

# **FAQ for Santa Rita Jail Consent Decree** **(Babu v. County of Alameda)**

## **WHAT IS THE *BABU* CASE?**

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*Babu, et. al., v. County of Alameda, et. al.* (“*Babu*”) is a class action lawsuit started in 2018. The case is about improving conditions at the Alameda County Jail. The lawsuit demands that the federal court order the County to improve mental health care, increase out of cell time, change the jail’s classification system, provide disability-related accommodations to people with psychiatric disabilities and stop the use of unnecessary force.

On January 19, 2022, the Court will hold a hearing on whether to approve a Consent Decree that will make **significant** changes at the jail. **If the Court approves the Consent Decree, the changes listed below will begin to take effect starting in 2022.**

## **WHAT WILL THE CONSENT DECREE DO?**

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### **1. Limit the Use of Restrictive Housing.**

The Consent Decree requires that the County change the jail classification system to limit the use of restrictive housing. The Consent Decree prohibits putting people with serious mental illness into the most restrictive settings, except in extreme circumstances and only if approved by mental health staff.

### **2. Provide More Recreation and Out of Cell Time.**

The County must offer all persons in General Population – Celled Housing at least 28 hours of out-of-cell time per week. This applies to individuals in celled settings including individuals held in Medium and Maximum custody. Individuals in dormitory settings may receive additional recreational time.

For people in Restrictive Housing, within 2 years, the Jail must reconfigure outdoor and indoor recreation space so that the Jail can offer people more time out of their cells. Once this is complete the Jail must offer at least 14 hours of out-of-cell time per week to people in Restrictive Housing Step One and 21 hours of out-of-cell time per week to people in Restrictive Housing Step Two.

During the 2-year reconfiguration period, the Jail must increase out-of-cell time so that by the fourth month after the Consent Decree is approved, people in Restrictive Housing are offered between 10 and 17 hours of out-of-cell time per week.

People held in what will be the Therapeutic Housing Units, focused on providing services to people with mental health needs, must be offered at least 28 hours of out-of-cell time per week even in the most restrictive settings. Individuals in less restrictive settings must be offered at least 35 hours of out-of-cell time per week.

### **3. Limit Use of Force.**

The Jail will have six months after the Consent Decree is approved to change the Jail's use of force policies. New policies must:

- Prohibit head strikes, kicking and knee kicks, in most cases.
- Allow only the amount of force that is objectively reasonable and necessary to control the situation or stop a threat.
- Require cooling down periods, and mental health de-escalation before planned uses of force.
- Ensure cameras are placed throughout the jail, especially in intake areas and in areas where force has been used more frequently in the past.
- Prohibit the use of restraint devices as a punishment or as a substitute for treatment.

### **4. Change Rules for Discipline.**

The Jail will have six months after the Consent Decree is approved to change discipline policies to prohibit punishing people with mental illness for refusing treatment or medication, or for engaging in self-harming behavior, or threatening self-harming behavior.

Mental health staff must be part of the new disciplinary process and procedures to make sure that any disciplinary hearing addresses the relationship between the alleged behavior and the person's mental health or intellectual disability.

The Jail must also cease using "disciplinary diets" in all cases except where food was part of the rule violation.

### **5. Provide More Mental Health Care.**

The Jail must develop a new mental health system including an electronic system to track referrals and response times. All people who are arrested and sent to the jail must be screened for mental health problems, and receive services immediately if they need them. Anyone with serious mental illness housed in the jail must receive individual therapy, group therapy, and treatment planning, as deemed appropriate by a clinician.

Mental health staff must also meet with people in confidential settings and for long enough to provide appropriate care. Cell-side check-ins to provide mental health care are not allowed unless there are extenuating circumstances, like the person is refusing to leave their cell.

The Jail must establish one or more Therapeutic Housing Units for people with serious mental illness who cannot be housed in the General Population. Therapeutic Housing Units are not hospital units, they will use existing housing unit space but will focus on providing mental health care and treatment with additional mental health staff assigned to these units. Mental health staff will be responsible for placing people in and discharging people from these units and must do so based on the person's treatment needs.

#### **6. Provide Mental Health Reentry Planning.**

For anyone with mental illness who remains in the Jail longer than 3 days, treatment planning must include a discharge plan for that person to continue to receive care after release. Transition and discharge planning for current Behavioral Health Clients shall begin as soon as feasible but no longer than seventy-two (72) hours following booking or identification as a Behavioral Health Client. Each person's discharge plan should include assistance with evaluating for benefits eligibility and the application process, contacts with community mental health services, housing recommendations, and additional services as necessary. Adult Forensic Behavioral Health Services must work toward a "warm hand-off" on release, including helping people set up meetings with community mental health providers prior to release.

