

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

**HUMAN RIGHTS DEFENSE CENTER, a
not-for-profit corporation,**

Plaintiff,

v.

**BOARD OF COUNTY COMMISSIONERS
OF PONTOTOC COUNTY, OKLAHOMA;
et al.,**

Defendants.

Case No. 6:18-CV-00149-RAW

CONSENT DECREE

The parties to this action, represented by counsel, hereby stipulate to the entry of a Consent Decree on the following terms and conditions, which fully and finally resolve all of the Plaintiff's claims for injunctive and declaratory relief; and the Court hereby orders the entry of a Consent Decree as follows:

1. On May 9, 2018, Plaintiff Human Rights Defense Center ("HRDC" or "Plaintiff") filed suit in the above-captioned matter seeking injunctive and declaratory relief, damages, and attorneys' fees and costs. Plaintiff's Complaint alleges an unlawful and unconstitutional custom, practice, or policy regarding the delivery of incoming publications and correspondence to prisoners at the Pontotoc County Justice Center (the "Jail") in violation of the First and Fourteenth Amendments to the United States Constitution. On the same day, Plaintiff filed a Motion for a Preliminary Injunction against the Defendants' unconstitutional policies and practices.

2. HRDC specifically alleged that on at least twenty-nine separate occasions, the Defendants censored and failed to provide constitutionally adequate due process notice for books sent to individual prisoners at the Jail.

3. On June 4, 2018, the named Defendants each filed an Answer denying the

allegations in Plaintiff's Complaint and raising various affirmative defenses. The Defendants also objected to the entry of a preliminary injunction, arguing that the Motion was moot because the Defendants changed the Jail's mail policies to address Plaintiff's claims after this lawsuit was filed.

4. The parties agree that Defendants deny any liability in this case. However, in order to avoid the expense, delay, uncertainty, and burden of litigation, the parties agree to the entry of this Consent Decree as part of a settlement of the litigation. Defendants have represented that the Jail was constructed by the Pontotoc County Public Facilities Authority Trust, which appointed the Pontotoc County Sheriff to operate and administer the Pontotoc County Jail. This Consent Decree shall apply to the Pontotoc County Sheriff, in his/her official capacity; the Pontotoc County, Oklahoma Sheriff's Office, its employees, and agents, in their official capacities ("the Sheriff's Office"); or any other person or agency designated from time to time to operate and administer the Jail. The parties agree that the individually named Defendant and the Board of County Commissioners of Pontotoc County are dismissed from this action.

5. The parties agree, and the Court orders, that the Jail shall deliver, if consistent with its legitimate penological interests and express policy terms based thereon, all publications (including but not limited to books, magazines, brochures, newsletters, and newspapers) to prisoners held in the Jail's custody in the future. The Jail shall not condition delivery of any publication on the recipient relinquishing ownership of said publication.

6. The parties agree, and the Court orders, that this Consent Decree shall also be applicable to the delivery of all publications and other correspondence sent directly from any publisher to any person held in custody at the Jail. For the purposes of this Consent Decree, the term "publisher" shall mean any publisher, book seller, or other type of distributor of literature that sends books or other publications to people through the mail.

7. The parties agree, and the Court orders, that, consistent with the written and adopted policy of the Pontotoc County Justice Center, whenever the Jail refuses to deliver any publication, correspondence, or document sent to any prisoner at the Jail for any reason, the Sheriff's Office shall transmit written notice to the sender by certified mail within five (5) business days of making the initial mail rejection decision. The notice shall include the name and address of the publisher, as well as the name(s) of the intended recipient(s), a description of the refused item of mail, a citation to the objectionable portion of the publication, and a citation to the Jail rule concerning the way in which the censored speech would threaten the Defendants' specific penological interests. The notice shall also inform the sender of their right to appeal the decision within fourteen (14) days of the date the notice is mailed to the sender, and shall include the name and address of the person to whom such appeals should be addressed and the date by which appeals must be submitted. The notice shall also be given to the intended prisoner-recipient of the mail within three (3) business days after the mail rejection decision is made. Such notice may be satisfied through the utilization of a standardized form identical to or similar to that currently used by the Jail.

8. The parties agree, and the Court orders, that any refused publication, correspondence, or document will be retained by the Jail in accordance with the appeal process established by the Jail. Further, any appeal shall be decided by a person or persons who was not involved in the initial decision to reject the item(s) in question.

9. It is further agreed that on May 31, 2018, the Jail adopted and currently enforces a new mail policy consistent with the terms herein. The parties agree, and the Court orders, that the Jail shall conduct an appropriate training session with all staff persons who are responsible for any part of the receipt, collection, and/or delivery of U.S. Mail to prisoners regarding the contents of

this Consent Decree and the new mail policy adopted on May 31, 2018, and the best practices for compliance therewith.

10. Defendants shall post a copy of this Consent Decree and a copy of the new mail policy in the prisoners' living areas for a period of 180 days. Defendants shall ensure that any other written materials concerning their jail mail policy are amended and conformed to reflect the changes adopted on May 31, 2018.

11. Within thirty (30) days of the entry of this Consent Decree, Defendants' counsel will furnish the Court and Plaintiff's counsel with written confirmation that the matters in paragraphs 9 and 10 have been implemented or otherwise corrected.

12. This Consent Decree is binding on the Pontotoc County, Oklahoma Sheriff's Office, its agencies, departments, agents, independent contractors, successors, and assigns, or any other person or agency designated to operate and administer the Jail. This Consent Decree also applies to any new or additional jail(s) used by the Defendants in the future.

13. The parties agree, and the Court orders, that Plaintiff may pursue enforcement against the Pontotoc County Sheriff, in his official capacity, or any successor charged with the operation of the Jail, if the Sheriff's Office/successor purposefully violates this Consent Decree. However, prior to filing any action, Plaintiff shall advise the Jail in writing of any violation or deficiency and allow the Jail reasonable time to address or correct the issue.

14. The Court finds that this case concerns the First and Fourteenth Amendment rights of a publisher, and is therefore not a case concerning prison conditions as defined in the Prison Litigation Reform Act of 1996. The Court further finds that the relief herein ordered is narrowly drawn, extends no further than necessary to correct the alleged harm to HRDC, and is the least intrusive means necessary to correct that harm.

15. The parties agree that the public interest is served by the entry of this Consent Decree, which protects the constitutional rights of publishers and other persons who correspond with prisoners by mail, and the right of prisoners to send and receive mail.

16. The Court retains jurisdiction of this matter for the purpose of enforcement of this Consent Decree.

IT IS SO ORDERED this 31st of January, 2019.



Ronald A. White
United States District Judge
Eastern District of Oklahoma