

U.S. v. Puerto Rico



Jl-PR-004-005

RECEIVED
U.S. ATTORNEY'S OFFICE
DISTRICT OF PUERTO RICO

OCT 11 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF PUERTO RICO

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE COMMONWEALTH OF PUERTO RICO;

The Honorable PEDRO J. ROSSELLO,
Governor of the Commonwealth of
Puerto Rico, in his official capacity;

THE JUVENILE INSTITUTIONS ADMINISTRATION;

ZORAIDA BUXO, Secretary of the Department
of Corrections and Rehabilitation, in her
official capacity;

MIGUEL RIVERA, Director, Juvenile
Institutions Administration, in his
official capacity;

DR. CARMEN FELICIANO VDA. DE MELECIO,
Secretary of Health, Department of Health,
in her official capacity;

DR. NESTOR GALARZA, Director, Anti-Addiction
Services Department, in his official capacity;

VICTOR FAJARDO, Secretary, Department of
Education, in his official capacity;

PEDRO PIERLUISI, Secretary, Justice Department
of the Commonwealth of Puerto Rico, in his
official capacity;

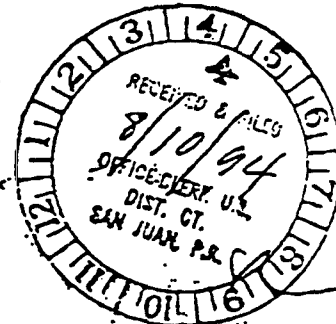
CARMEN RODRIGUEZ, Secretary, Department of
Social Services, in her official capacity;

DANIEL VAZQUEZ TORRES, Director,
Humacao Detention Center, in his official
capacity;

EDGARD ORTIZ ALBINO, Director, Mayaguez
Industrial School, in his official capacity;

U.S. Attorney's Office
District of Puerto Rico

Civil Action
No. 94-2080CC



(Handwritten initials)

(Handwritten initials)

NORMA CRUZ, Director, Ponce Central Training School, in her official capacity;)
 FRANCISCA APONTE, Director, Ponce Victoria Street Training Center, in her official capacity;)
 PAULITO DIAZ DE GARCIA, Director, Ponce Detention Center for Girls and Ponce Industrial School for Girls and Boys, in her official capacity;)
 JULIO CUALIO BONET, Director, Guaynabo Training School, in his official capacity; and)
 LYDIA LASALLE, Acting Director, Central Metropolitan Training School of Bayamon, in her official capacity;)
 Defendants.)

CONSENT ORDER

Introduction

1. This agreement between the Commonwealth of Puerto Rico and the United States, acting pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. §1997 et seq., addresses the failure of the Commonwealth to provide adequate acute psychiatric care to juveniles confined in the Commonwealth juvenile detention and training facilities in this case and the dangerous overcrowding that exists in these facilities. These two conditions are depriving the juveniles confined in these facilities of rights, privileges or immunities secured or protected by the Constitution of the United States and pose the risk of life threatening harm.

[Handwritten initials]
[Handwritten signature]
[Handwritten signature]

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1345.

3. The United States has standing to maintain this action pursuant to 42 U.S.C. §1997a.

4. The United States is authorized to institute this civil action by 42 U.S.C. §1997a and has met all the prerequisites for the institution of this civil action prescribed by the statute.

5. Venue in the United States District Court for the Commonwealth of Puerto Rico is proper pursuant to 28 U.S.C. §1391.

6. Defendant COMMONWEALTH OF PUERTO RICO ("Commonwealth") owns and operates the juvenile detention and training facilities that are at issue in this action.

7. Defendant PEDRO J. ROSSELLO is the Governor of Puerto Rico, and in this capacity heads the executive branch of the Commonwealth's government. The Governor of Puerto Rico, as chief of the executive branch, has the duty to ensure that the departments that compose the Executive Branch of the Commonwealth of Puerto Rico guarantee the constitutional and statutory rights of all of the citizens of Puerto Rico, including the juveniles confined in Commonwealth correctional facilities.

8. Defendant JUVENILE INSTITUTIONS ADMINISTRATION was created by Law 154, dated August 5, 1988 ("Juvenile Institutions Administration Law"), to guarantee, among other things, the administration of juvenile facilities to rehabilitate and resocialize the juveniles confined in them.

