



PRISON LAW OFFICE

General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Laura Bixby
Patrick Booth
Steven Fama
Alison Hardy
Sophie Hart
Jacob Hutt
Rita Lomio
Margot Mendelson

NOTE: This handout is not intended to be legal advice about the facts in your case, but it will give you more information about your rights and what you can do to help yourself.

CONFIDENTIAL LEGAL MAIL

Parsons v. Shinn Case Update Revised March 2021

I. BACKGROUND ON *PARSONS V. SHINN*

Parsons v. Shinn is a federal class action lawsuit against the Arizona Department of Corrections' (ADC) medical, mental health, and dental care system. The lawsuit also challenges inhumane conditions in maximum custody isolation units. This case is a "class action" and protects all people housed in the ten Arizona state prisons. The lawsuit sought only changes to the policies and practices of ADC, and did not seek money damages. The case was filed in March 2012 by the Prison Law Office, the ACLU, and other lawyers.

♦ **Am I covered by the *Parsons* lawsuit?**

Every person housed in Arizona's ten state-run prisons is a *Parsons* class member: Douglas, Eyman, Florence, Lewis, Perryville, Phoenix, Safford, Tucson, Winslow, and Yuma.

♦ **What does the Arizona Department of Corrections have to do?**

The parties settled the case in October 2014, and in February 2015, Judge David Duncan approved the case's settlement. The settlement agreement requires ADC to fix its health care system and meet more than 100 health care performance measures, including medical care, mental health care, and dental care. ADC must overhaul the rules for isolation units. If you would like a free copy of the settlement agreement (called "Stipulation"), please write us and ask.

Since the settlement was approved, the federal district court has issued a series of orders directing ADC to take additional steps to comply with the settlement. These are described at pages 3-7.

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◆ **How can you help me?**

Our work is focused on making sure that ADC does everything required by the Stipulation. We do this through document review and monitoring trips to the prisons, where we talk to class members and staff. (Our visits to the prisons have been limited to “virtual” visits during the COVID-19 pandemic, using video and phone calls.) When necessary, we go to court and ask the federal judge to issue further orders directing ADC to comply with the Stipulation.

We have divided monitoring duties with our co-counsel. The Prison Law Office monitors problems with medical and dental care. We may be able to notify ADC attorneys if we learn of people with serious and urgent untreated health care needs that could lead to death or permanent injury, or that are seriously affecting activities of daily living, including eating, bathing, dressing, toileting, walking, transferring, and continence. Other than notifying ADC, we cannot assist with your individual health care concern.

The ACLU National Prison Project monitors problems with mental health care and the maximum custody units. You can write to them directly via confidential Legal Mail at:

ACLU National Prison Project
Attn: David Fathi, Attorney at Law
915 15th Street, NW, 7th Floor
Washington, DC 20005

The *Parsons* lawsuit did not seek money damages. If you want to file an individual lawsuit, we cannot represent you, and you must exhaust your grievance (this means take it to the highest level) before you can file a case. We have free self-help material we can send you on how to exhaust grievances, how to file a lawsuit in state or federal court, and a list of attorneys who in the past have sued ADC and/or their health care vendors (Wexford, Corizon, and Centurion). If you would like any of this information, please write us and ask for it.

We also have prepared numerous self-help handouts on other topics, including: Commutation and Compassionate Release, Hepatitis C, HNR Charges and Charges for Outside Medical Care, Immigrant Resources, Innocence Project, Legal Mail, LGBT Resources, Medical Diets, Medical Records Request Process, Pain Medication Policies, Pardons, Parental Power of Attorney forms for pregnant and parenting incarcerated people, Parole / Community Resources for People Leaving Prison, and Religious Rights of People in Arizona prisons. Please write to us if you would like a free copy of any of these handouts.

II. 2018-2021 CASE DEVELOPMENTS (THROUGH MARCH 18, 2021)

FOR MORE INFORMATION REGARDING COVID-19, PLEASE REFER TO OUR HANDOUT, “INFORMATION ABOUT COVID-19 IN ARIZONA PRISONS” AVAILABLE UPON REQUEST OR AT <https://prisonlaw.com/news/arizona-covid-19/>

♦ Change of Federal Judge

In June 2018, Magistrate Judge David Duncan, who oversaw settlement negotiations and litigation, retired from the bench. District Court Judge Roslyn Silver now is assigned to *Parsons*.

♦ Change of Health Care Contractor

In January 2019 ADC announced that they had contracted with a company called Centurion of Arizona to provide all health care services as of July 1, 2019, and would take the place of Corizon, the company that had provided health care since 2013. Centurion started to provide health care services on July 1, 2019. For the most part, they hired the line staff who had worked for Corizon, but brought in new state management.

