

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

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

COMMONWEALTH OF PUERTO RICO;

The Honorable PEDRO ROSSELLO,
Governor of Puerto Rico in his
official capacity;

THE JUVENILE INSTITUTIONS
ADMINISTRATION;

NYDIA COTTO VIVES, Secretary,
Department of Corrections and
Rehabilitation,
in her official capacity;

MIGUEL RIVERA, Administrator,
Juvenile Institutions
Administration;
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
Dept.), in her official
capacity;

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U.S. DISTRICT COURT
SAN JUAN, P.R.
Frank

CIVIL ACTION NO. 94-2080 (CC)

(TENDERED)

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 Dept.), in his official capacity;

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

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 Bayamón, in his official capacity;

Defendants.

SECOND AMENDED COMPLAINT¹

1. This civil rights action is brought by the Attorney General, on behalf of the United States, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §1997 et seq., to enjoin the Commonwealth of Puerto Rico from depriving juveniles confined in its residential detention and training facilities of rights, privileges or immunities secured or protected by the Constitution of the United States and by federal law.

JURISDICTION, STANDING AND VENUE

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. With the filing of the Complaint, the Attorney General certified that all pre-filing requirements specified in 42 U.S.C. §1997b had been met. The Certificate of the Attorney General was attached to the Complaint and the Amended Complaint and incorporated therein. The United States incorporates by reference the Certificate of the Attorney General attached to the Complaint and the Amended Complaint.

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

¹ On August 10, 1994, plaintiff filed the complaint. After filing the complaint, plaintiff learned that two of the defendants sued in their official capacities had been incorrectly named. On August 22, 1994, plaintiff filed an amended complaint correcting the two names.

§1391. All claims set forth in the Complaint arose in this District.

DEFENDANTS

6. Defendant COMMONWEALTH OF PUERTO RICO ("Commonwealth") owns and operates the juvenile detention and training facilities that are at issue in this action. The detention facilities house two classes of juveniles. About half of the juveniles in the detention centers have been ordered detained by the Commonwealth's juvenile court pending disposition of their cases ("pre-trial detainees"). The other half of the juveniles in detention facilities have had their cases heard by the juvenile court and have been ordered into the Commonwealth's custody. These juveniles are awaiting placement at one of the Commonwealth's training facilities. The training facilities house juveniles in the Commonwealth's custody who have been transferred from a detention center and who are confined in the training facilities for periods of time established by the juvenile courts.

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 NYDIA COTTO VIVES, 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. JOSE ACEVEDO MARTINEZ, Administrator of the Mental Health and Anti-Addiction Services Administration (formerly the Anti-Addiction Services Department); VICTOR FAJARDO, Secretary of the Department of Education; CARMEN L. RODRIGUEZ, Secretary of the Department of Services to the Family (formerly the Social Services Department); DR. CARMEN FELICIANO VDA. DE MELECIO, Secretary of the Department of Health; and JOSE A. FUENTES-AGOSTINI, 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. The Humacao Detention Center ("Humacao"), which was open and operating at the time that the Complaint was filed, is now closed.

12. Defendant ANGEL VICTOR MARTINEZ is the Director of the Cabo Rojo Industrial School (also known as Mayaguez) and the Cabo Rojo Detention Center, and is responsible for the day-to-day operation of these facilities.

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

14. The Ponce Victoria Street Training Center ("Victoria"), which was open and operating at the time that the Complaint was filed, is now closed.

15. Defendant ANGEL VAZQUEZ 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 DANIEL VAZQUEZ TORRES is the Director of the Guaynabo Training School ("Guaynabo"), and is responsible for the day-to-day operation of this facility.

17. Defendant JOSE SANTOS 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, 9-10, 12-13, and 15-17 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. 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.

21. At all relevant times, Defendants have acted or failed to act, as alleged herein, under color of state law.

22. Juveniles residing at the Commonwealth juvenile correctional facilities include youths with special needs including those with mental illness, mental retardation, and other learning disabilities.

FACTUAL ALLEGATIONS

23. Defendants have failed and are continuing to fail to protect juveniles confined in Commonwealth detention and training facilities from harm.

24. Defendants have failed and are continuing to fail to provide juveniles confined in Commonwealth detention and training facilities with adequate mental health care by failing to provide, among other things: a) continuous psychiatric and/or psychological care; b) any in-patient care and adequate out-patient psychiatric care; c) juveniles with known suicidal and self-mutilating behaviors with adequate treatment;

d) supervision sufficient to prevent juveniles with known suicidal and self-mutilating behaviors from inflicting harm upon themselves, including allowing youths to repeatedly lacerate their bodies, attempt suicide by hanging, and ingest broken shards of glass or toxic chemicals; e) adequate suicide resistant cells with adequate suicide watches for youths known to be suicidal; f) adequate screening of juveniles for psychiatric and psychological problems; and g) administration of psychotropic drugs at Commonwealth juvenile facilities in conformance with generally accepted medical standards.

