IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JIMMY (BILLY) McCLENDON, et al.,

Plaintiffs,

vs. **CIV 95-24 JB/KBM**

CITY OF ALBUQUERQUE, et al.,

Defendants,

vs.

E.M., R.L., W.A., D.J., P.S., and N.W., on behalf of themselves and all others similarly situated,

Plaintiff-Intervenors.

PLAINTIFFS' OPPOSITION TO DEFENDANT CITY'S MOTION TO DISMISS

Plaintiff-Intervenor subclass and the Plaintiff class (hereafter "the Plaintiffs"), by counsel, respectfully file this opposition to Defendant City of Albuquerque's Motion to Dismiss [Doc. 1733] ("MTD"), and request that the Court deny Defendant City's Motion.

INTRODUCTION

Defendant City of Albuquerque is not in compliance with the terms of the 2017 Settlement Agreement and Court Order [hereinafter, "Settlement Agreement"]. Although Plaintiffs will stipulate to the City's compliance with paragraphs 6, 8, and 9 of the Settlement Agreement, the City remains noncompliant with seven substantive paragraphs of the Agreement and has failed to fulfill the Agreement's essential requirements and core purpose of remedying ongoing constitutional and statutory violations and stopping its discriminatory and unlawful arrest practices resulting, among other things, in jail overcrowding.

When it began, this lawsuit was, at its core, about preventing overcrowding in the Bernalillo County Metropolitan Detention Center (MDC). However, Defendant County of

Bernalillo alone does not control who is arrested and booked into the MDC; Defendant City and the Albuquerque Police Department also do. *See* City Settlement Approval Order [Doc. 1326], at 15 ("[A]s reflected in the Settlement Agreement, the City will take part in solving issues related to overcrowding the Bernalillo County jail system by reforming the City's policing that contributes to overcrowding."); *see also* Clerk's Minutes 9/11/2017, Settlement Approval Hearing [Doc. 1322] ("Ms. Rahn … notes that the [Settlement Agreement] helps the County to manage the MDC population."). To this end, on March 28, 2017, the Defendant City entered a settlement with Plaintiffs to resolve their Amended Motion for An Order to Show Cause and For Further Remedial Relief Regarding City Defendants [Doc. 1233] ("Show Cause Motion"). The Settlement Agreement was accepted by the Court and entered as a court order. *See* 2017 Settlement Agreement [Doc. 1320], City Settlement Approval Order [Doc. 1326].

The purpose of the Settlement Agreement was to remedy ongoing constitutional and statutory violations, that is to say, the City was using arrest and pre-trial detention at MDC as a way to sweep people with mental illness and those experiencing homelessness from the City's streets and to force them into the jail. *See* City Settlement Approval Order [Doc. 1326], at 15. As alleged in the Show Cause Motion, the City's arrest practices and other conduct were violating the Constitution, the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and stipulated Court orders designed to reduce overcrowding at MDC, including reducing arrests for citable offenses and improving jail diversion programs for those with mental disabilities and others, and causing the population to exceed the jail's capacity.

The parties bargained for specific terms and steps to be taken by the City to remedy these violations of the law and Court orders and to reduce jail overcrowding, including:

- requiring the City to create and implement policies and training prohibiting warrantless misdemeanor arrests for nonviolent misdemeanors, except in special circumstances (¶¶ 1, 5);
- requiring the City to issue and implement a revised citation form that includes fields designed to reduce the issuance of bench warrants by gathering contact information for misdemeanants who have no fixed mailing address (¶¶ 2, 5);
- limiting the suspicion-less investigation and approach of people who appear to have a mental health disability or to be homeless (¶¶ 3, 5);
- requiring the City to create systems designed to reduce the arrest of people experiencing a behavioral health crisis (¶¶ 4, 5);
- requiring the City to collaborate with the County Defendant to make use of community-based mental health services and develop jail diversion programs and other alternatives to jail for people with mental health disabilities and who are homeless (¶ 7); and
- require the provision of 700 supportive housing slots specifically for individuals, including those with mental health disabilities, who have been booked into the MDC (¶ 10).

As set forth below, in conflict with this Agreement, the City has significantly and openly *increased* criminal enforcement against nonviolent misdemeanants, particularly the unhoused and those with mental illness, and begun crowding the jail via the adoption of systematic practices and formal enforcement policies at odds with the Settlement Agreement terms and purpose. The City has not met its burden to show compliance with the spirit and terms of the Settlement Agreement. The Court should deny the City's Motion to Dismiss.

LEGAL STANDARD

"Since consent decrees and orders have many of the attributes of ordinary contracts, they should basically be construed as contracts." *McClendon v. E.M.*, No. CIV 95-0024 JB/KBM, 2022 WL 4094519, at *21 (D.N.M. Sept. 6, 2022) (quoting *United States. v. ITT Cont'l Baking Co.*, 420 U.S. 223, 236 (1975)) [Doc. 1580]. The Settlement Agreement states that dismissal is appropriate "after the City Defendants have substantially complied with the provisions set forth herein. City Defendants may file motions with the Court to find substantial compliance in whole or in part with individual paragraphs of this Agreement." Settlement Agreement [1320], ¶ 14. "Defendants carry

the burden of showing by a preponderance of the evidence 'that they had substantially complied with the requirements of the consent decrees, and that any deviation from literal compliance did not defeat the essential purposes of the decrees.'" *Jackson v. Los Lunas Ctr. for Persons with Developmental Disabilities*, No. CV 87-0839 JP/KBM, 2012 WL 13076262, at *9 (D.N.M. Oct. 12, 2012) (quoting *Jeff D. v. Otter*, 643 F.3d 278, 284 (9th Cir. 2011)).

"Procedurally, motions to disengage the action items in the S[ettlement] A[greement] are like motions for summary judgment. A court may grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. When applying this standard, the Court examines the factual record and reasonable inferences in the light most favorable to the party opposing summary judgment." *Jackson v. Los Lunas Ctr. For Persons with Developmental Disabilities*, No. CV 87-0839 JAP/KBM, 2020 WL 4220907 at *3 (D.N.M. July 23, 2020) (internal quotations and citation omitted).

ARGUMENT

I. The City is not in substantial compliance with the Settlement Agreement.

The City now claims that oversight is no longer needed to remedy the constitutional and federal statutory violations that cause overcrowding at the MDC and led to the Settlement Agreement entered in this case. *See* MTD at 33-36. Not only has the City failed to meet its burden of proof to establish that this is so, but the City's own data and policies show otherwise. Publicly available documents and reports demonstrate that the same infirmities that motivated the Show Cause Motion and resulted in the Settlement Agreement have resurfaced. The City is out of compliance with the purpose and intent of the Settlement Agreement, as well as the plain terms of Paragraphs 1, 2, 3, 4, 5, 7, and 10. Because the City has not established compliance as required for

dismissal, and is in many ways further out of compliance than it has ever been, the Motion to Dismiss should be denied.

