



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 11, 1997

Mr. John S. Ricci
County Administrator
McDade Administration Building
P.O. Box 8060
Trenton, NJ 08650-0068

Re: CRIPA Investigation of Mercer County Detention Center

Dear Mr. Ricci:

On May 1, 1996, we notified you of our intent to investigate conditions at the Mercer County Detention Center ("MCDC") pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 et seq. The purpose of the investigation, as we stated in our notification letter, was to determine whether conditions at the jail violate the constitutional rights of inmates. This letter is to inform you of our findings, supporting facts, and recommended remedial measures, pursuant to 42 U.S.C. § 1997b(a)(1).

We asked for the County's cooperation in conducting this investigation. The County, however, through its counsel, has refused to provide us with any documentation relevant to the investigation, refused to allow us to tour the facility, and even refused to allow us to meet with inmates during attorney visiting hours. Letters from A. Vuocolo, Acting County Counsel, dated June 18, 1996, July 26, 1996, and March 13, 1997. We have repeatedly stated our desire to work with the County, emphasizing the benefits of such a cooperative approach prior to the Department completing its investigation and issuing any recommendations regarding needed remedial measures. We offered to meet with County officials to describe the logistics of the investigation, to review the scope of our document request and to answer any questions about the direction of the investigation. Letters from C. Lopez, Trial Attorney, dated July 9, 1996, March 28, 1997. The County declined all of these offers and continues to refuse to cooperate.

CRIPA Investigation



JC-NJ-002-003

As a result, we have been forced to conduct our investigation without the benefit of a tour of the facility, review of relevant documents in the facility's possession, or meetings with inmates. We have reviewed documents available from other sources, including, government assessments, published reports, and written complaints outlining jail conditions from inmates in the jail. We have spoken with individuals whose work brings them into the jail and communicated with some current and former inmates via mail and telephone.

We have concluded that a number of conditions at MCDC violate the constitutional rights of the inmates incarcerated there. The constitutional deficiencies are in the following areas: First Amendment, general environmental safety and sanitation, fire safety, use of force by corrections officers, unacceptably high risk of violence, and medical and mental health care. These conclusions, and the more specific findings and recommendations set out below, must be read in the context of the County's refusal to cooperate with the investigation. Both the legislative history of CRIPA and federal case law make it clear that the Attorney General may consider state officials' failure to cooperate with an investigation in her decision to bring suit under the Act. United States v. Michigan, 868 F. Supp. 890, 896 (W.D. Mich. 1994) (citing relevant legislative history). Nevertheless, we offer our findings and recommendations in a cooperative spirit. We hope that the County will discuss these matters with us promptly and provide appropriate access to the Detention Center, rather than continuing its adversarial posture.

General conditions of confinement for inmates are governed by two sources of constitutional law: the Eighth Amendment (for inmates convicted of a crime) and the Fourteenth Amendment (for pretrial detainees). The Eighth Amendment's ban on cruel and unusual punishment governs many aspects of conditions discussed here. The Eighth Amendment "imposes duties on [prison] officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter and medical care and must 'take reasonable measures to guarantee the safety of the inmates'." Farmer v. Brennan, 511 U.S. 825, 832-33 (1994) (quoting Hudson v. Palmer, 468 U.S. 517, 526 (1984)). It also forbids excessive physical force against prisoners. Hudson v. McMillian, 503 U.S. 1, 9 (1992). Inmates retain the right of access to the courts, Lewis v. Casey 116 S.Ct. 2174, 2179 (1996), to petition their government for a redress of grievances, see e.g. Johnson v. Avery, 393 U.S. 483, 485 (1969), and to communicate with the outside world, Thornburgh v. Abbott, 490 U.S. 401, 411-12 (1989). Pretrial detainees "retain at least those constitutional rights . . . enjoyed by convicted prisoners." Id. at 545. With respect to pretrial detainees, the Fourteenth Amendment prohibits conditions or practices not reasonably related to the legitimate governmental objectives of safety, order, and security. Bell v.

Wolfish, 441 U.S. 520, 547 (1979). Pretrial detainees have not been convicted of anything, and therefore they may not be punished.

I. Findings of Investigation

The Mercer County Detention Center was opened in 1978 and was designed to house 196 inmates. The current population of the detention center is about 540, putting the facility at over 275 percent of its designed capacity.