25. Defendants have failed and are continuing to fail to provide treatment and rehabilitation for alcohol and drug abuse to the juveniles confined in Commonwealth juvenile correctional facilities.

26. Defendants have failed and are continuing to fail to meet the juveniles' basic care needs by, among other things: a) subjecting the juveniles to unsanitary, unsafe, and vermin infested physical conditions that pose serious health and safety risks; b) failing to exterminate insects and vermin that crawl on the youths in the night; and c) failing to maintain facilities, some of which have broken light fixtures, broken smoke detectors, and broken plumbing.

27. Defendants have failed and are continuing to fail to protect juveniles confined in Commonwealth detention and training facilities from fire safety hazards by, among other things:

a) utilizing antiquated unsafe structures; b) failing to repair broken electrical sockets and fire-damaged areas; c) failing to develop or implement proper evacuation procedures or to be otherwise prepared to address emergencies; and d) failing to provide housing that could be evacuated quickly in the event of a fire.

28. Defendants have failed and are continuing to fail to provide juveniles confined in Commonwealth juvenile correctional facilities with adequate access to outdoor exercise.

29. Defendants have failed and are continuing to fail to protect the juveniles confined in Commonwealth juvenile correctional facilities against incidents of staff abuse by failing, among other things: a) to provide proper mechanisms and procedures to identify possible abuse of juveniles; b) to fully investigate allegations of staff abuse; c) to make proper findings regarding allegations of staff abuse; and d) to take appropriate action when abuse is substantiated.

30. Defendants have failed and are continuing to fail to adequately classify juveniles confined in Commonwealth juvenile correctional facilities by, among other things: a) in detention facilities, housing juveniles accused of committing serious criminal violations such as murder or rape with juveniles who have been accused of acts that are not criminal, such as truancy from school or incorrigibility; b) in detention facilities, housing young juveniles, some as young as 10, with much older juveniles; and c) in training facilities, except for the

juveniles at Bayamon, failing to house juveniles by any classification method.

31. Defendants have failed and are continuing to fail to provide adequate institutional safeguards for the use of isolation by, among other things: a) placing juveniles in isolation without a hearing; b) failing to apprise juveniles in isolation concerning the length of time the juveniles will remain in isolation; and c) confining juveniles in isolation for days or even weeks after the juvenile is no longer a threat to himself or herself or others.

32. Defendants have failed and are continuing to fail to provide adequate primary and secondary education to the juveniles confined in Commonwealth juvenile correctional facilities. Defendants have also failed and are continuing to fail to adequately identify and provide educational and related services to juveniles with special needs.

33. Defendants have failed and are continuing to fail to meet the requirements of §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 et seq., and the regulations promulgated pursuant thereto.

34. Defendants have failed and are continuing to fail to meet the requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq., and the regulations promulgated pursuant thereto.

35. Defendants have failed and are continuing to fail to provide a sufficient number of adequately trained staff to render essential care and treatment in the areas outlined above in ¶¶ 23 - 34.

VIOLATIONS ALLEGED

36. The acts and omissions alleged in ¶¶ 23 - 35 infringe upon the legal rights and substantive liberty interests of the juveniles confined in Commonwealth juvenile correctional facilities and deprive these juveniles of rights, privileges or immunities secured or protected by the Fourteenth Amendment to the Constitution of the United States and by federal law.

37. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in ¶¶ 23 - 36 that deprive juveniles confined in Commonwealth juvenile correctional facilities of their legal rights and the rights, privileges, or immunities secured or protected by the Constitution of the United States, and cause irreparable harm to these juveniles.

PRAYER FOR RELIEF

38. The Attorney General is authorized under 42 U.S.C. §1997a to seek only equitable relief.

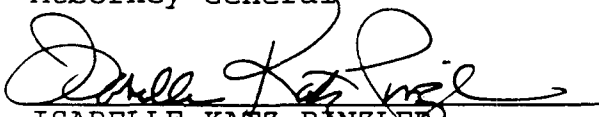
WHEREFORE, the United States prays that this Court enter an order permanently enjoining Defendants, their agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, practices and omissions set forth in ¶¶ 23 - 35 above, and to

require Defendants to take such action as will provide legal and constitutional conditions of care to juveniles confined in Commonwealth juvenile correctional facilities. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

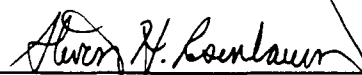
Respectfully submitted,



JANET RENO
Attorney General

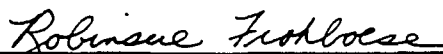


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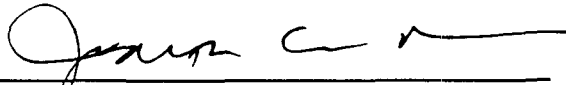
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