9. Defendant ZORAIDA BUXO, Secretary of the Department of Corrections and Rehabilitation, was appointed by the Governor to supervise, among other things, the operations of Defendant JUVENILE INSTITUTIONS ADMINISTRATION.

10. Pursuant to the Juvenile Institutions Administration Law, Co-Defendants MIGUEL RIVERA, Director of the Juvenile Institutions Administration; DR. NESTOR GALARZA, Director of the Anti-Addiction Services Department; VICTOR FAJARDO, Secretary of the Department of Education; CARMEN RODRIGUEZ, Secretary of the Department of Social Services; DR. CARMEN FELICIANO VDA. DE MELECIO, Secretary of the Department of Health; and PEDRO PIERLUISI, Secretary of the Department of Justice for the Commonwealth of Puerto Rico, form the Advisory Board to the Juvenile Institutions Administration and are charged with ensuring that Defendant JUVENILE INSTITUTIONS ADMINISTRATION complies with the objectives of the Juvenile Institutions Administration Act to coordinate the efforts of these agencies to rehabilitate and resocialize the juveniles confined in Commonwealth juvenile correctional facilities.

11. Defendant DANIEL VAZQUEZ TORRES is the Director of the Humacao Detention Center ("Humacao") and is responsible for the day-to-day operation of this facility.

12. Defendant EDGARD ORTIZ ALBINO is the Director of the Mayaguez Industrial School ("Mayaguez"), and is responsible for the day-to-day operation of this facility.

13. Defendant NORMA CRUZ is the Director of the Ponce Central Training School ("Ponce CTS"), and is responsible for the day-to-day operation of this facility.

14. Defendant FRANCISCA APONTE is the Director of the Ponce Victoria Street Training Center ("Victoria"), and is responsible for the day-to-day operation of this facility.

15. Defendant PAULITO DIAZ DE GARCIA is the Director of the Ponce Detention Center for Girls ("Ponce Detention") and the Ponce Industrial School for Girls and Boys ("Ponce Industrial"), and is responsible for the day-to-day operation of these two facilities.

16. Defendant JULIO CUALIO BONET is the Director of the Guaynabo Training School ("Guaynabo"), and is responsible for the day-to-day operation of this facility.

17. Defendant LYDIA LASALLE is the Acting Director of the Central Metropolitan Training School at Bayamon ("Bayamon"), and is responsible for the day-to-day operation of this facility.

18. The individual Defendants named in ¶¶ 7 and 9-17 above are officers of the Executive Branch of the Commonwealth of Puerto Rico and are sued in their official capacities.

19. The detention and training facilities that are at issue in this case are institutions as that term is defined in 42 U.S.C. §1997(1)(A), (1)(B)(i) and (1)(B)(v).

20. Juveniles residing at the Commonwealth juvenile correctional facilities include youths with special needs

including those with mental illness, mental retardation, and other learning disabilities.

21. Defendants are legally responsible, in whole or in part, for the operation of and conditions at the Commonwealth juvenile correctional facilities, as well as for the care and treatment of the juveniles residing at those institutions.

22. At all relevant times, Defendants have acted under color of state law.

23. In February and October 1991, the Attorney General of the United States, through the Assistant Attorney General, Civil Rights Division, notified the Governor of the Commonwealth, the Advisor on Security Affairs, and the Directors of the facilities that are at issue in this case of his intent to investigate allegations of unconstitutional conditions in the facilities pursuant to CRIPA.

24. Following a thorough investigation, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, notified the Governor of the Commonwealth, the Advisor on Security Affairs, and the Directors of the facilities that are at issue in this case that he had determined that juveniles confined in the facilities were being subjected to conditions that deprived them of rights, privileges and immunities secured by the Constitution of the United States.

25. The parties agree that the conditions of confinement of the juveniles in the facilities implicate rights of these

juveniles that are secured or protected by the Constitution of the United States. The parties further agree that the conditions of confinement addressed in this Consent Order are depriving the juveniles confined in facilities at issue in this case of rights that are secured or protected by the Constitution of the United States.

26. The provisions of this Consent Order are a lawful, fair and reasonable resolution of this case.

27. This Consent Order shall be applicable to and binding upon all of the parties, and their officers, agents, employees, assigns and successors.

