

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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JOSEPH MARONE, PAUL NANTISTA, and the	:	
NEW YORK CIVIL LIBERTIES UNION,	:	
	:	
Petitioners,	:	Index No. _____
	:	
-against-	:	
	:	
NASSAU COUNTY and EDWARD P. MANGANO,	:	VERIFIED PETITION
in his official capacity as Nassau County Executive,	:	
	:	
Respondents.	:	
	:	
For a Judgment Pursuant to Article 78	:	
of the Civil Practice Law and Rules	:	
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PRELIMINARY STATEMENT

1. This Article 78 petition seeks to compel Nassau County to comply with a twenty year-old unfulfilled mandate of the Nassau County Charter to create an independent Board of Visitors with the power to oversee and reform the Nassau County Correctional Center. The Board has never been fully staffed or functional and, although the Charter requires the County Executive to appoint qualified persons to the Board, the current County Executive has not appointed anyone, preventing the County from complying with this non-discretionary Charter requirement.

2. For the more than 10,000 people per year who spend time there awaiting trial or serving sentences for minor crimes, a stay in the Nassau County Correctional Center risks becoming a death sentence. In a little over one year, seven inmates have died in custody; some of those deaths have been labeled clearly preventable by state authorities. Over the same period, Petitioner New York Civil Liberties Union (NYCLU) has received more than 200 complaints

from inmates about the failure to provide necessary medication, the failure to treat chronic and life-threatening conditions, the mistreatment of persons with disabilities, and the lack of mental health services at the jail. The number of complaints has only escalated since the County shifted responsibility for medical and mental health care to a new private contractor.

3. The Board of Visitors has the authority to investigate these problems, inspect the facility, examine records, create reports, and advise the Sheriff's Department about changes that could remedy these problems and prevent unnecessary deaths at the jail. The Charter provision mandating the creation of the Board is a non-discretionary duty of the County specifically passed in order to address the County's long and ignominious history of neglecting the human rights and dignity of inmates in the jail. Yet, for more than two decades, the County has ignored that duty.

PARTIES

4. Petitioner, the New York Civil Liberties Union (NYCLU), is a not-for-profit corporation with chapter offices and more than 2,400 members in Nassau County. The mission of the NYCLU is to defend and promote human rights and the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including equality, dignity and due process of law. For over fifty years, the NYCLU has been involved in litigation and public policy advocacy for individual rights and government accountability. The Nassau Chapter office of the NYCLU has a dedicated line to NCCC by which inmates can lodge complaints and seek legal advice from the NYCLU. The NYCLU regularly visits inmates who complaint about conditions at the jail to follow up on their complaints and engages in advocacy on those inmates' behalf.

5. Petitioner Joseph Marone is currently incarcerated at NCCC.

6. Petitioner Paul Nantista is currently incarcerated at NCCC.

7. Respondent Nassau County is a political subdivision of the State of New York bound by the terms of the Nassau County Charter. The County maintains a jail administered by the Nassau County Sheriff's Department known as the Nassau County Correctional Center (NCCC). The NCCC is the primary detention facility for Nassau County and the largest county correctional facility in the State of New York. The facility has a maximum capacity of 1,916 beds and operates both a medical clinic within the main facility and a prison ward in a secured wing of the neighboring Nassau University Medical Center (NUMC).

8. Respondent Edward Mangano is the County Executive for Nassau County. He is sued in his official capacity.

FACTS

Recent Deaths at the Nassau County Jail

9. Since January 1, 2010, seven inmates have died while in the custody of the NCCC, five of them as a result of suicide.

10. Darryl Woody, 44 years old, committed suicide on January 3, 2011, while at the NUMC Prison Ward. The New York State Commission of Correction, an independent state entity that investigates deaths in custodial facilities, reported that his death "may have been prevented but for the grossly inadequate psychiatric care provided him in the jail and hospital, and the lack of appropriate supervision by the NUMC." The Commission of Correction further reported that Mr. Woody had a history of mental instability and had previously attempted suicide once before entering jail and once in December 2011 while on suicide watch in the jail. The Commission's report recommended investigations into the jail's booking, supervision and staffing procedures, as well as investigations for "gross negligence and gross incompetence" of the two doctors who treated Mr. Woody.