A. The City continues to violate the essential requirements and purpose of the Settlement Agreement.

"[T]he touchstone of the substantial compliance inquiry is whether Defendants frustrated the purpose of the consent decree—i.e. its essential requirements." *Joseph A. by Wolfe v. New Mexico Dep't of Hum. Servs.*, 69 F.3d 1081, 1086 (10th Cir. 1995). Here, Defendant City has failed to carry its burden of proof to show substantial compliance with the very purpose of the Settlement Agreement. Nor can it carry that burden, as publicly available information and data obtained from the County and the City show the opposite: the City continues to frustrate the purpose of the Settlement Agreement and run afoul of its essential requirements.

In Plaintiff-Intervenors' Show Cause Motion that was resolved by the Settlement Agreement, Plaintiff-Intervenors alleged that the City's practices violated the Court's orders, the Constitution, and federal disability rights laws in several ways:

> Specifically, Albuquerque police continue: a) targeting people with mental disabilities to be unlawfully stopped, searched, seized, and incarcerated in the absence of any reasonable suspicion that they are engaged in criminal activity; b) failing to reasonably accommodate the disabilities of sub class members in the course of what may be a lawful stop, search or seizure; and c) a pattern of discriminatory and unnecessary arrests and incarceration, causing sub class members to be institutionalized and segregated from the community due to their mental disabilities. . . .
>
> The root cause of many inappropriate detentions and arrests of sub class members is the City Defendants' de facto policy of "sweeping the streets" of people who appear to have a mental disability. . . [Albuquerque Police Department] officers routinely stop and question people who appear to be what law enforcement officials commonly refer to as "homeless mentally ill," and order them to move when they are standing or sitting in public places.

See Motion to Show Cause [Doc. 1233] at 13-14. The Settlement Agreement's essential purpose was to rectify these alleged violations with the ultimate goal of reducing the number of individuals brought into MDC by the City who have a mental illness or are experiencing homelessness.

The core allegation in the Show Cause Motion was that the City "sweeps the streets" of people the Albuquerque Police Department (APD) refers to as "the homeless mentally ill." *See* Doc. 1320 at 14-15. Those "sweeps" have dramatically increased in recent years in frustration of the purpose of the Agreement. Publicly available information alone demonstrates as much:

1. Data the City previously made public on their website regarding homelessness reported displacing unhoused people at a rate of 700 displacements per year in 2023 and reported over 1,000 displacements per month in 2024. Police commonly demand identification and run warrant checks when they displace people who are camping.[1]

2. City officials have initiated "tactical plans" for sweeping homeless people from the streets and, as part of that campaign, APD is arresting people for misdemeanors. Effective February 2026, the City revised its encampment policy to expressly require APD to "take criminal enforcement action" in homeless encampment clearings. The encampment policy permits "any law enforcement action based on the conduct of any individual present at an encampment," and does not mention the requirements of the Settlement Agreement.[2]

3. The percentage of people booked into the MDC who are identified as not having an address (categorized as "transient") has dramatically increased. People categorized as "transient" made up 26% of MDC's population in February 2023. *See* **Exhibit 1**, MDC Dashboard Timeline. That percentage steadily increased to 34% in February 2024, 45% in February 2025, and 49% in February 2026. *Id.* In 2025 and 2026, transient detainees arrested by APD routinely comprise the majority of the jail's total population.[3] For example, on March 10, 2026, the MDC Dashboard reports that 52% of the MDC's detainees are transient.[4]

A former Albuquerque police chief recently said that the result is that the MDC has become the state's largest "mental health facility."[5] These practices are harmful and run afoul of the Settlement Agreement.

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[1] *See* Megam Myscofski, *New Albuquerque dashboard shows the city made over 1,000 encampment sweeps in January*, Source NM, (March 4, 2024) https://sourcenm.com/2024/03/04/new-albuquerque-dashboard-for-homelessness-data-shows-the-city-made-over-1000-encampment-sweeps-in-january/

[2] *See* City of Albuquerque: Policy for Responding to Encampments on Public Property, effective 2/2/2026, at 6, available at https://www.cabq.gov/health-housing-homelessness/documents/2024-encampment-policy_12-17-24-fnl.pdf.

[3] *See* Nicole Santa Cruz & Ruth Talbot, *Albuquerque's Mayor Said Arrests Were "Not the Solution" to Homelessness. Yet Jail Bookings Have Skyrocketed*, Propublica, March 4, 2026, available at https://www.propublica.org/article/albuquerque-homelessness-citations-surge-tim-keller. [hereinafter "Jail Bookings Have Skyrocketed"].

[4] Available online at https://www.bernco.gov/county-manager/bernalillo-county-mdc-population-dashboard/ (accessed Mar. 10, 2026), at 2.

[5] *See* "Jail Bookings Have Skyrocketed," *supra* n.4.

The unlawful manner in which these "sweeps" and targeted arrests are occurring also remain the same, contrary to the essential requirements of the Agreement. As Plaintiffs set forth in the Show Cause Motion:

> APD officers commonly stop a person who appears to be "homeless mentally ill" for no lawful reason, then demand identification from him/her and search his/her person and backpack. Those unlawful stops, searches and seizures of members of the sub class, without reasonable suspicion of a crime, frequently lead to resistance by the person and inappropriate arrests and segregation of the person from the community. The City Defendants direct APD employees to approach persons who have, or appear to have, disabilities merely because they are exhibiting non-threatening symptoms of their mental illness or because they had an encounter with law enforcement in the past. APD officers then commonly check whether that sub class member has a warrant, often charge him or her with a crime and, in the absence of an exigent circumstance, arrest them instead of issuing a citation.

See Motion to Show Cause [Doc. 1233] at 14-16.

The relief in the Settlement Agreement was crafted to end and remedy these unlawful policies and practices. The Agreement thus requires, among other things, that APD issue "citations whenever appropriate" and directs that "persons alleged to have committed non-violent misdemeanor offenses (not to include DWIs) will not be arrested when there are no circumstances necessitating arrest." *See* Settlement [Doc 1320] Agreement, ¶ 1. Yet, in recent years, the City has turned back the clock and resumed these very same tactics and unlawful stops, searches, seizures, and arrest practices:

1. In a 2022 state law civil rights class action homeless people and their advocates have provided sworn declarations and video showing that, during 2024 and 2025, APD officers commonly approached people standing together in the International District of Albuquerque, who might be homeless, and required each person to disclose their identity. Police then run warrant checks on them with no reasonable suspicion.[6]

2. In 2025, people were charged 1,256 times for obstructing sidewalks, nearly six times the number of cases in the previous eight years *combined*. Other crimes, targeted primarily at the unhoused, such as "unlawful camping" and "criminal trespass" have seen similar increases. More than 3,000 trespassing charges were handed out last year, the highest for

[6] *Williams et al. v City of Albuquerque*, No. D-202-CV-2022-07562, complaint available online at https://www.aclu-nm.org/app/uploads/2022/12/final_complaint_class_action.pdf.

any year since 2017. And cases of unlawful camping increased to 704 from 113 the year before. On some days in 2025, the MDC held more homeless people than Albuquerque's largest homeless shelter. [7]

3. Researchers from UNM further reported in January 2025 that bookings into the MDC on misdemeanor charges have increased from 300 to 400 per month (a 33% increase) since 2021, and that APD initiates 65% of the bookings into the MDC.[8]