#### **7. End Punitive Suicide Precautions.**

The Jail will phase out of the use of "safety cells," which are padded cells with only a hole in the floor for a toilet, to the maximum extent feasible. To do so, the Jail must construct suicide-resistant cells, which include beds, toilets, and sinks, within six months of approval of the Consent Decree. To the extent safety cells are used at all, strict time limits of no more than eight hours will apply immediately once the Consent Decree is approved. Once the suicide-resistant cells are constructed, the Jail will not be allowed to place people in safety cells for more than four hours.

#### **8. Ensure That Patients from the Jail Receive Inpatient Care When Needed.**

The County must address the problem of psychiatric hospitals, such as John George, sending patients back to the Jail when the patient is not stabilized and not ready to return to the Jail. The Consent Decree requires the Jail to make sure that a person sent to a hospital for a mental health crisis is sent back to the hospital if the hospital attempts to return that person in an unstable condition.

#### **9. Establish an Inmate Advisory Council and Ombudsperson Program.**

The Jail must work with incarcerated persons to set up an Inmate Advisory Council to give people in the jail a way to raise concerns and improve living conditions.

#### **10. End Discrimination Based on Mental Health Disabilities.**

Those with psychiatric disabilities must receive equal access to the Jail's programs, services, and activities. This includes access to vocational, educational, recreational, and

re-entry related programs. The Jail must set up a disability-specific request and grievance process to make sure people can ask for access to these programs and grieve any denials.

### **11. Eliminate Short-Staffing As An Excuse for Locking People Down.**

For years, the County has used lack of staff as an excuse for locking people in cells for 23 or more hours each day with little or no access to the outdoors or to educational programs and with limited mental health care and treatment. The Consent Decree requires enough staff be allocated to the Jail to fix these problems. Any additional staff added under the Consent Decree cannot be diverted for the Sheriff's Department patrol and must work in the Jail. The Sheriff must also certify that any additional staff hired pursuant to the Consent Decree are in fact assigned to work in the Jail.

### **12. Prevent COVID-19 Outbreaks.**

The County must provide COVID-19 testing and vaccines, as well as masks, personal protective equipment, cleaning supplies, soap, and enhanced cleaning of common areas. Non-punitive quarantine or medical isolation will be implemented by jail staff as recommended by public health authorities for correctional environments.

### **HOW AND WHEN WILL THESE CHANGES HAPPEN?**

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The details of how the Jail will actually do each of the things the Consent Decree requires will be addressed in new and detailed policies and procedures. The County must work with the neutral experts to create these new policies and procedures with input from Class Counsel. The County must implement the new policies and procedures within six months once the Consent Decree is approved. Staff must then be trained on the new policies and procedures within ninety days.

The County is also required to work with Class Counsel to develop an "Implementation Plan." The Implementation Plan must be completed within three months once the Consent Decree is approved and will set out benchmarks for implementation including specific goals, interim measures, and timelines.

### **WHO ARE THE LAWYERS REPRESENTING THE CLASS?**

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Jeffrey Bornstein, Kara Janssen, Ernest Galvan, and Amy Xu of the law firm Rosen Bien Galvan & Grunfeld LLP are class counsel.

### **WHY WAS THE CASE FILED?**

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People in the jail and their families contacted us about the inhumane conditions in the jail and we began meeting with people incarcerated in Alameda County to determine the extent of the problems. By the time we filed the complaint, more than 30 people had died in the jail over the prior five years - nearly half of these deaths were suicides. The complaint was filed to improve conditions and address the high rate of suicides.

## **WHY IS THE CASE BEING SETTLED INSTEAD OF GOING TO A TRIAL?**

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The Courts will not allow a case to go to trial until after the lawyers for both sides have talked to find out whether the goals of the lawsuit can be reached by agreement. There are many reasons for this. First, getting a case to trial can take many years. Second, the judge and the appeals court get many chances to end the case without a trial if the judge or the appeals court decides that the law does not allow what the plaintiffs are asking for. Third, if an acceptable settlement can be made without these delays and risks, it is better to reach a settlement and then to use the Court to enforce the settlement as necessary.