Remedial Measures

28. Pursuant to an administrative order dated June 29, 1994, from Defendant Feliciano de Melecio, Secretary of Health, to Dr. Manuel Pubillones, Bayamon Psychiatric Unit shall immediately accept for in-patient mental health treatment all juveniles in the facilities in this case in need of such services in the opinion of a qualified psychiatrist. Defendant Department of Health shall also authorize the contracting of three (3) psychiatric hospital beds at a private psychiatric hospital as a backup in the event that the Bayamon Psychiatric Unit is fully occupied.

29. Within ninety (90) days of the filing of this Consent Order, Defendants shall establish at Bayamon an adequate residential mental health treatment program which provides services in accordance with accepted professional standards for

juveniles confined in the facilities in this case who are attempting to commit suicide and/or who are inflicting harm upon themselves and/or any other juvenile in need of such services as determined by a qualified psychiatrist. This residential treatment program will house up to forty-eight (48) juveniles from Commonwealth facilities. The residential treatment program will be established in an area that meets professional standards regarding safe physical areas for suicidal and/or self-mutilating juveniles.

30. Within ninety (90) days of the filing of this Consent Order, Defendants shall provide an adequate number of qualified staff members for the residential treatment program at Bayamon, which will include a child psychiatrist, psychologist, occupational therapist, social workers, and nurses.

31. Within sixty (60) days of the filing of this Consent Order, Defendants shall develop and approve a suicide prevention and intervention program. This program shall be approved by a qualified medical or mental health professional. Training for all staff who supervise juveniles will begin within two (2) weeks of approval of this program.

32. Within thirty (30) days of the filing of this Consent Order, Defendants shall develop and implement appropriate procedures to ensure that juveniles being medicated with behavior-modifying medications are actually ingesting the prescribed medications.

33. Within ten (10) days of the filing of this Consent Order, Defendants shall initiate CPR training for all direct care and security staff at the facilities, including all newly hired staff. Forty (40) staff members will be trained weekly until all staff members are trained.

34. Within 160 days of the filing of this Consent Decree, Defendants shall train all staff whose responsibilities include supervision of the juveniles regarding the effective recognition of suicidal and/or self-mutilating behaviors.

35. Within ninety (90) days of the filing of this Consent Order, Defendants shall provide a psychiatric team, consisting of a child psychiatrist, psychologist, social worker and occupational therapist, to provide emergency services to juveniles in the facilities twenty-four (24) hours a day, seven (7) days per week.

36. Within 120 days of the filing of this Consent Order, Defendant Juvenile Institutions Administration shall provide continuous psychiatric and psychology services to juveniles in need of such services in the facilities in this case, either by employing or contracting with sufficient numbers of adequately trained psychiatrists and psychologists or by contracting with private entities for provision of such services. The continuous psychiatric and psychology services shall include at a minimum, a thorough psychiatric evaluation, necessary diagnostic tests before the prescription of behavior-modifying medications, blood level monitoring if behavior-modifying medications are

prescribed, therapy, counselling, treatment plans, and necessary follow-up care.

37. Within forty-five (45) days of the filing of this Consent Order, Defendants shall reduce by 25% the number of juveniles that exceed the rated capacity at each facility in this case. Every forty-five (45) days thereafter, Defendants shall reduce by 25% the number of juveniles that exceed the rated capacity in this case until, but no later than 180 days from the filing of this Consent Order, the number of juveniles does not exceed the rated capacity of each facility. Defendants shall establish for each facility a rated capacity that considers original design capacity plus or minus capacity changes resulting from building additions, reductions, or revisions as well as, for the Detention Centers only, the peaking rate for each Detention Center. The peaking rate for the detention population is a measure of how much the population can safely exceed the capacity of the facility for no more than 72 consecutive hours each month.

38. Within ten (10) days of the filing of this Consent Order, Defendants shall provide at least one hour of daily outdoor exercise, including weekends and holidays, to juveniles confined in the facilities in this case.

39. Within ten (10) days of the filing of this Consent Order, Defendants shall ensure that juveniles confined in the facilities in this case have access at all times to potable drinking water and water to wash their hands.

