

Memorandum



AEP:MHN:AJB:ph
DJ 168-8-24

Subject
Proposed Investigation of the
Gila County Jails
in Globe, Arizona

Date

JUN 3 1994

To Deval L. Patrick
Assistant Attorney General
Civil Rights Division

From Arthur E. Peabody, Jr.
Chief
Special Litigation Section

RECOMMENDATION

Pursuant to the Civil Rights of Institutionalized Persons Act, ("CRIPA"), 42 U.S.C. § 1997 et seq., we recommend an investigation into the conditions of confinement at the Gila County Jails in Globe, Arizona.

We have received complaints from the Government of Mexico which indicate possible violations of constitutional rights of persons incarcerated in these facilities, including sentenced inmates, pre-trial detainees and Immigration and Naturalization Service detainees. These complaints include allegations of inadequate clothing provision for inmates, particularly in cold weather; lack of bedding and blankets; lack of appropriate hygiene items; insufficient food of adequate nutritional content; and lack of appropriate medical care. These deficiencies, if verified, would deprive Gila County inmates of their federal constitutional rights. Sentenced inmates are entitled to protection against "the wanton and unnecessary infliction of pain" proscribed by the Eighth Amendment. Chapman v. Rhodes, 452 U.S. 337, 346 (1981). Pre-trial detainees are similarly entitled to conditions which do not amount to unconstitutional punishment pursuant to the due process clause of the Fourteenth Amendment. Bell v. Wolfish, 441 U.S. 520, 535 (1979); cf. Ingraham v. Wright, 430 U.S. 651, 671-72 (1977). Aliens detained by the Immigration and Naturalization Service are entitled to constitutional conditions of confinement pursuant to the Fifth Amendment's due process clause. Ortega v. Rowe, 796 F.2d 765, 767 (5th Cir. 1986).

BACKGROUND

The Gila County Jails consist of two facilities. The main jail is located in Globe, Arizona. A substation jail is located in the town of Payson, Arizona. As reported to the American Correctional Association National Jail and Adult Detention Directory, Fifth Edition, 1990, Gila County claims that the main jail has a rated capacity of 127 inmates and an actual census of approximately 100 inmates. The substation jail is said to have a

CRIPA Investigation



JC-AZ-001-002

capacity of twenty-two inmates. In the 1985 edition of the American Correctional Association Directory, the main jail was said to have a capacity of seventy-five inmates and an actual census of 100 inmates. There is no indication that the main jail has been renovated to account for the increased rated capacity reported in 1990. The reported correctional officer staffing of a total of eighteen correctional officers for both facilities appears inadequate to provide twenty-four hour a day, seven day a week coverage for both facilities. Source, ACA Directory, 1990.

This investigation is predicated upon a referral to this Division of a letter of complaint (copy attached) from Honorable Nicolas Escalante, Consul of Mexico, whose office is located in Phoenix, Arizona. The letter was sent to Janet Napolitano, United States Attorney for the District of Arizona, and was subsequently forwarded to this Division by the FBI on April 25, 1994. The attorney responsible for this matter has responded by telephone to the Consul, and additional information has been informally obtained from him by telephone interview. As a courtesy to the Mexican government, we are attaching a letter for your signature to Consul Escalante indicating our intention to conduct an investigation of the matters raised by him, should you determine that an investigation of this matter pursuant to CRIPA is warranted. Because Immigration and Naturalization Service ("INS") detainees are held in the Gila County jails, and because the safety and security of these foreign nationals is the foremost concern of Mr. Escalante, we are also attaching for your signature a letter advising the Director of the Immigration and Naturalization Service of our intention to conduct an investigation into the conditions of confinement at this facility in which the INS rents jail space.

With respect to the focus of the investigation, conditions of confinement in the jails are the matters subject to investigation under CRIPA, without regard to the citizenship status of individuals incarcerated therein. In these facilities, however, INS detainees are mixed together with general population citizen inmates. Thus, the conditions observed by Mr. Escalante apply equally to United States citizen inmates.

In his letter to the Arizona United States Attorney, Consul Escalante sets forth a description of conditions which he personally observed by visiting the Gila County Jail. Quoting from his letter, "I personally found the situation appalling and I hereby request that in the case of this group of Mexican citizens, list attached, their rights as federal prisoners be respected or that they be transferred to other facilities without the problems that I was able to verify." In addition to this statement set forth in his letter, we were advised that, due to the severity of conditions observed, Mr. Escalante and his assistant visited the facility again in late April of this year and noted that absolutely no improvement in conditions had

occurred since his previous visit. Mr. Escalante has verbally advised Gila County jail management of his concerns, and by his letter to the United States Attorney, similarly placed the United States on notice of the alleged unlawful conditions.^{1/}

ALLEGED UNCONSTITUTIONAL CONDITIONS

Inmates at the Gila County jails are allegedly incarcerated under conditions of confinement which result in actual harm to them. Based upon on-site observations of inmates and interviews with detainees, Consul Escalante asserts in particular significant inadequacies with basic necessities of life, including - insufficient clothing; inadequate bedding; lack of hygiene items and opportunity for exercise; an inadequate diet with insufficient amounts of food provided; and indifference to serious medical needs of inmates. Although he did not interview United States citizen prisoners, as previously mentioned due to the integration of alien detainees with general population inmates, the conditions complained of are not exclusive to the alien detainees.