11. Eamon McGinn, 32 years old, committed suicide on January 3, 2010, while incarcerated in the jail. The New York State Commission of Correction reported that his was “a preventable death with inadequate provision of mental and medical health care.” According to local media, Mr. McGinn’s family is suing the county and the hospital for failing to assess risk factors of suicide properly for Mr. McGinn.

12. Gasparino Godino, 31 years old, hung himself with a bedsheet on Oct. 5, 2010 while incarcerated at NCCC. The New York State Commission of Correction reported that he was a known suicide risk because of his history of drug use and his depression.

13. Herve Jeanot, 29 years old, committed suicide in the NCCC on Oct. 27, 2010 following conviction for first degree murder at his third retrial. In its report on his death, the New York State Commission of Correction noted that the NCCC “does not have any procedure in place for rescreening inmates who have been convicted at trial or have received significant sentences of incarceration” for suicide risk.

14. Most recently, on February 24, 2012, Bartholomew Ryan was found hanging in his cell at NCCC, the victim of an apparent suicide. According to media reports, Mr. Ryan was a 32 year-old veteran of the Iraq war. He had been arrested following a traffic stop for driving under the influence and speeding. He had been in Nassau County’s custody for under twenty-four hours before his apparent suicide. Mr. Ryan’s mother has filed a Notice of Claim informing Nassau County and the jail that she intends to file a lawsuit for the wrongful death of her son. The Notice of Claim alleges, among other things, that the jail failed to monitor, supervise and care for Ryan properly, despite knowing that he suffered from drug addiction and post-traumatic stress disorder.

15. These deaths make Nassau County responsible for one-third of all suicides in county facilities statewide and almost ten percent of suicides in all New York correctional facilities (including the state prison system) in 2010, even though NCCC holds less than two percent of all state and county inmates, according to local media reports.

16. Despite these deaths, media reports indicate that NCCC officials recently eliminated a mandatory class for correction officers on suicide awareness.

17. In addition to this remarkable rate of apparently preventable suicide, two additional people have died at NCCC within the past year due to injuries or medical conditions sustained in the jail.

18. Roy C. Nordstrom died in NCCC on June 11, 2011. According to local news reports, Nordstrom complained of not feeling well. He went to the infirmary and was sent back to his cell. On the morning of June 11th, he was found in his cell in cardiac arrest. He was taken to NUMC and was pronounced dead at 8:59 a.m.

19. Antwan Brown was beaten to death in the NCCC on January 7, 2012. Local media reported that he died from “contusions about his body” following a fight in his cell.

The Lack of Adequate Medical and Mental Health Care at the Jail

20. These deaths are not isolated phenomena. Over the past year and a half, Petitioner NYCLU has received more than 200 complaints from inmates at the NCCC about the conditions of confinement and the failure to provide needed medical and mental health services.

21. These complaints have regularly raised issues regarding NCCC’s failure to provide appropriate medical treatment, including the denial of needed medications; the failure to treat individuals with special needs; the refusal to examine patients who say they are ill or injured; the failure to provide needed surgeries; the failure to provide timely care for urgent

medical conditions; the failure to provide regular mental health visits; and the failure to provide follow-up care after an inmate is on suicide watch.

22. Prior to June 2011, medical and mental health care was provided to inmates at the jail by NUMC. In June of 2011, NCCC awarded an exclusive contract to a private contractor, Armor Correctional Health Services (“Armor”), to provide medical and mental health services.

23. Since the change in healthcare providers at the jail, the volume of complaints received by the Nassau Chapter office of the NYCLU has increased dramatically.

24. Inmates have complained that Armor personnel create insurmountable barriers to inmates’ access to qualified doctors, by denying sick call requests and using non-qualified medical personnel to screen people; that Armor has taken away wheelchairs, canes and crutches from disabled inmates, leaving them to maneuver around the facility without any assistance; that NCCC often does not supply inmates with grievance forms for medical and mental health issues; and that if an inmate writes a grievance on a sheet of paper or manages to get hold of a grievance form, it often goes unanswered.