Moreover, over the course of the past two years, counsel for Plaintiff, Adam Flores, has periodically reviewed the County's MDC Population Dashboard.[9] *See* Affidavit of Adam Flores, ¶ 10 [Doc. 1743-3]. According to his review, "MDC's average daily population has increased from approximately 1,500 residents to more than 1,800 residents over the course of [2025], rapidly approaching the MDC's McClendon settlement population cap of 1,950." *Id.* ¶ 10. According to data from the County Defendant, the majority of detainees have been arrested by APD, including more than 800 misdemeanor bookings and an additional 200 detainees booked on misdemeanor warrants. *Id.* This increase coincides with changes in City policies and directives about targeting people who appear to be homeless or mentally ill. The Chief of Police and the Mayor have sent text messages to one another about "hammer[ing] the unhoused."[10] In recent public statements to the media and news reports, City officials have stated they have been conducting, and will continue to conduct, arrests that Plaintiffs argue violate the Settlement Agreement and run afoul of the Constitution and federal disability rights laws.[11]

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[7] *See Jail Bookings Have Skyrocketed*, *supra* at n. 4; https://www.propublica.org/article/albuquerque-homelessness-citations-surge-tim-keller.
[8] **Exhibit 2**, UNM Study: Law Enforcement Booking Patterns at 3.
[9] Available online at https://www.bernco.gov/county-manager/bernalillo-county-mdc-population-dashboard/.
[10] *See Jail Bookings Have Skyrocketed*, *supra* at n. 4.
[11] *See id.*; Jacqlin Aragon, Albuquerque Police crack down on crime along East Central, KOB4 NEWS, February 16, 2025, available at https://www.kob.com/news/top-news/albuquerque-police-crack-down-on-crime-along-east-central; Jessica Salinas, Albuquerque police target fentanyl use on Central Ave., KRQE NEWS, October 9, 2024, last updated October 10, 2024, available at https://www.krqe.com/news/crime/albuquerque-police-target-fentanyl-use-on-central-ave/; Matthew Reisen, Albuquerque Police Plan to Crack Down on Open-Air Fenanyl Use Along Central, THE ALBUQUERQUE JOURNAL, October 9, 2024, Available at https://www.abqjournal.com/news/article_a47e44b8-867c-11ef-8f0c-f3dd7a2b2e5a.html

Thus, contrary to its burden to prove substantial compliance with the essential purpose of the Settlement Agreement, the City's own data, policies, and public statements demonstrate ongoing noncompliance and frustration of the purpose of the Agreement.

B. The City fails to demonstrate compliance with most of the Settlement Agreement.

When determining whether Defendants have demonstrated substantial compliance, "the court should begin with the essential purposes of the consent decree … and it should then consider the specific steps set forth in the consent decree by which those purposes may be satisfied." *Wolfe*, 69 F.3d, 1086. In the Settlement Agreement, these specific steps are set forth in numbered paragraphs, some of which require multiple steps be taken to achieve the purpose of the Agreement. Not only does the City continue to violate the core purpose of the Settlement Agreement, it also continues to violate the express provisions of seven of the paragraphs setting forth these required steps by which the purpose of the Agreement may be satisfied. Plaintiffs address each relevant paragraph in turn.

i. <u>Paragraph 1</u>

Paragraph 1 states, in relevant part:

> The Chief of the Albuquerque Police Department will, within 45 days from the signing of this Agreement, (a) issue a special order and a member of the command staff will issue a corresponding video, and (b) initiate revision to the Arrests, Arrest Warrants and Booking Procedure Standard Operating Procedure, specifically 2-80. ***Both the Special Order and revised SOP 2-80 will include a clear written directive to police officers regarding the Court's order in McClendon with respect to issuing citations whenever appropriate, as established by operative policies, including an explanation that persons alleged to have committed non-violent misdemeanor offenses (not to include DWIs) will not be arrested when there are no circumstances necessitating an arrest***….

Settlement Agreement, ¶ 1 (emphasis added).

The current version of Standard Operating Procedure ("SOP") 2-80 does not comply with paragraph 1. As background, in 2018, the City issued a version of SOP 2-80 that complied with

the requirements of paragraph 1, but then subsequently changed it without Plaintiffs' approval. *See* 2018 SOP 2-80, attached as **Exhibit 3**. [12] The current SOP 2-80 (effective 2/06/2026) permits officers to "make arrests on misdemeanor crimes that occur in their presence." 2026 SOP 2-80, 2-80-4(B)(3)(a), attached hereto as **Exhibit 4**.[13] However, paragraph 1 does not permit arrests under the misdemeanor-arrest-rule, but instead requires that the SOP direct officers to issue citations to individuals charged with non-violent misdemeanors rather than to arrest them regardless of whether the officer witnessed the non-violent misdemeanor.

SOP 2-80 also permits officers to arrest individuals for misdemeanor crimes committed outside their presence if the officer has probable cause for the arrest. When discussing misdemeanor arrests, SOP 2-80 states that "[s]worn personnel may … make a custodial arrest … for a misdemeanor criminal offense that has occurred outside their presence, provided probable cause, statutory authority to arrest, and exigent circumstances, or an articulable exigency exists which would imminently prevent securing an arrest warrant." *Id.* at 2-80-4(B)(3)(b). SOP 2-80 defines "exigency" as "[a] situation known to sworn personnel prior to or at the time of a warrantless arrest which…provides a sufficient factual basis for making the warrantless arrest, ***such as on-the-scene arrest based upon probable cause.***" *Id.* at 2-80-3(A) (emphasis added). This definition is the only definition of "exigency" in SOP 2-80 and, therefore, applies to both felony and misdemeanor arrests. This definition of "exigency" then becomes the exception that swallowed the rule—permitting officers to arrest people for non-violent misdemeanors based on probable cause alone. This is contrary to paragraph 1's requirement that SOP 2-80 direct officers

[12] The City only attached one page of the 4/26/2018 version of SOP 2-80. Plaintiffs have attached the entire 2018 version of SOP 2-80 as **Exhibit 3**.

[13] The 2026 version attached is also substantially similar to the 2025 version which included the same problems discussed herein. *See* 2025 SOP 2-80, attached as **Exhibit 5**. The 2025 version was in effect when the City filed its Motion to Dismiss on 3/28/25, yet the City attached the 2018 version to its Motion to Dismiss.

issue citations rather than arresting people for non-violent misdemeanor offenses. *See* Settlement Agreement, ¶ 1 [Doc. 1320]. Thus, the City has not and cannot demonstrate substantial compliance with paragraph 1.[14]

ii. Paragraph 2

Paragraph 2 provides:

> The City has been informed that the State will soon be issuing a revised Uniform Traffic Citation form that includes fields for telephone number and email address, and has so informed counsel for Plaintiffs and Plaintiff-Interveners. In reliance on this expectation, Plaintiff and Plaintiff Interveners have agreed that the Chief of the Albuquerque Police Department will, within 30 days after the State issues the revised Uniform Traffic Citation form that includes fields for telephone number and email address, issue a Standard Operating Procedure ***requiring all officers to, whenever possible, obtain and record telephone numbers and email addresses whenever they issue a citation***.

Settlement Agreement, ¶ 2 (emphasis added).