♦ Civil Contempt, Sanctions, and Plaintiffs’ Request for a Receiver

Over the last three and a half years, we have participated in hearings, and filed a series of motions to enforce the Stipulation and to seek contempt sanctions against the ADC for their failure to comply with its provisions. On February 24, 2021, Judge Silver issued a sweeping order granting several of our motions and requiring ADC to address their continuing noncompliance with many aspects of the Stipulation and the performance measures. Doc. 3861, The issues addressed in the Order relating to health care are discussed below.. We anticipate that the ADC may try to appeal parts of this order to U.S. Court of Appeals for the Ninth Circuit.

➤ June 22, 2018 Contempt Order (Doc. 2898)

On June 22, 2018, Judge Duncan found ADC Director Ryan in civil contempt of court for ADC’s failure to comply with many requirements of the Stipulation. Doc. 2898. He ordered ADC to pay \$1,445,000 for violations of the court’s order in December 2017, January 2018, and February 2018. Judge Silver would decide how the money should be spent to best benefit prisoners. ADC appealed this order to the Ninth Circuit Court of Appeals, which denied the appeal. The Ninth Circuit upheld Judge Duncan’s contempt order and the fine, and said it was within the power of the Arizona district court judges to find Director Ryan and the department in contempt of court.

In her February 24, 2021 Order, Judge Silver directed that the ADC use the \$1.445 million contempt sanction, along with the \$1.1 million contempt sanction for failure to comply with the May 2019 Order (see next section), to pay for a system-wide staffing analysis and a systemic analysis of the adequacy of the health care provided to class members. Doc. 3861. On March 12, 2021, we and the ADC gave the Court suggestions for experts to do the required analysis, and we await Judge Silver's decision.

➤ **May 6, 2019 Order to Show Cause (Doc. No. 3235)**

On May 6, 2019, Judge Silver issued what is called an "Order to Show Cause" against Director Ryan. Doc. 3235. This order required ADC to show her why she should not also issue another contempt order and fines. She identified multiple areas of the Stipulation where month after month ADC and Corizon were not complying with its requirements. She listed a total of 34 performance measures and institutions that by July 1, 2019, must be above 85% compliance. She said that for each one of these measures that were not compliant in the month of June 2019, she would fine ADC \$ 50,000. In August 2019, ADC filed a report showing they were noncompliant with 24 of the 34 performance measures at issue in the month of June 2019, and offered their explanation for their failure to comply.

The Court's February 24 Order ruled that the ADC did not take reasonable steps to comply with the court's May 2019 Order and fined them \$50,000 for 22 of the 24 noncompliant measures during the month of June 2019, for a total fine of \$1.1 million. Doc. 3861. (Two of the measures at issue are no longer in force, and thus the Judge did not impose sanctions for two of the measures at issue.) The ADC deposited the \$1.1 million into the Court's Registry on March 10, 2021.

➤ **January 31, 2020 Order to Show Cause (Doc. 3490)**

On January 31, 2020, two days after the Ninth Circuit issued its opinion stating the district court had the power to find the department in contempt of court, Judge Silver issued another Order to Show Cause. Doc. 3490. In this order, she listed a total of 125 performance measures and institutions that by March 1, 2020, must be above 85% compliance. She said that for each one of these measures that were not compliant beginning in February, she would fine ADC \$100,000. She ordered the department to report by June 15, 2020, on the status of their compliance. On February 12, 2020, she issued another order telling the department that if they were not in compliance with the Stipulation by July 2020, she would set the case for trial. Doc. 3495.

Defendants filed their response on July 10, 2020, in which they admitted they were noncompliant with 20 performance measures in Judge Silver's order in the month of February 2020, which would amount to \$2.0 million in fines. Doc. 3649. In her February 24, 2021 Order, Judge Silver ordered defendants to address their compliance with the performance measures for the months of March through December, 2020. ADC's filing is due on March 26, 2021, and we will respond by April 16, 2021. Docs 3864 and 3866.

➤ **June 12, 2020 Motion to Enforce Paragraph 14 (Doc. 3623)**

On June 12, 2020, we filed a motion to enforce the Stipulation that detailed ADC's failure to comply with the requirement that for all people who are not fluent in English, that health care encounters be conducted using an interpreter. Our motion detailed how monolingual Spanish speakers and Deaf people were unable to communicate with health care staff in medical, mental health, and dental encounters.

In the February 24, Order, Judge Silver gave ADC 30 days to develop and file a plan that explains how class members who are not fluent in English will be identified, how class members will be informed of their entitlement to interpreter services, and how these services should be requested. That plan is due at the end of March.