25. There can be no doubt that these policies affect people’s lives and health directly. For example, while under the care of the NCCC, Plaintiff Joseph Marone has suffered from untreated or poorly treated medical conditions. After his hand and ribs were injured following an accident caused by the mechanical door of his NCCC cell, Mr. Marone was not properly examined by a doctor and was provided only mild, over-the-counter pain medication that does not alleviate his pain. Mr. Marone also contracted an ear infection that has caused him intense pain and possible hearing loss. Although he promptly requested medical attention for this infection by making the required “sick call” request, he was not seen by a medical professional for weeks and, when he finally was seen, the doctor provided him with ineffective medication

without even examining his infected ear. Mr. Marone has also been given the incorrect prescription medication on at least one occasion at NCCC, causing him to lose consciousness and hit his head, requiring hospitalization. When Mr. Marone has filed administrative grievances about his medical care, NCCC has responded that his complaints are “non-grievable” and done nothing about them. As a result, he has been denied an adequate opportunity to grieve his medical care and receive redress for his injuries.

26. Plaintiff Paul Nantista has an untreated broken toe on his right foot, the result of an injury that he suffered in the NCCC. Although he has been seen by nurse practitioners at sick call, no doctor or specialist has looked at his injury and it has not been properly treated. He remains in constant pain. Mr. Nantista also is frequently denied his prescription blood pressure medication because of the failure of NCCC medical providers to renew his prescription.

27. The two named plaintiffs represent only a small part of a larger problem. The NYCLU has received and investigated complaints from inmates with life-threatening conditions that have gone untreated. For example, another inmate reported to the NYCLU that he suffers from a seizure disorder and was shackled, handcuffed and beaten after reporting to corrections officers that he felt as if he were about to have a seizure. The inmate reported that he was hospitalized following the beating and suffered bruises around his legs (where he was shackled) and his arms. He told NYCLU interviewers in June 2011 that he still experienced a significant amount of pain and that he had not received any X-rays or any medical evaluation.

28. That same inmate also reported problems receiving his medications for his seizure disorder, including multiple days when he did not receive any required medications. He stated that staff nurses would write in his medical records that he refused medication, even when he in fact had pleaded for it. He also reported that when he filed administrative grievances about this

denial, as he is required to do by the Inmate Handbook he received on admission to the facility, his complaints were returned “non-grievable.”

29. Yet another inmate reported to the NYCLU that he was in a wheelchair due to a severe automobile accident that resulted in four herniated discs, 3 broken ribs, a concussion and nerve damage in his leg that made him unable to walk. He reported that his room at the jail lacked appropriate accommodations for a person confined to a wheelchair, and as a result he fell and cut his hand open after using the toilet and trying to return to his wheelchair. Despite his incapacity, corrections officers required him to engage in tasks such as scrubbing the bathroom floor, causing him again to injure himself when he attempted to climb from the wet floor back to his wheelchair. According to the inmate, corrections officers threatened him with a "blanket party" (a beating with blankets to avoid leaving the evidence of bruising) when he asked to be excused from this duty and, when he injured himself, initially refused to call an ambulance; he waited for hours in excruciating pain before being transferred to the hospital for treatment. He also reported that NCCC regularly delayed the process of refilling his prescription for pain medication, leaving a gap of some days when he did not have any medication, and never fulfilled his prescription for physical therapy due to his injuries.

30. These are but a small sample of the many complaints the NYCLU has received from inmates in the last two years.

The Jail’s Long History of Neglecting the Medical and Mental Health of its Inmates

31. These recent deaths and complaints about inadequate care are not a sudden development. Nassau County has a long history of mistreatment and neglect of inmates at NCCC.

32. In 1981 the Nassau County Sheriff entered into a consent judgment with inmate plaintiffs who had complained of unconstitutional conditions of confinement at NCCC. This consent judgment ordered that the County increase available cell space and contained provisions relating to medical services, food, recreation, telephones, contact visits, and staffing. *See Badgley v. Varelas*, 729 F.2d 894, 896 (2d Cir. 1984).