A. Inadequate Environmental Safety And Sanitation

County officials have publicly acknowledged that the physical plant of MCDC is in need of extensive repairs. The structural, heating, cooling, plumbing and electrical problems in the building are compounded by the extreme crowding, and represent a threat to the health and safety of the inmates incarcerated there.

County officials reportedly acknowledge that there are not enough cells to house the population. All available floor space, including day rooms and meeting rooms is used for inmates to bed down. Many inmates are housed in triple-bunked cells. There are insufficient dining facilities; many inmates eat their meals seated on the floor, on steps and in their cells. The noise level in the facility is allegedly very high, making it difficult for inmates and custody staff to communicate, thus hindering the provision of adequate security.

According to published reports and complaints from inmates, rainwater leaks through the ceiling and down the walls in the cell blocks and ice has on occasion formed on the inside walls and floors during the winter. The plumbing system is inadequate, and sewage occasionally overflows into living areas. Drainage within the cell blocks is poor, and there is often water on the walls and floors, creating a safety hazard and sanitation problem. Fungus grows on the walls of some cells. Although we received no information regarding water leaking into the electrical system, this is an obvious additional concern given the disrepair of the electrical system and the pervasiveness of the water problem. There is an inadequate number of working showers to accommodate the inmate population.

Available evidence also indicates that there are inadequate fire prevention and fire suppression systems in place in MCDC. No regular fire drills are conducted. The ventilation system is inadequate, creating a health hazard, and the heating and cooling systems need replacing. Inmates are not afforded adequate access to recreation, especially outdoor recreation.

B. Unnecessarily High Risk Of Violence And Excessive Use Of force

The extreme crowding not only burdens the resources of the facility, but leads to an unnecessarily heightened state of tension among inmates and corrections personnel. Fights among inmates are reported to be relatively commonplace, and knives, homemade "shanks", and illicit drugs are all too available. Several larger scale disturbances have occurred wherein inmates have been injured. The evidence available to us indicates that there may have been instances where corrections officers, individually and in concert, have used excessive force on inmates. Some individuals, both inside and outside the facility, report that the situation is presently very volatile.

C. Inadequate Medical And Mental Health Care

Our investigation revealed that MCDC's medical and mental health care is constitutionally deficient. Inmates are not properly screened for medical or mental health issues upon intake. Inmates with mental illness are housed in general population without adequate access to mental health professionals or prescription medications. Several inmates have attempted suicide, and one mentally ill inmate died after a long and severe psychotic episode during which corrections personnel reportedly failed to act appropriately.

Available evidence indicates that medical care for both acute and chronic medical conditions is inordinately delayed or unavailable. Inmates have an unreasonably difficult time receiving appropriate medications for their conditions.

D. Inadequate Access To The Courts

The MCDC law library is inadequate, and the facility offers no alternative means to meet its obligation to provide inmates access to the courts. The most basic legal resources are lacking or are out of date, and access to the library is too limited. The facility thus does not provide inmates with adequate access to courts.

E. Violations Of The Inmates' First Amendment Rights

Inmates retain the freedom to communicate with the outside world, see e.g., Thornburgh v. Abbott, 490 U.S. 401, 411-12 (1989), and the freedom to petition their government for a redress of grievances, see e.g., Johnson v. Avery, 393 U.S. 483, 485 (1969). The right to petition the government for a redress of grievances extends to all departments of the government. Cal. Motor Transport Co. v. Trucking Unlimited 404 U.S. 508, 510 (1972). Thus, inmates have a constitutional right to petition, inter alia, the United States Department of Justice to

voice their complaints, and meet with representatives who are investigating the inmates' conditions of confinement. See Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995) (inmates' right to petition government includes right to petition its administrative arms and units); Franco v. Kelly, 854 F.2d 584, 589 (2d Cir. 1988) (inmates' right to petition government includes right to communicate with state administrative agency); Robbins v. Budke, 739 F. Supp. 1479, 1485 (D.N.M. 1990) (institutionalized persons have constitutional right to speak with advocates); Faulkner v. McLocklin, 727 F. Supp. 486, 490 (N.D. Ind. 1989) (pretrial and convicted inmates have right to communicate confidentially with legal organizations). Cf. Sturm v. Clark, 835 F.2d 1009 (3d Cir. 1987) (attorney has First and Fourteenth Amendment right to meet with inmates).