The City has complied with paragraph 2 to the extent that it issued SOP 2-40 requiring officers to obtain and record telephone numbers and email addresses when they issue *traffic* citations, but SOP 2-40 does not contain the same requirement for non-traffic citations for misdemeanors. *See* SOP 2-40-4(B) *and compare* 2-40-5(B)(1)(b). Paragraph 2 states that the City will issue an SOP "requiring all officers to, whenever possible, obtain and record telephone numbers and email addresses whenever they issue a citation." This necessarily includes citations for non-traffic misdemeanors. It also appears that the required fields were not added to the forms for many years, or mandated, as required by the Settlement Agreement. Plaintiffs need discovery to confirm whether this information is being gathered now.

[14] After meeting and conferring with Judge Molzen, the City agreed to provide a revised version of SOP 2-80 that would address Plaintiffs' concerns which they sent to Plaintiffs' counsel on March 4, 2026. Because these revisions have not yet been approved by Plaintiffs or adopted by the City, the 2026 version of SOP 2-80 is still in effect, and it violates paragraph 1. However, the parties may be able to reach agreement regarding paragraph 1 in the future.

As discussed at the February 3, 2026, Motion hearing, the City also has not demonstrated that, pursuant to paragraph 5 of the Agreement, it has implemented the requirements of paragraph 2. The City presents the Affidavit of Deputy Chief JJ Griego, in which he alleges that the City has recently modified the citation such that the email and phone number are required fields that must be filled in to finalize the citation. *See* Exhibit J [Doc. 1733-10]. Plaintiff has not had an opportunity to depose Chief Griego and inquire about whether an officer can fill in this box without a real phone number or email, simply to complete the form, or if there is a certain code that can be entered when a person refused to provide or does not have an email or phone number. Moreover, if such a capability exists, the City has not provided, and Plaintiffs have found, no evidence showing that the City has done anything to check whether, in alleged refusal circumstances, the person being cited in fact did not provide or did not have a phone number or email—a basic step in implementation of such a policy.

Indeed, the City has not presented any evidence that this change in the form means officers are now inputting the email and phone number when one is provided. The City has presented no evidence that it has done any quality assurance or audits to determine whether its officers are substantially complying, or, if and when they do not, the City is correcting this behavior. And the evidence shows the opposite to be true. To that end, Plaintiffs attach three citations all of which show the same inputted phone number of 111-111-1111 and email of none@1.com, despite that one of the cited individuals is a housed person who had a phone number and email she uses. *See* **Exhibit 6**. The fact that the form has changed, without more, does not demonstrate that the City is in compliance with this paragraph or the purpose of the Agreement. Further, because APD does not reliably use the citation form with fields for email address and phone number as required, unhoused people do not get notice of arraignments on their citations and are then arrested on

misdemeanor warrants during subsequent sweeps. As discussed below, Plaintiffs need discovery to probe the extent of these practices that may impact thousands of people in the City.

iii. Paragraph 3

Paragraph 3 states, in relevant part:

> The City Defendants will also initiate revisions to the following SOPs:
>
> a. Field Services Standard Operating Procedure 1-14 entitled "Biased Based Policing/Profiling."
> b. Field Services Standard Operating Procedure 2-80 entitled "Arrests, Arrest Warrants and Booking Procedures;"
> c. Field Services Standard Operating Procedure 2-71 entitled "Search and Seizure without a Warrant;" and
> d. Former Field Services Standard Operating Procedure 3-12 entitled "Domestic Violence…."
>
> After the Chief issues the SOP regarding the issuance of citations, issues the SOP regarding the collection of phone numbers and email addresses, and gives ultimate approval to the SOPs (specifically SOPs 1-14, 2-19, 2-80, 2-71 and 3-12), ***APD will ensure that all officers are adequately trained on the revised SOPs***.

Settlement Agreement, ¶ 3 (emphasis added).

The City was required to develop training plans for each of the above policies and provide counsel for Plaintiffs the opportunity to review and make comments and recommendations on the training plans and materials. *Id.* The City has not complied with Paragraph 3 because it has failed to demonstrate that all APD officers have been adequately trained on these SOPs.

As proof that it has trained officers on the above SOPs, the City provided two affidavits. The first, by the Commander of the APD Training Academy, attests to the percentage of APD personnel trained on SOPs 1-4, 2-80, 2-71, and 4-25 by the end of 2018 only. [Docs. 1733-39 at 1-2]. The second affidavit, by the 2019 Training Coordinator for the APD Training Academy, attests to the percentage of APD personnel training on SOP 2-19 by November 19, 2019, only. [Doc. 1733-40 at 1-2]. These affidavits are insufficient to show compliance for three reasons.

First, they fail to demonstrate that APD officers were ever adequately trained on SOP 2-40 covering the collection by officers of phone numbers and email addresses when using the uniform traffic citation form as required by Paragraph 3. *See also* **Exhibit 6**, above. Plaintiffs raised this issue in their April 12, 2018, letter to which the City responded and acknowledged on May 10, 2018, that APD had not yet issued the SOP requiring officers to collect that information. *See* Letters [Docs. 1733-27 at 2 and 1733-28 at 3]. However, since adopting SOP 2-40, the City has provided no evidence that it trained APD officers on that SOP.[15]

Second, neither of the two affidavits address the percentage of officers trained on SOPs 1-4, 2-80, 2-71, and 4-25 since 2018, and SOP 2-19 since 2019. The Settlement Agreement's requirement that APD "ensure that all officers are adequately trained on the revised SOPs" is an ongoing obligation not limited to a certain time frame. [Doc. 1320 at 4]. Thus, to demonstrate compliance, the City must provide sufficient evidence of continued, adequate training of officers on these SOPs. It has not done so.

Third, the City reads the word "adequately" out of the Agreement. The mere fact that an officer has received some training does not render that training adequate. Adequate training should result in substantial compliance by officers with the contents of the SOPs. The City has proffered no evidence showing that officers have been adequately trained and, as discussed in Section I.A of the Argument above, the evidence shows otherwise—officers continue to engage in stop, frisk, and arrest practices that run afoul of the revised SOPs and the terms and purpose of the Settlement Agreement. Also, the City substantively changed SOP 2-80 so that it no longer complies with

[15] The City's letter of 5/10/18 suggests that it "could" incorporate the topic of collecting phone numbers and email addresses on citations into its training regarding citations in lieu of arrests and discussion of its special order requiring officers to collect this information. [Doc. 1733-28 at 3]. However, the City has produced no evidence that it in fact incorporated this topic into either training. Nevertheless, Paragraph 3 of the Settlement Agreement contemplates training on the SOP itself, not incorporation of its requirements in the training on other SOPs.

paragraph 1 as discussed previously, so any training on this SOP since the City changed it would be inadequate. The City has thus failed to carry its burden of showing substantial compliance with the adequate training requirement.

iv. Paragraph 4

Paragraph 4 states, in relevant part:

> ***The City Defendants will also initiate revisions to Field Services Standard Operating Procedure 2-19 entitled "Response to Behavioral Health Issues"***…. After the Department's internal review process is complete, the City will send this SOP to the parties and the Monitor in USA v. City, 1:14-CV-1025-RB-SMV, where it is subject to objection by the parties and approval of the Monitor. ***City will implement the SOP*** within 30 days of Monitor approval.