33. Throughout the 1980s, NCCC inmates brought and won a series of lawsuits arising out of Nassau County's failure to comply with this consent judgment. *See Badgley v. Varelas*, 729 F.2d 894 (2d Cir. 1984); *Badgley v. Santacroce*, 800 F.2d 33 (2d Cir. 1986), *cert. denied*, 479 U.S. 1067 (1987); *Badgley v. Santacroce*, 815 F.2d 888 (2d Cir. 1987); *Badgley v. Santacroce*, 853 F.2d 50 (2d Cir. 1988).

34. The Second Circuit described these cases as “a Dickensian saga of prison overcrowding and bureaucratic excuse and delay” in the course of finding the County Sheriff in contempt of court. *Badgley v. Santacroce*, 800 F.2d 33, 33 (2d Cir. 1986).

35. This saga continued into the next decade. According to local media, on January 13, 1999, inmate Thomas Pizzuto died in the custody of NCCC, allegedly due to a beating he received at the hands of NCCC corrections officers. As a result of Mr. Pizzuto's case, four correction officers received prison sentences.

36. That same year, the United States Department of Justice (DOJ) opened an investigation into the conditions at NCCC. The Department concluded that the conditions at NCCC rose to the level of constitutional violations because of deliberate indifference to inmates' serious medical needs and excessive use of force against inmates.

37. In 2002, the Attorney General filed a complaint in the U.S. District Court for the Eastern District of New York alleging that the NCCC provided medical care by unlicensed and

untrained staff, failed to ensure that inmates in need of routine or acute medical care were seen by medical staff in a timely manner, failed to ensure that inmates with chronic diseases receive timely and appropriate follow-up treatment or medication, failed to identify, monitor or treat communicable diseases, and failed to adequately manage medication and medical records.

38. Shortly afterward, Nassau County and the Department of Justice entered into a consent decree that directed NCCC to make significant changes to its policies and procedures on use of force and on medical and mental health care, including medical staffing and professional credentials, intake screening, sick call, chronic diseases, medication management, medical records, treatment of female inmates, drug and alcohol treatment, mental health treatment and special needs, mortality reviews, medical safety and sanitation, inmate education, quality assurance and improvement.

39. On February 17, 2009, less than a year after the Department of Justice ended its oversight of the NCCC, the Commission of Correction issued a report indicating that NCCC was substantially out of compliance with minimum standards for correctional facilities promulgated by the Commission. The Commission enumerated twenty-five steps that the NCCC would have to take to comply with minimum standards. These steps included such basic requirements as providing a sanitary shower environment for inmates, providing laundry detergent, and ceasing to ignore inmate grievances.

40. The Commission of Correction also issued specific reports following the deaths of Gasparino Godino, Hearve Jeanot, Eamon McGinn, and Daryl Woody. These reports included recommendations directed at various County officials for ways to prevent such deaths from occurring.

41. According to local media reports, Janine Kava, the spokesperson for the Commission, stated that the Nassau County Sheriff has accepted only some of the recommendations in the Commission's reports of the four inmate suicides. For other recommendations, the Sheriff "has refused to accept findings upon which recommendations are based and has resisted making any changes."

The County Charter's Requirement of Independent Oversight for the Nassau County Jail

42. In August 1990 the Nassau County Board of Supervisors passed legislation to create a Board of Visitors Oversight Committee with authority over NCCC.

43. According to local media in 1990, county officials stated that the Board of Visitors had been recommended by both a consultant's study on the jail and by the state as a remedy to systemic problems in the jail and the Sheriff's failure to adequately handle grievances brought by jail inmates.

44. The provision of the County Charter codifying this legislation reads as follows:

§ 2004. Nassau County Correctional Center Board of Visitors; membership; appointment, compensation and expenses; power and duties.