On February 20, 1997, we informed the County that we wished to visit MCDC to speak with sixty-four named inmates. On March 13, 1997, counsel for the County responded to our request and denied us any access to the inmates. Letter from A. Vuocolo, Acting County Counsel. The County has cited no legitimate penological interest to justify the County's blanket refusal to allow inmates to meet with representatives of the United States about the conditions of their confinement.

In addition, we have received information that inmates are subject to retaliation or threats of retaliation if they complain or attempt to complain to authorities or to public organizations about the conditions of their confinement. Inmates report that incoming and outgoing mail is monitored by MCDC for complaints about conditions, and that the mail is inappropriately tampered with by corrections officers. These actions by the County violate the inmates' First Amendment rights. See Muhammad v. Pitcher, 35 F.3d 1081, 1083 (6th Cir. 1994) (holding that inmates have a fundamental interest in maintaining confidentiality of correspondence from "prosecuting officials"); Bradley v. Hall 64 F.3d at 1279 (inmates' right to petition government for redress of grievances precludes prison authorities from punishing them for exercising this right).

II. Minimum Remedial Measures

- A. MCDC should ensure that inmates are permitted to meet with governmental and legal organizations in order to present or discuss grievances. MCDC should ensure that such meetings are confidential. MCDC should ensure that inmates are also permitted to communicate via telephone and mail with governmental and legal organizations to communicate grievances, and that such communications are confidential.

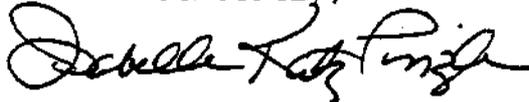
- B. MCDC should ensure that there is no retaliation or threat of retaliation against inmates who communicate grievances (formally or informally) to authorities or public organizations.
- C. MCDC should ensure that the physical plant of the facility (e.g. structure, lighting, heating, cooling, plumbing, ventilation, living space, noise levels, recreation space) is adequate and does not threaten the health or safety of the inmates.
- D. MCDC should ensure that the facility's alarm and smoke detector system is functioning properly, and that sprinkler systems are installed where appropriate. MCDC should use qualified personnel to conduct comprehensive fire safety training, drills, and inspections. The facility should conduct regular testing of the fire evacuation plan.
- E. MCDC should ensure that sanitation in the facility (e.g. medical facilities, toilets and showers, clean places for eating and sleeping) is adequate and does not threaten the health or safety of the inmates.
- F. MCDC should ensure that inmates are not subjected to an unreasonably high risk of violence, abuse, or excessive force from other inmates or staff. Incidents of violence and excessive force should be accurately documented and promptly and thoroughly investigated. Appropriate discipline should be imposed. The facility should provide sufficient staff to implement appropriate policies and procedures to ensure that weapons and contraband that could lead to violence are not present or available in the detention center and that inmates are provided adequate security.
- G. MCDC should provide adequate and timely medical/mental health care to every inmate. MCDC should provide sufficient numbers of appropriately trained staff to provide adequate medical and mental health care to inmates. Facilities used to treat and house inmates with medical and mental health problems should be safe and appropriate for such use. Adequate medical/mental health care includes timely screening of each incoming inmate; complete medical assessment of all inmates who screen positive for medical or mental health problems; and adequate and timely treatment of all medical or mental health problems, including the prompt availability of appropriate medications.
- H. MCDC should ensure that all staff is properly trained and qualified for every function/duty they are expected

to perform. MCDC should ensure that staffing is at all times adequate to provide all appropriate services in a safe and timely manner.

- I. MCDC should provide timely and adequate access to legal materials or legal assistance to ensure that all inmates are provided adequate access to the courts.
- J. MCDC should ensure that policies and procedures necessary to facilitate constitutional conditions of confinement are created, implemented and followed.

We invite the County to discuss the remedial recommendations with us, with the goal of remedying the identified constitutional violations without resort to litigation. Pursuant to CRIPA, however, the Attorney General may institute a lawsuit to correct deficiencies of the sort identified in this letter 49 days after the appropriate officials have been notified of those deficiencies. 42 U.S.C. § 1997b(a)(1). We, therefore, urge County officials promptly to provide us with access to persons, facilities, and information that so far has been withheld, and to discuss with us the issues raised in this letter.

Sincerely,



Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

cc: Mr. Patrick McManimon
Superintendent
Mercer County Detention Center

Sheriff Samuel J. Plumuri
Mercer County Detention Center

Mr. Robert Prunetti
County Executive

Alfred Vuocolo, Esquire
Acting County Counsel

Faith S. Hochberg, Esquire
United States Attorney
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