Settlement Agreement, ¶ 4 (emphasis added).

The City was required to revise *and implement* SOP 2-19 regarding police response to behavioral health issues. *Id.* While the SOP was revised as required, the City has failed to demonstrate implementation of the revised policy and therefore is not in compliance with Paragraph 4. In its Motion, the City provided correspondence regarding multiple rounds of revisions to SOP 2-19, with comments from Plaintiffs, the Monitor, and others, in accordance with requirements of the Agreement, but proffered no evidence of implementation beyond proof that the revised policies, now split into two SOPs (2-19 and 1-37), were published in April 2019 and some correspondence with Plaintiffs regarding the opportunity to review a training plan and materials related to the SOPs.[16] *See* Exhibits JJ, KK, & LL [Docs. 1733-36, 1733-37, & 1733-38].

The plain language of paragraph 4 of the Agreement requires the City to "implement" the revised SOPs, not to simply provide training on them. Training requirements appear elsewhere in the Settlement Agreement, including in paragraphs 3 and 5. By its plain language, to "train" and

[16] As the City references in its Motion, during the revision process, APD divided SOP 2-19 into two policies: SOP 2-19 and SOP 1-37. Doc. 1733 at 10.

to "implement" are two different requirements. It is a fundamental canon of construction that if a drafter (whether a legislature or contracting party) uses different language in two places, they are intended to convey different meanings. *See Penncro Assocs., Inc. v. Sprint Spectrum, L.P.*, 499 F.3d 1151, 1156-57 (10th Cir. 2007) ("When a contract uses different language in proximate and similar provisions, we commonly understand the provisions to illuminate one another and assume that the parties' use of different language was intended to convey different meanings."). As described by the U.S. Supreme Court, this principle instructs that "the same term usually has the same meaning and different terms usually have different meanings." *Pulsifer v. United States*, 144 S. Ct. 718, 735. Courts interpret contracts to give effect to the parties' intent and generally presume that if the parties used different words in two parts of a contract, they intended different results. *See 3rd Rock Logistics, LLC v. Occidental Petro. Corp*., 303 F. Supp. 3d 1166, 1168 (D.N.M. 2018) ("Where, as here, the parties use different language in different parts of a contract, [the court] assume[s] that they intended different things.") (internal citations and quotation marks omitted); *see also McClendon v. E.M.*, No. CIV 95-0024 JB/KBM, 2022 WL 4094519, at *21 (D.N.M. Sept. 6, 2022) (quoting *United States. v. ITT Cont'l Baking Co.*, 420 U.S. 223, 236 (1975)) [Doc. 1580] ("[B]ecause 'a consent decree or order is to be construed for enforcement purposes basically as a contract, reliance upon certain aids to construction is proper, as with any other contract.'").

The City's provision of correspondence regarding Plaintiffs' review of an initial training plan and materials for the policies does not even demonstrate that relevant personnel were adequately trained, nor whether they have been trained since 2019. *See* Exhibits KK and LL [Docs. 1733-37 and 1733-38]. To the contrary, the City's letter to Plaintiffs states "[t]he Crisis Intervention Unit only has a 1.5 hour block of time to deliver the training, which covers much more than just SOP 2-19." Exhibit KK [Doc. 1733-37 at 1]. Further, though not offered in relation

to Paragraph 4, an affidavit by the 2019 Training Coordinator for the APD Training Academy attests to the percentage of APD personnel trained on SOP 2-19 by November 19, 2019. Exhibit NN [Doc. 1733-40 at 1-2]. This affidavit does not include the percentage of APD personnel trained on SOP 1-37, which the City concedes is covered by this paragraph, nor does it address the percentage trained on SOP 2-19 or 1-37 since November 2019. Indeed, the April 2019 versions of SOPs 2-19 and 1-37 require ongoing training of relevant personnel in order to adhere to the policies. *See, e.g.*, Exhibit JJ [Doc. 1733-36 at 1, 4, 19, 20, 26]. For example, SOP 2-19-2 states: "Officers … will receive on-going training to equip them with information and techniques to help them better respond to individuals with behavioral health disorders or who are in a behavioral health crisis. Officers will be trained in intervention and de-escalation techniques and will be familiar with available behavioral health resources to enhance both officer and public safety." *Id.* at 1. The City has not provided any evidence that it is conducting such training, which is necessary to determine compliance with this paragraph.

Regardless, implementation requires much more than training. Otherwise, the parties would simply have required training, not implementation. For example, to demonstrate implementation of the SOPs, Plaintiffs would expect to see substantial compliance with the SOPs by APD officers and mental health clinicians, as well as policies, practices, and procedures for tracking and addressing instances of noncompliance with the SOPs. But the City has proffered no such evidence—falling far short of its burden of proof.

Moreover, Plaintiffs have evidence indicating the City is violating requirements within SOP 2-19, in direct conflict with its implementation. For example, SOP 2-19-2 states: "The goal during an incident involving an individual in a behavioral health crisis is to de-escalate the situation safely with the least amount of force for all individuals involved…." *See* Exhibit JJ [Doc. 1733-

36 at 1]. At SOP 2-19-7, officers are further instructed: "Officer should not threaten the individual with arrest or physical harm, as this may create additional fright, stress, and potential aggression." *Id.* at 7. A 2024 Mental Health Response Advisory Committee report raises concerns, however, that "[b]oth fatal and non-fatal uses of force continue to occur in circumstances involving a behavioral health crisis."[17] Publicly available data further shows that, in 2025, there was a 10% increase in APD arrests and other enforcement actions when responding to behavioral health crises or other behavioral health-related calls and 103 interactions between APD and someone in a behavioral health crisis involved a use of force, 86 of those individuals were injured by APD officers, and at least two individuals were shot and killed by APD officers during a behavioral health crisis.[18] This raises grave concerns about implementation of these SOPs and compliance with the Agreement.

SOP 2-19-2 also instructs: "Officers and communities must act in concert with behavioral health professionals to successfully resolve an incident involving individuals in behavioral health crises." Exhibit JJ [Doc. 1733-36 at 1]. To this end, SOP 2-19-8, entitled "Diversion from Jail," instructs APD officers on the measures they can take to divert individuals with mental health disabilities or who are experiencing a mental health crisis from jail, including issuing a verbal warning or citation, disengaging, or providing transport to a mental health provider. *See* Exhibit JJ [Doc. 1833-36 at 9-10]. The SOP states: "When an individual's criminal behavior appears to stem from a behavioral health disorder and he or she would be better served in a treatment location rather than in a criminal justice setting, officers should seek interventions in lieu of criminal charges. This process applies only to misdemeanor and non-violent felony cases." *See id.* at 9.

[17] **Ex. 7**, Mental Health Response Advisory Committee for Albuquerque, New Mexico, *MHRAC 2024 Annual Report* 1 (Feb. 2025).
[18] **Ex. 8**, Crisis Intervention Section, Albuquerque Police Department, *Response to Behavioral Health Incidents, January 1, 2025-June 30, 2025* (Fall 2025) at 12, 29, and 36.