- A. There shall be within the Division of Corrections a Nassau County Correctional Center Board of Visitors. It shall consist of seven members, including a chairperson, each of whom shall be appointed by the County Executive subject to confirmation by the County Legislature. As far as may be practicable, the members shall possess a working knowledge of the correctional system.
- B. All members of the Board shall be Nassau County residents.
- C. All members of the Board shall be voting members.
- D. The term of office of each member shall be three years, except that members first appointed shall be appointed as follows: four for a term of one year, two for a term of two years, and one for a term of three years. Upon expiration of the term of office of any member, his successor shall be appointed for a term of three years. Any appointed member of the Board may be removed by the County Executive for cause after an opportunity to be heard in his defense. Any member chosen to fill a vacancy created other than by expiration of term shall be appointed for the unexpired term of the member

whom he is to succeed. Vacancies caused by the expiration of term or otherwise shall be filled in the same manner as original appointments.

- E. Members shall serve without compensation. The Board of Supervisors may appropriate sufficient sums to meet the expenses actually and necessarily incurred by members of the Board in the performance of their duties hereunder.
- F. The Board and each member thereof shall have the following powers and duties:
 - 1. To investigate, review or take such other actions as shall be deemed necessary or proper with respect to inmate complaints or grievances regarding the correctional center as shall be called to their attention in writing.
 - 2. To have access to the correctional center and all books, records and data pertaining to the correctional center which are deemed necessary for carrying out the Board's powers and duties.
 - 3. To obtain from correctional center personnel any information deemed necessary to carry out the Board's powers and duties.
 - 4. To request and receive temporary office space in the correctional center for the purpose of carrying out the Board's powers and duties.
 - 5. To report periodically to the Sheriff and, where appropriate, to make such recommendations to the Sheriff as are necessary to fulfill the purposes of this section.
 - 6. To advise the Sheriff in developing programs for improving correctional center services and duties and for coordinating the efforts of correctional center officials in respect to improving conditions of inmate care, treatment, safety, rehabilitation, recreation, training and education.
 - 7. To meet on a regular basis at a time and place designated by the Chairman of the Board.

45. In March 1999, following the death of inmate Thomas Pizzuto, then-County Executive Thomas Gulotta appointed two members to the Board, Brian J. Noone and Manuel A. Mendoza, Jr. These appointments were confirmed by the Nassau County Legislature.

46. In December 2001, Mr. Gulotta appointed another member, Elliot Bloom. Mr. Bloom's appointment was also confirmed by the Nassau County Legislature.

47. According to local media, former Freeport-Roosevelt NAACP President Bob Summerville, John Brickman and others were considered for positions on the Board of Visitors in 2003 by then-County Executive Thomas Suozzi. Mr. Summerville and Mr. Brickman were not appointed to the Board.

48. Beyond these three events in 1999, 2001 and 2003, Petitioners have not been able to uncover, through media reports or Freedom of Information requests to Nassau County, any evidence that the Board ever met or was ever fully appointed.

49. No other independent authority in Nassau County besides the Board of Visitors has the power to oversee the operations of the jail or process inmate grievances.

50. Since the federal government terminated its enforcement of the consent decree in 2008, the NCCC has not been subject to any independent oversight body with the power of enforcement. Although the New York State Commission of Correction promulgates minimum standards for correctional facilities in New York State and conducts mortality investigations, it has no specific oversight authority over the NCCC and no enforcement power.

CAUSE OF ACTION UNDER ARTICLE 78

51. Article 78 is the appropriate vehicle for a mandamus action to enforce a non-discretionary duty of a government body or official.

52. The Nassau County Charter imposes a mandatory, non-discretionary duty upon Respondents to create a Nassau County Board of Visitors with the authority and duties specified in the Charter, and specifically mandates that the County Executive shall appoint certain qualified persons to the Board, subject to confirmation by the County legislature.

REQUESTED RELIEF

WHEREFORE, Petitioners seek judgment:

- (1) Pursuant to CPLR 7806, directing Respondents to comply with their duty under Article XX §2004 of the Nassau County Charter to appoint qualified members to the Nassau County Correctional Center Board of Visitors in a timely manner; and
- (2) Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,



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