40. Defendants shall immediately institute rat, rodent, and insect extermination procedures for the facilities in this case. Defendant Department of Health shall conduct inspections of each facility every four (4) months in order to review compliance.

41. Within ninety (90) days of the filing of this Consent Order, Defendants shall repair all defective plumbing in the facilities in this case. The defective plumbing will be repaired first at Mayaguez, Ponce Industrial, Ponce Detention, and Humacao.

42. Orlando Martinez will act as the Monitor to oversee Defendants' compliance with this Consent Order. The Monitor shall be compensated by the Defendants. The Monitor shall provide a written report to the Court and the parties within fifteen (15) days of the filing of the Consent Order.

(Handwritten initials)
Thereafter, the Monitor shall report to the Court and to the parties every thirty (30) days, until directed otherwise by the Court, describing the precise steps Defendants have taken to implement this Consent Order and evaluating the extent to which Defendants have, in fact, complied with the requirements of this Consent Order.

(Handwritten initials)
43. Until this Order is fully implemented, Defendants shall submit to the Legislature of the Commonwealth each fiscal year a report wherein the required sums of money will be established so as to implement this Consent Order.

44. Defendants remain fully responsible for the timely and complete implementation of this Order.


45. This Consent Order shall remain in full force and effect until a comprehensive Consent Order, addressing all of the unconstitutional conditions in these facilities, is filed with the Court.


46. The United States acknowledges the good faith of the Commonwealth of Puerto Rico in trying to address the remedial measures necessary to correct the conditions under which the juveniles live. The United States may seek enforcement of this Consent Order or any other appropriate remedy from the Court in the event that it determines that Defendants have failed to comply with any provision of this Consent Order. The United States agrees to consult with officials from the Commonwealth before instituting enforcement proceedings.

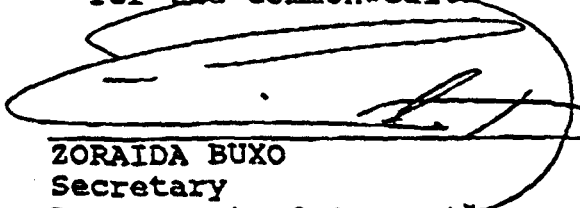
CONSENTED TO BY THE UNDERSIGNED:


FOR THE DEFENDANTS


FOR THE PLAINTIFF

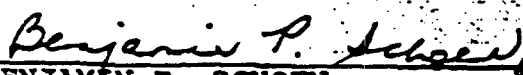

PEDRO PIERLUISI
Secretary
Department of Justice
for the Commonwealth

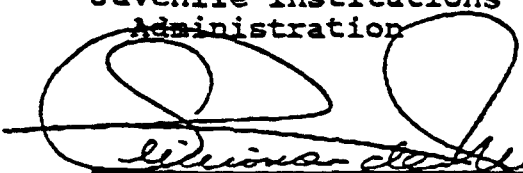

DEVAL L. PATRICK
Assistant Attorney General
Civil Rights Division

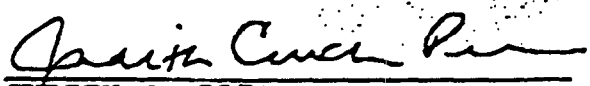

ZORAIDA BUXO
Secretary
Department of Corrections and
Rehabilitation


ARTHUR E. PEABODY, JR.
Chief
Special Litigation Section
Civil Rights Division


MIGUEL RIVERA
Director
Juvenile Institutions
Administration


BENJAMIN P. SCHOEN
Deputy Chief
Special Litigation Section
Civil Rights Division


CARMEN FELICIANO VDA. DE MELECIO
Secretary
Department of Health


JUDITH C. PRESTON
Senior Trial Attorney
Civil Rights Division
U.S. Department of Justice
Washington, D.C.

WHEREFORE, the parties to this action having agreed to the above provisions, and the Court being advised in the premises, ^{Partial} the Consent Decree is hereby entered as the ORDER and JUDGMENT of this Court. IT IS SO ORDERED, this the 6th day of October, 1994, at San Juan, Puerto Rico.


UNITED STATES DISTRICT JUDGE

RECEIVED & FILED
1994 OCT -7 PM 15:00
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

dat
as
Acuna
for file
10/11/94