Yet, in 2025, only 0.4% of encounters between APD officers and individuals with a behavioral health condition or crisis (14 out of 3,440 encounters) were transferred to the Albuquerque Community Safety Department (ACS), made up of non-police first responders trained specifically to handle behavioral health crisis and calls.[19] Current data regarding the percentage of individuals with mental health disabilities who are either in MDC or subject to enforcement actions when interacting with APD has increased.[20] MDC population data shows that over 40% of the total population in the jail receives psychiatric services.[21] And, as stated above, a former Albuquerque police chief recently referred to the MDC as the state's largest "mental health facility."[22]

In outlining when jail diversion may or may not be appropriate, the policy further states that "[t]he fact that [a] person appears to be experiencing homelessness is not a sufficient basis for an arrest." Exhibit JJ [Doc. 1733-36 at 9]. As discussed above and in discussing paragraph 7 below, over the past four years, the number of bookings into MDC that were classified as homeless or "transient" has significantly increased; it was up to nearly 12,000 in 2025, from 3,670 in 2022.[23] In 2025 and 2026, "transient" detainees arrested by APD routinely comprise the majority of the jail's total population. On some days in 2025, the MDC held more homeless people than Albuquerque's largest homeless shelter.[24]

The City has thus failed to demonstrate that these revised behavioral health SOPs have been implemented or that the City is in substantial compliance with Paragraph 4.

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[19] **Ex. 8**, Crisis Intervention Section, Albuquerque Police Department, *Response to Behavioral Health Incidents, January 1, 2025-June 30, 2025* (Fall 2025) at 12.
[20] **Ex. 9**, University of New Mexico Center for Applied Research & Analysis, *Review of the Metropolitan Detention Center Population* (April 2025); **Ex. 8**, Crisis Intervention Section, Albuquerque Police Department, *Response to Behavioral Health Incidents, January 1, 2025-June 30, 2025* (Fall 2025).
[21] **Ex. 9**, University of New Mexico Center for Applied Research & Analysis, *Review of the Metropolitan Detention Center Population* 18 (April 2025).
[22] *See* "Jail Bookings Have Skyrocketed," *supra* n.4.
[23] *See* "Jail Bookings Have Skyrocketed," *supra* n.4.
[24] *See* Jail Bookings Have Skyrocketed, *supra* n. 4.

v. Paragraph 5

Paragraph 5 states:

> ***The City Defendants will implement the special order and SOPs described above***. The obligations with respect to policies and training in this Settlement Agreement apply only to city personnel who are subject to the applicable SOPs as identified herein. Sworn commissioned law enforcement officers are subject to the above SOPs and will receive the above referenced training. ***Mental health clinicians employed by APD are also subject to SOP 2-19 and will receive training relevant to that SOP***.

Settlement Agreement, ¶ 5 (emphasis added).

The City has not complied with paragraph 5 by failing to: (1) "implement the special order and SOPs" described in paragraphs 1-4, and (2) demonstrate that all mental health clinicians employed by APD have received training on SOP 2-19 (which is now split into two SOPs). First, to demonstrate implementation of the SOPs, as noted above, Plaintiffs would expect to see substantial compliance with the SOPs by APD officers and mental health clinicians, as well as policies, practices, and procedures for tracking and addressing instances of noncompliance with the SOPs. But the City has proffered no such evidence, merely alleging that it has "implemented trainings on the revised [SOPs]." MTD at 11. Like paragraph 4 above, by its plain language, paragraph 5 of the Agreement requires the City to "implement" the revised SOPs, not to simply provide training on them. If the parties intended for the City to simply provide training, they would have said so, as they did elsewhere, and not made implementation an express requirement. Implementing the SOPs clearly requires more than training.

Nor can the City demonstrate substantial compliance with this implementation requirement because the evidence shows the opposite: that APD officers continue to engage in the same unlawful and discriminatory arrest practices that led to the Settlement Agreement and to violate the terms of the revised SOPs previously approved by Plaintiffs and the terms of the Agreement. For example, Paragraph 1 of the Settlement Agreement requires that "revised SOP 2-80 will

include a clear written directive to police officers regarding the Court's order in McClendon with respect to issuing citations whenever appropriate, as established by operative policies, including an explanation that persons alleged to have committed non-violent misdemeanor offenses (not to include DWIs) will not be arrested when there are no circumstances necessitating an arrest." *See* Settlement [Doc 1320] Agreement, ¶ 1. Yet sworn declarations and video evidence show that, during 2024 and 2025, APD officers commonly approached people standing together who appeared to be homeless, required each person to disclose their identity, and then ran warrant checks on them with no reasonable suspicion.[25]

The attached APD charges brought against Amanda Young on January 7, 2026, are illustrative of these practices. The charges state: "On January 7, 2026, at approximately 0830 hours, while working on the Encampment Team, I was advised by Solid Waste regarding an encampment in the area…. I observed multiple individuals with structures set up and numerous articles (shopping carts, wagons, suitcases, tarps, clothing, food) spread throughout private property, and where no trespass signs were posted. All occupants of the encampment were advised they had been detained." *See* **Exhibit 10**, Criminal Complaint of Amanda Young. It goes on to explain that Ms. Young "had been cited for Unlawful storage of property" on two prior occasions and was arrested and searched on that basis. *Id.* In direct violation of the mandated revisions to SOP 2-80 under paragraph 1 of the Agreement, she was charged with "unlawful storage of property, unlawful camping, and criminal trespass"—all nonviolent misdemeanor offenses. *Id.* Another individual was similarly arrested and searched based on two prior citations for "unlawful storage of property," as well as criminal trespass. *Id.* This is consistent with the City's new protocol

[25] *Williams et al. v City of Albuquerque*, No. D-202-CV-2022-07562, complaint available, available online at https://www.aclu-nm.org/app/uploads/2022/12/final_complaint_class_action.pdf.

for encampment abatement, which expressly requires APD officers to "take criminal enforcement action" in homeless encampment clearings, permits "any law enforcement action based on the conduct of any individual present at an encampment," and does not mention *McClendon* or the requirements of the Settlement Agreement.[26]

These ongoing arrest practices are also confirmed by data from the County Defendant showing that, in 2025, people were charged 1,256 times for obstructing sidewalks, nearly six times the number of cases in the previous eight years *combined*. Other crimes, targeted primarily at the unhoused, such as "unlawful camping" and "criminal trespass" have seen similar increases.[27] These policies and practices directly conflict with the revised SOPs required by paragraphs 1-4 of the Settlement Agreement and with the essential requirements and purpose of the Agreement.

Consistent with these arrest practices, the majority of detainees in the MDC have been arrested by APD, including more than 800 misdemeanor bookings.[28] As of January 2025, research shows that bookings into the MDC on misdemeanor charges have increased by 33% since 2021, and that APD initiates 65% of the bookings into the MDC.[29] This is strong evidence of a failure to implement the requirements of paragraphs 1-4 of the Agreement and revised SOP 2-80 as previously approved by Plaintiffs.