I. Clothing and bedding.

Inmates at this jail are provided one jail uniform which is the sole article of clothing in their possession. Underwear is not provided, and on days when the one jail uniform is washed, the inmates are allegedly forced to remain in the nude until the clothing item is returned. If the inmate happens to have visitors on that day, the visits are cancelled. Many inmates are placed in cells without appropriate bedding. Mr. Escalante noted that many of the detainees were not issued blankets. The town of Globe, Arizona is located at a relatively high altitude and many detainees asserted to Mr. Escalante that they suffered from the

^{1/} The actual notice given by the Consul to the county and the United States regarding alleged unlawful conditions alleviates, from a civil rights perspective, a potential problem arising from Ortega v. Rowe, supra, the leading case involving INS detainees. In Ortega, private plaintiffs complained that INS Border Patrol detainees were forced to sleep on concrete floors and metal bunks without mattresses. The court denied the plaintiffs relief because the plaintiffs failed to show either - (a) that the defendants, INS and a Texas county, intended to punish the detainees by subjecting them to such conditions, or (b) that actual notice of the conditions was provided to INS or county authorities. In that case, the county and INS avoided liability by asserting that "[f]ederal agents believed that Lubbock officials were responsible for maintaining the jails, while local officials believed that operations were within the province of the Border Patrol." Ortega, 797 F.2d at 766.

effects of cold temperatures in the jail with insufficient clothing and bedding.

II. Hygiene items and exercise.

Inmates are not issued toilet paper, and are provided insufficient amounts of soap, toothpaste and other basic items required to maintain cleanliness and good health. The physical plant is not well maintained and inmates complain of an inability to clean their living areas. Exercise time is allegedly limited to fifteen minutes per day, which is inadequate to provide appropriate muscular exercise and opportunity to avoid illness caused by lack of out-of-door activity.

III. Insufficient diet.

According to Mr. Escalante, all inmates interviewed by him complained of insufficient amounts of food provided to sustain health. At the time of his first visit to the facility, Mr. Escalante noted in an anecdotal manner that the rice which was served to inmates that day appeared burned or otherwise inedible. Moreover, inmates were unable to supplement their diet with items from the commissary because it had been closed for several weeks.

IV. Failure to address serious medical needs.

Inmates bitterly complained to Mr. Escalante that medical care at this facility was insufficient to deal with serious medical needs. Serious and untreated skin diseases were noted by Mr. Escalante during the course of his visit. Inmates complained that forms were often not provided to request medical attention, and when they were provided, it took several weeks to see the doctor who served the jail. It is unknown at this juncture how often the doctor provides medical services at the jail. Although there is a nurse of some level of certification at the jail, inmates asserted to Mr. Escalante that she refuses to do nursing rounds due to the nudity of many inmates waiting for a clothing issue.

According to one private attorney involved in jail litigation in the state,^{2/} there has been at least one suicide that he is aware of which took place at the Gila County Jail during approximately the last two or three years. In that instance, a Navajo woman inmate with known suicidal propensities was allegedly left alone for a considerable time in the jail and was able to commit suicide by hitting and tearing herself and

^{2/} Telephone call May 12, 1994, with George Barnett, an Arizona attorney who has been involved in private class action litigation and medical malpractice litigation regarding jail and state mental health facilities.

finally successfully terminating her life by hanging. Based upon his knowledge of the lack of mental health services in Arizona, it was his opinion that essentially no mental health services are provided in any but the largest jails in the state.

Due to the remote location of this jail facility, and the lack of inmate advocates in the Arizona jurisdiction, civil rights groups in Arizona were generally unable to provide additional information about this jail. However, Ms. Bonnie Carter of the Arizona State University Law School Prison Project advised^{3/} that she had received complaints about conditions of confinement in Arizona jails, and recalled complaints received from inmates pertaining to the Gila County facilities. She further advised that she does not retain jail complaints, or investigate them, as her program and resources are limited to involvement in a longstanding statewide prison conditions lawsuit.

CONCLUSION

The described violations suggest that inmates at the Gila County Jails are suffering immediate threats to their health and safety which are proscribed by the Constitution. Alien detainees are similarly protected by due process rights available to them under the Constitution. For all the foregoing reasons we recommend approval of this investigation.

Attachments: 

Approved: _____

Disapproved: _____

Comments:

^{3/} Telephone conversation, May 4, 1994, Arizona State University Prison Project.