



Jl-PR-004-006

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;

NYDIA COTTO VIVES, 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. JOSE ACEVEDO MARTINEZ, Administrator, Mental
Health and Anti-Addiction Services Administration
(formerly Anti-Addiction Services Department),
in his official capacity;

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

JOSE A. FUENTES AGOSTINI, Secretary, Department
of Justice for the Commonwealth of Puerto Rico,
in his official capacity;

CARMEN L. RODRIGUEZ, Secretary, Department of
Services to the Family (formerly Social Services
Department), in her official capacity;

ANGEL VICTOR MARTINEZ, Director, Cabo Rojo
Industrial School (also known as Mayaguez) and
Detention Center, in his official capacity;

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FRANCISCA APONTE, Director, Ponce Central Training School, in her official capacity;

ANGEL VAZQUEZ, Director, Ponce Detention Center for Girls and Ponce Industrial School for Girls and Boys, in his official capacity;

DANIEL VAZQUEZ TORRES, Director, Guaynabo Training School, in his official capacity; and

JOSE SANTOS, Acting Director, Central Metropolitan Training School of Bayamon, in his official capacity;

Defendants.

**UNITED STATES' MOTION FOR LEAVE
TO AMEND COMPLAINT**

Plaintiff, the United States of America, moves for leave to file a second amended complaint, attached as Exhibit 1 to this motion, pursuant to Federal Rule of Civil Procedure 15(a). Defendants' counsel was asked to consent to the filing of a second amended complaint, but did not agree to consent. As grounds for this motion, the United States states:

1. The complaint in this matter was filed on August 10, 1994.

2. The complaint, filed pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 et seq., alleged constitutional violations of the rights of juveniles confined in detention and training facilities operated by the Commonwealth. The complaint alleged that the facilities were

dangerously overcrowded and that the Commonwealth was failing to protect juveniles confined in the facilities from harm; was failing to provide adequate mental health care services; was failing to provide adequate medical care; was failing to provide adequate treatment for alcohol and drug abuse; was failing to meet the juveniles' basic care needs; was failing to protect the juveniles from fire safety hazards; was failing to provide juveniles with adequate access to outdoor exercise; was failing to protect juveniles from staff abuse; was failing to adequately classify juveniles; was failing to provide adequate safeguards for the use of isolation; was failing to provide an adequate number of trained staff; and, was failing to provide adequate access to telephone and mail.

3. Along with the complaint, the parties filed an interim consent decree addressing the dangerous overcrowding in the facilities and the Commonwealth's failure to provide adequate acute mental health services. The parties asked that the consent decree be entered as a court order. The partial decree was entered as a court order in October 1994.

4. The complaint contained no allegations regarding inadequate educational services and contained no claims of deprivations of rights under federal statutes. Under CRIPA, before the United States can file a complaint, certain pre-filing requirements, including notice of deficiencies to appropriate state government officials, must be met. CRIPA, § 1997(a). At the time that the complaint was filed in this action, the United

States had not yet notified Commonwealth officials concerning its findings, made in May and June 1994, that educational services throughout the system were violating the constitutional and federal statutory rights of juveniles confined in the facilities.

5. In September 1994, the United States notified Commonwealth officials that educational services in the facilities were deficient.

6. After filing the complaint, the United States learned that two of the officials sued in their official capacities had been incorrectly named. On August 22, 1994, the United States filed an amended complaint correcting the two names.

7. The settlement agreement filed herewith contains a number of provisions addressing the deficient educational services throughout the system. The second amended complaint, in ¶¶ 32-34, alleges that the Commonwealth has failed to provide adequate educational services and states claim under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, et seq., and the Individuals with Disabilities Education Act, 20 U.S.C. §1400, et seq.


8. Since filing the complaint, the Commonwealth has addressed the dangerous overcrowding in the facilities and has remedied deficiencies with respect to medical care and access to telephones and mail. As such, allegations concerning these areas have been deleted from the second amended complaint.

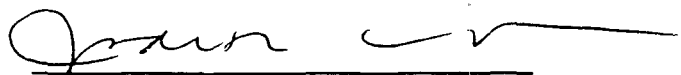
9. Rule 15(a) of the Federal Rules of Civil Procedure states that leave to amend a complaint "shall be freely given

when justice so requires," and the Supreme Court has noted explicitly that "this mandate is to be heeded." Foman v. Davis, 371 U.S. 178, 182 (1962). The Court elaborated on the liberal standard for amendment, stating that amendment should be freely given "[i]n the absence of any apparent or declared reason — such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." Here, where the parties have agreed to remedies to address the deficient educational services throughout the system, and where Defendants have not proffered a justifying reason for denial of leave to amend, this Court should grant the United States' motion.

For these reasons, the United States respectfully requests leave to file a second amended complaint in this action.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the United States' Motion for Leave to Amend Complaint and a proposed order was sent by first class mail, postage prepaid, this 7 day of October, 1997 to counsel of record in this case:

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Isabelle Munoz-Acosta