Second, contrary to the City Defendant's assertions in its Motion to Dismiss, the City has provided no evidence that mental health clinicians employed by APD have all received the required trainings on SOP 2-19 and SOP 1-37. In support of its assertion that 100% of mental health clinicians have received the required training, the City cites an affidavit that only refers to trainings

[26] *See* City of Albuquerque: Policy for Responding to Encampments on Public Property, effective 2/2/2026, at 6, available at https://www.cabq.gov/health-housing-homelessness/documents/2024-encampment-policy_12-17-24-fnl.pdf.
[27] *See Jail Bookings Have Skyrocketed*, *supra* at n. 2; https://www.propublica.org/article/albuquerque-homelessness-citations-surge-tim-keller.
[28] Available online at https://www.bernco.gov/county-manager/bernalillo-county-mdc-population-dashboard/.
[29] **Exhibit 2**, UNM Study: Law Enforcement Booking Patterns at 3.

completed as of November 2019, and the affidavit makes no mention of mental health clinicians at all. *See* MTD at 11-12; Exhibit NN [Doc.1733-40]. Moreover, as discussed in relation to paragraph 4 above, the evidence indicates that any training provided has been inadequate, as APD personnel are not substantially complying with SOP 2-19.

vi. Paragraph 7

Paragraph 7 states:

> The City Defendants will continue to collaborate in good faith with Bernalillo County to ***develop jail diversion programs*** and will collaborate in good faith with Bernalillo County and other partners in the establishment of such programs and ***the allocation of resources to implement those programs***. The City Defendants will ***utilize current third-party behavioral health response programs and services, including current locations available during a behavioral health crisis and will utilize other appropriate third-party providers as they become available in the community***. The details and timing of these programs are fully within the discretion of the City and the County. To the extent appropriations are required, notwithstanding any other provisions in this Agreement, the terms of this paragraph of the Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement.

Settlement Agreement, ¶ 7 (emphasis added).

The City is required to collaborate in good faith with Bernalillo County to develop, establish, and allocate resources to implement jail diversion programs, and to utilize third-party behavioral health response programs and other appropriate third-party providers in the community. *Id.* The evidence proffered by the City is misleading, incomplete, and does not show "the allocation of resources to implement those programs." Moreover, the City appears to be deviating from its own policies on jail diversion. Even if deemed in compliance with those parts of paragraph 7, the City has not proffered any evidence of the utilization of third-party behavioral health response programs and providers and therefore cannot be in compliance in that regard.

Rather than addressing the third-party providers, as proof of its compliance, the City describes seven programs it identifies as jail diversion programs. *See* MTD [Doc. 1733 at 16-19].

Of those seven programs, however, at least two appear to have either ended or not yet begun and two more are not jail diversion programs. In its discussion of the Law Enforcement Assisted Diversion (LEAD) Program, the City states that the County intended to terminate that program on July 1, 2025. [Doc. 1733, at 17 n. 68]. Without additional evidence of the current status of the LEAD Program, the City cannot rely on it as proof of compliance with paragraph 7. Additionally, in its description of the Forensic Assertive Community Treatment (FACT) Program, the City states that "[i]t is anticipated that the FACT Program will begin operation in late 2024." [Doc. 1733 at 18]. Given that its Motion was filed several months after this date, whether the FACT Program ever began operation is uncertain.

Of the remaining five programs described by the City, not all appear to be aligned with the purpose of jail diversion programs, which are generally intended to connect individuals to support and services that address their underlying needs in order to prevent criminal justice involvement. The City includes among its "jail diversion programs," for example, its Assisted Outpatient Treatment Program (AOT), a form of civil commitment mandating treatment for individuals with severe mental illness. Yet, failing to adhere to an AOT in New Mexico can result in detention. *See* NMSA 43-1B-13. The City asserts that AOT resulted in recipients having fewer arrests, but the figures provided in its Motion are not represented in the AOT pamphlet they cite or in anything else the City has provided as evidence. [Doc. 1733 at 18]; Exhibit BBB [Doc. 1733-54]. Many of these same concerns also apply to the specialty courts cited by the City Defendant.

Additionally, the City relies on its revision of SOP 2-19 and the adoption of subsection SOP 2-19-8, entitled "Diversion from Jail," as evidence of its compliance. [Doc. 1733 at 19]; Exhibit JJ [Doc. 1733-36 at 9-10]. As discussed above in Section I.B.iv above, publicly available information suggests APD is violating that subsection, and unhoused individuals and those with

mental health conditions are being arrested at higher rates and spending more time in jail than ever before. As of April 2025, the population at the MDC was higher than it had been in approximately ten years, and a significant proportion—over 40%—were receiving psychiatric services.[30] Additionally, from January to June 2025, 12.2% of behavioral health-related calls resulted in APD arrests and other enforcement actions, up 10.4% from 2024.[31] This information indicates an increase in the number of individuals with behavioral health conditions being arrested or jailed, not diverted from it.

Even if the Court finds the jail diversion programs sufficient, paragraph 7 also requires that the City utilize third-party behavioral health response programs and services available in the community. The City has not demonstrated compliance with those additional essential requirements of this paragraph.

vii. Paragraph 10

Finally, Paragraph 10 states:

> City Defendants will continue to provide approximately ***700 supportive housing slots for people, including those with mental illness or mental disability, who have been booked into the Metropolitan Detention Center. The housing slots are either transitional supportive housing or permanent housing with wrap-around case management and other behavioral health services.*** In providing these services, the City will keep, subject to applicable grant funding and appropriations by City Council, the programs that include individuals with mental disabilities who have been booked into the Metropolitan Detention Center, where not prohibited by other funding sources. ***City Defendants will collaborate in good faith with Bernalillo County regarding opportunities for additional supportive housing slots and the allocation of resources for same.*** Notwithstanding any other provisions in the Agreement, the terms of this paragraph of the Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this paragraph of the Agreement.

Settlement Agreement, ¶ 10 (emphasis added).

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[30] **Ex. 9**, University of New Mexico Center for Applied Research & Analysis, *Review of the Metropolitan Detention Center Population* 18 (April 2025).

[31] **Ex. 8**, Crisis Intervention Section, Albuquerque Police Department, *Response to Behavioral Health Incidents, January 1, 2025-June 30, 2025* (Fall 2025) at 12.

The City has not demonstrated (1) that it provided 700 *supportive* housing slots, as opposed to other forms of housing, (2) that those slots were provided *specifically for people who have been booked into MDC,* or (3) that it has made good faith efforts to keep "the programs that include individuals with mental disabilities who have been booked into the Metropolitan Detention Center" and collaborated in good faith with the County "regarding opportunities for additional supportive housing slots and the allocation of resources for same," as required by this paragraph.

First, supportive housing, by its very terms, is more than just housing. It is housing that includes assistance (e.g., long-term leasing or rental assistance) and supportive services to assist people with behavioral health and related disabilities, including those who are at risk of or are experiencing homelessness, in achieving housing stability.[32] Indeed, the Settlement Agreement defines supportive housing as "either transitional supportive housing or permanent housing with wrap-around case management and other behavioral health services." Settlement Agreement, ¶ 10. It is thus more than mere housing vouchers. *See McClendon*, WL 4094519, at *21, *supra* (the contractual nature of consent decrees means parties may rely on the "technical meaning" of words). While potentially very helpful, services like motel and hotel vouchers, temporary lodging vouchers, and emergency overnight shelter beds discussed in the City's Motion, MTD at 25-26, are not supportive housing slots and thus not relevant to compliance with this requirement.