After we filed the case, we proposed that the parties pick a group of neutral experts on mental health care, equal access for persons with disabilities, classification, and jail operations who would make findings and recommendations on how to fix the problems in the jail. The experts wrote reports, which you can read at this website: <https://rbgg.com/santa-rita-consent-decree/>. We can also mail you copies upon request.

At the same time, class counsel received many calls and letters from people incarcerated in the jail and conducted numerous in-person visits that provided valuable information about day to day conditions in the Jail and what needed to be fixed. During this time the United States Department of Justice also investigated the jail and issued a report, which we used as an additional source of information about the problems that needed to be fixed as well as some of the suggested fixes.

Using the information from the experts, and listening to what class members told us in many visits and interviews we have conducted over the years, we worked with a Federal Court Magistrate Judge to reach an agreement with the County on what to do fix the problems with the jail. The agreement we reached is what is contained in the Consent Decree.

In our opinion, the Consent Decree can bring about the significant changes we believe are needed to address the issues in this case. The process we used eliminated the years of delay for discovery, legal motions, and appeals. The Consent Decree also removes the risk that we would get no changes at all because of a bad legal ruling from the Court.

## **HOW CAN I READ THE CONSENT DECREE IF I AM IN THE JAIL?**

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You can access the complete Consent Decree in both hard copy in your housing unit and on the electronic tablets that are provided to those incarcerated in Santa Rita. In addition, you can call or write to class counsel and we will send you a copy upon request. Copies will be available in English and Spanish. If you need a copy in a different language, you can request one from jail staff.

**HOW CAN I RECEIVE A COPY OF THE CONSENT DECREE IF I AM NOT IN THE JAIL?**

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It is posted at <https://rbgg.com/santa-rita-consent-decree/>.

**HOW ARE THE ATTORNEYS REPRESENTING THE INCARCERATED PEOPLE PAID? HOW ARE THE NEUTRAL EXPERTS PAID?**

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Under the terms of the settlement, the County has agreed to pay the reasonable fees and expenses of both the Plaintiffs' attorneys' and the neutral experts. Plaintiffs' attorneys have asked the Court to issue a ruling on the reasonableness of the amount they are requesting to be compensated for their work and costs of the lawsuit.

**IF I WANT TO COMMENT ON THE CONSENT DECREE HOW CAN MY VOICE BE HEARD?**

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You can submit written objections or comments to the Court **until December 31, 2021**. Objections or comments must include at the top of the first page: the case name, *Babu v. County of Alameda*, and case number, 5:18-cv-07677. Please also include your name, address and signature. **Objections or comments must be postmarked no later than December 31, 2021, and sent to the following address:**

Clerk of the Court  
United States District Court  
Northern District of California  
280 South 1st Street  
San Jose, CA 95113

**If you have trouble writing an objection or comment, you may call class counsel at 415-433-6830, and we will assist you in writing and filing your comment or objection.**

**WILL PEOPLE IN THE JAIL BE ABLE TO COLLECT DAMAGES OR MONETARY COMPENSATION THROUGH THE CONSENT DECREE?**

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**No. This case is only about making changes at the Jail.** No one incarcerated in the Jail will receive any money as a result of this case. You can still pursue any claims you may have for monetary damages on your own or with another attorney.

**CAN I STILL BRING MY OWN CASE IF I FEEL LIKE I HAVE BEEN MISTREATED?**

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**Yes.** Nothing in the Consent Decree affects your right to bring a claim for damages on your own behalf if you feel you have had your rights violated. The Consent Decree also does not prevent people from filing other cases that cover other important issues not covered by this lawsuit.

**WHAT HAPPENS IF THE COUNTY VIOLATES THE CONSENT DECREE?**

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Not all changes will be implemented immediately. The Consent Decree will be in effect for a term of six years. During that time, the County will have different deadlines to reach compliance on the various requirements set forth in the Consent Decree. Neutral experts will tour the Jail twice a year and report on whether the County is complying. Class counsel will also tour the jail and monitor compliance. If the County violates the Consent Decree, class counsel can bring the County back to Court to enforce the Consent Decree.

**WHO DO I CALL OR ASK IF I HAVE MORE QUESTIONS?**

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**You can write, call, or email class counsel at:  
Rosen Bien Galvan & Grunfeld LLP.  
PO Box 390  
San Francisco CA 94105  
Phone: 415-433-6830  
Email: SantaRita@rbgg.com**