive months.
  2. Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure by the DHS/DYS to maintain substantial compliance. However, intermittent compliance during a period of sustained non-compliance shall not constitute substantial compliance.

3. Subsections of this Agreement may be terminated separately and independently from the provisions of the Agreement that have not yet reached substantial compliance, if the State maintains substantial compliance in these areas for a period of one year.

## **VIII. GENERAL PROVISIONS**

### **A. Policies and Procedures**

1. **Policy and Procedure Review.** The DHS/DYS shall generate such policies and procedures to ensure compliance with the substantive terms of this Agreement. The policies and procedures developed pursuant to this Agreement shall be subject to the review process described below in paragraphs VIII.A.2 and VIII.A.3.
2. **Schedule for Policy and Procedure Review.** Unless otherwise stated in Section III of this Agreement, the DHS/DYS shall complete its policy review and revision within six months of the Effective Date. To accomplish this goal, the DHS/DYS shall adhere to the Agreement regarding each substantive provision. After the DHS/DYS completes its initial revision, it shall immediately submit the revised policies to the Probation Services Independent Auditor for review and input and to the United States for its review and input. Both the Independent Auditor and the United States shall submit to the DHS/DYS any suggested revisions to the proposed policies within thirty (30) days. Within thirty (30) days after receiving the Independent Auditor's and the United States' suggested revisions, the DHS/DYS shall revise the policies to incorporate the revisions, where deemed appropriate by DHS/DYS.
3. **Process for Resolving Disputes About Policies.** In the event that the United States asserts that policies, procedures, or other written documents are not in compliance with the terms of this Agreement, or do not adequately address deficiencies identified by the Independent Auditor in the Auditor's report, the Parties will confer on the matter for up to thirty (30) days. If the Parties cannot reach agreement, either party may file a motion requesting that the Court resolve the dispute.
4. **Policy Implementation.** No later than three months after each policy or procedure is finalized consistent with Paragraph III.A.2, the State shall formally adopt and begin implementing the policies and modify all orders, job descriptions, training materials, and performance evaluation instruments in a manner consistent with the revised policies and procedures. Following adoption and implementation, the DHS/DYS shall annually review each policy and procedure and revise as necessary. Any revisions to the policies and procedures shall be submitted to the Independent Auditor for review and input and to the United

States for its review and input. Unless otherwise stated, all policies and procedures shall be implemented within one year of the Effective Date.

5. **Modification.** Should the Parties choose to modify this Agreement, they may do so by mutual agreement. Any such modifications or amendments to this Agreement shall be memorialized in writing and executed by representatives for the Parties.

## **B. Reporting Requirements**

1. **Comprehensive Action Plan.** Within four months of the Effective Date, the State shall submit to the United States and the Probation Services Independent Auditor a comprehensive action plan specifying the measures it intends to take in order to bring the State into compliance with the substantive requirements of the Agreement, including anticipated timeframes for completion of each measure.
2. **Compliance Report.** The DHS/DYS shall submit a bi-annual compliance report to the United States and the Probation Services Independent Auditor, the first of which shall be filed within six months of the Effective Date. Thereafter, the bi-annual reports shall be filed 30 days prior to the Independent Auditor's bi-annual compliance tour until the Agreement is terminated. Each bi-annual compliance report submitted by the DHS/DYS shall describe the actions it has taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented. To the extent any provision of this Agreement is not being implemented, the compliance report shall also describe what actions, including any additional revisions to policies, procedures and practices, the State will take to ensure implementation, and the date(s) by which those actions will be taken.
3. **Records.** The DHS/DYS shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available to the United States at all reasonable times for inspection and copying. These records shall be maintained for three years. In addition, the DHS/DYS shall maintain and submit upon request records or other documents to verify that they have taken such actions as described in the compliance reports (e.g., census summaries, policies, procedures, protocols, training materials and incident reports) and shall also provide all additional documents reasonably requested.
4. **Prohibition on Retaliation.** No Child, parent, staff, stakeholder, or any other person shall be subjected to retaliation in any manner for information shared with the Probation Services Independent Auditor or the United States in their efforts to determine compliance with this Agreement.



Respectfully submitted this 19th day of June, 2015,

For Plaintiff THE UNITED STATES OF AMERICA:

/s/ Gregory K. Davis  
GREGORY K. DAVIS  
United States Attorney  
Southern District of Mississippi

/s/ Vanita Gupta  
VANITA GUPTA  
Principal Deputy Assistant Attorney General  
Civil Rights Division

/s/Mitzi Dease Paige  
MITZI DEASE PAIGE (Bar No. 6014)  
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WHEREFORE, for good cause shown,

it is SO ORDERED this 17<sup>th</sup> day of September, 2015.

Henry T. Wingate  
The Honorable Henry T. Wingate  
United States District Court Judge