Second, with respect to the supportive housing slots reported in the City's Motion, it is unclear the source for these numbers, whether these were in fact *supportive* housing slots with

[32] *See, e.g.*, U.S. Department of Housing and Urban Development, *Permanent Supportive Housing*, available at https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-program-components/permanent-housing/permanent-supportive-housing/; James Yates, Sherry Lerch, and Cynthia Melugin, *Strategic Plan for Supportive Housing in New Mexico: 2018 – 2023* 2, 4-5 (Jan. 2018), available at https://www.hca.nm.gov/wp-content/uploads/NM-Strategic-Housing-Plan.pdf; HHS - SAMHSA (2010). *Permanent Supportive Housing Evidence-Based Practices (EBP) Kit*. PowerPoint Presentation: http://store.samhsa.gov/product/SMA10-4510 (supportive housing is "decent, safe, and affordable community-based housing that provides tenants with the rights of tenancy under state and local landlord tenant laws and is linked to voluntary and flexible support and services designed to meet tenants' needs and preferences.")

wrap-around case management and other behavioral health services as defined in the Agreement, and whether they were provided to people who have been booked into MDC. At the hearing on the Motion, the City conceded that its evidence did not demonstrate that the housing it provides is *for those who have been booked into MDC*. *See* **Exhibit 11**, Hearing Trans. at 56:1-6.[33] Instead, the City provided a pdf of an "Excel Spreadsheet" created by an anonymous author that purports to describe the number of "units/vouchers" funded in fiscal year 2018 and a chart showing the total number of "supportive housing vouchers" supplied to individuals between FY 2018 and FY 2024. *See* Exs. OOO & PPP [Docs. 1733-67 & 1733-68]. Again, mere housing units or vouchers does not show that these are supportive housing units as expressly defined by the Agreement. There is no evidence as to whether these vouchers resulted in people getting actual housing, or to whom these slots and vouchers went. Moreover, counsel for Plaintiffs, Mr. Flores, has personally reviewed the County's 2019 Jail Population Management Plan, which includes documentation of jail population reduction initiatives. Affidavit of Flores, ¶ 9 [Doc. 1743-3]. This document indicates that, as of May 30, 2019, the City of Albuquerque committed only $500,000 in supportive housing funds and that the County was trying to persuade the City to more than double that number in order to provide a mere 150 total housing slots. *Id.*

Third, the City has not provided any evidence whatsoever that it has kept or endeavored to keep "the programs that include individuals with mental disabilities who have been booked into the Metropolitan Detention Center." Nor has the City shown that it has collaborated with the County in good faith "regarding opportunities for additional supportive housing slots and the allocation of resources for same." The City has thus failed to show it is in substantial compliance

[33] Plaintiff-Intervenors have exceeded the 50-page limit for Exhibits proscribed by D.NMLr-Civ. 10.5. Pursuant to that rule, counsel for Plaintiff-Intervenors contacted counsel for Plaintiffs, and Defendant County and City. All counsel agreed Plaintiff-Intervenors could exceed that limit in their 11 exhibits attached hereto.

with paragraph 10. In light of the City's failure to carry its burden of proving substantial compliance, and the significant evidence of rampant ongoing violations of numerous essential requirements of the Settlement Agreement, the Court should deny the City Defendant's Motion to Dismiss.

II. The City has failed to meet its burden of proof and so the City's Motion should not be granted without first ordering additional discovery to determine the City's compliance with other paragraphs of the Settlement Agreement.

The City is asking this Court to grant its Motion to Dismiss based on insufficient, one-sided evidence without affording Plaintiffs the opportunity to obtain discovery into its compliance with the Settlement Agreement. In cases involving consent decrees, "counsel for the plaintiffs has a continuing duty and responsibility to make sure that the defendants comply, and continue to comply, with the decree." *Duran v. Carruthers*, 885 F.2d 1492, 1495 (10th Cir. 1989). Numerous cases have permitted discovery regarding compliance with a consent decree. *See Caliste v. Cantrell*, No. CV 17-6197, 2020 WL 814860, at *4 (E.D. La. Feb. 19, 2020) ("This Court is not reduced to approving consent decrees and hoping for compliance. In fact, there is a strong federal interest in ensuring that the decree here is followed. Discovery is merely a means by which to achieve that goal." (internal citations and quotations omitted)); *Louisiana Fish Fry Prods., Ltd. v. Corry*, No. 3:07-CV-1224J33TEM, 2010 WL 1544355, at *2 (M.D. Fla. Apr. 19, 2010) (allowing discovery and finding that "courts faced with similar circumstances to the instant matter have granted motions to re-open discovery for the limited purpose of verifying compliance with consent judgments"); *All. to End Repression v. City of Chicago*, No. 74 C 3268, 1992 WL 80527, at *2 (N.D. Ill. Apr. 9, 1992), *aff'd*, No. 74 C 3268, 1992 WL 159495 (N.D. Ill. June 26, 1992) (permitted discovery). Plaintiffs have briefed this issue in their Motion to Stay Defendant City of Albuquerque's Motion to Dismiss [Doc. 1743].

At the hearing on February 3, 2026, this Court stated that Plaintiffs could serve discovery on the City. *See* **Exhibit 11**, Transcript of February 3, 2026 Hearing at 88, lines 6-25; 89, lines 1-4. The Court also stated that the parties could request that Judge Molzen handle matters pertaining to discovery regarding the City's Motion to Dismiss. *See id.* at 89, lines 11-14. The parties agreed that Judge Molzen will oversee discovery in this matter and have met with her on three occasions (twice with all parties together and once separately) to facilitate this discovery. Plaintiffs served discovery on the City on February 23, 2026. On March 6, 2026, the City provided its objections to these discovery requests and agreed to provide discovery in response to at least ten of Plaintiffs' requests for production and eleven of Plaintiffs' interrogatories. Both parties anticipate that Judge Molzen will help to resolve any discovery disputes. The parties also agreed to a schedule that would permit discovery pertaining to the City's Motion to Dismiss. *See* Joint Motion of the City of Albuquerque, Plaintiffs, and Plaintiff-Intervenors to Enter Amended Briefing Scheduling Order for Documents 1733 and 1816, ¶¶ 2-3, 5 [Doc. 1829]. The City is also seeking discovery from Plaintiffs. *See id.* at ¶ 3. Both parties are working with each other and with Judge Molzen to facilitate this exchange of information.

The Court should either deny the City's Motion to Dismiss, or allow the parties to exchange discovery to fill in the many gaps in the evidence proffered by the City regarding its compliance, clarify what is happening in practice and whether SOPs are being adequately trained on and implemented, and allow Plaintiffs to evaluate the validity of the data the City has proffered with its Motion.

CONCLUSION

The City has failed to show it is in substantial compliance with the Settlement Agreement and the weight of the evidence shows rampant ongoing violations. The Court should thus deny the

City's Motion to Dismiss. In the alternative, Plaintiffs respectfully request that the Court withhold its ruling on the City's Motion to Dismiss until the parties have completed discovery.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2026, I filed the foregoing electronically through the Court's E-File system, which caused all parties through counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Ryan J. Villa
RYAN J. VILLA