



Jl-PR-004-009

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE COMMONWEALTH OF PUERTO RICO, )  
 et al., )  
 Defendants. )

---

Civil Action No. 94-2080 (CCC)

97 OCT -7 PM 1:31

RECEIVED

**UNITED STATES' MOTION TO ENTER SETTLEMENT AGREEMENT  
AS AN ORDER OF THE COURT  
AND FOR A FINDING OF COMPLIANCE WITH THE  
PRISON LITIGATION REFORM ACT**

Plaintiff, the United States of America, respectfully moves this Court for entry of the accompanying settlement agreement (attached as Exhibit 1), which has been signed and agreed upon by both parties, as the Order and fully enforceable Judgment of the Court to address all claims raised in the proposed Second Amended Complaint in the above-captioned matter. In addition, plaintiff moves this Court for a finding that the settlement agreement complies with the Prison Litigation Reform Act, Pub. L. No. 104-134, §§ 801-810 (April 26, 1996), 18 U.S.C. § 3626 ("PLRA").

On August 10, 1994, the United States filed a Complaint for Preliminary and Permanent Injunctive Relief 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. Together with the Complaint, the parties

filed a partial stipulation addressing only the conditions in Commonwealth juvenile facilities that posed the risk of life-threatening harm. The partial stipulation was entered as an Order and Partial Judgment of this Court on October 6, 1994.<sup>1</sup>

The United States has separately moved for leave to file its Second Amended Complaint. The Second Amended Complaint, like the two previously-filed Complaints, raises claims that were not addressed in the partial stipulation. The parties have negotiated the accompanying comprehensive stipulation that includes appropriate remedial measures for all of the claims raised in the Second Amended Complaint.

The PLRA requires this Court to make certain findings before it can enter the settlement agreement as an order of this Court. 18 U.S.C. § 3626(c)(1). Specifically, the Court must find that the prospective relief "is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The Court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." 18 U.S.C. § 3626(a)(1)(A).

---

<sup>1</sup> Under the terms of the partial stipulation, the Consent Order remained in full force and effect until the parties filed the settlement agreement with the Court. October 6, 1994 Consent Order at ¶ 45. The parties have incorporated by reference those remedial provisions of the Court's previous order that are as yet unmet in the proposed settlement agreement. Settlement Agreement at ¶ 104.

For purposes of this lawsuit only and in order to settle this matter, Defendants have stipulated that the prospective relief set forth in this agreement complies in all respects with the provisions of 18 U.S.C. § 3626(a)(1) and (c)(1). See Settlement Agreement ¶ 22. The United States also avers that the settlement agreement complies in all respects with the requirements of the PLRA.

Conditions in the facilities operated by the Commonwealth violate the constitutional and statutory rights of the juveniles confined therein. See, e.g., Youngberg v. Romeo, 457 U.S. 307 (1982) (institutionalized persons have 14<sup>th</sup> Amendment rights to adequate basic care, adequate medical care, and reasonable safety); Alexander S. v. Boyd, 876 F. Supp. 773 (D.S.C. 1995) (juveniles in custody have right to adequate mental health and substance abuse care); Donnell C. v. Illinois State Board of Education, 829 F. Supp. 1016 (N.D. Ill. 1993) (disparity between educational services provided to juveniles in custody and services provided to non-incarcerated juveniles must be rationally related to a legitimate penological interest); the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. As the affidavit of the Monitor, attached as Exhibit 2, clearly shows, juveniles in the facilities are not provided adequate basic care; are provided inadequate mental health and substance abuse care; and are subjected to dangerous, indeed, life-threatening conditions. Affidavit at ¶¶ 6-7, 9-10,

14, 20, 31-34, 36-39, 41-42, 61. The affidavit also establishes that juveniles are not receiving educational services to which they are entitled under federal law. Affidavit at ¶¶ 53-56 (general population) and 58 (juveniles with disabilities).

In particular, juveniles are subjected to stabbings, beatings by guards and by peers, and sodomy and sexual assaults. Affidavit at ¶¶ 6-7. Since 1993, two juveniles have committed suicide and two juveniles have been killed by other juveniles. Affidavit at ¶ 6. A staff person recently fractured a juvenile's elbow with a broom handle for cursing. Affidavit at ¶ 45. Throughout the system, vermin such as cockroaches, mosquitos, and rats are found in the juveniles' rooms. Affidavit at ¶ 10. Rooms cannot be occupied because there is standing water on the floor due to plumbing destroyed by the juveniles, *ibid.*, and because they have been demolished by fires. Affidavit at ¶ 14. Large groups of juveniles are padlocked into rooms with no staff present. Affidavit at ¶ 11. Contraband such as knives, shanks, lethal weapons such as hedge clippers, and illegal drugs come into the facilities undetected. Affidavit at ¶ 20. At Bayamon, where as many as 20% of the population have tested positive for drugs, life-threatening violence has occurred when juveniles were under the influence of drugs. Affidavit at ¶ 20. Vulnerable juveniles are housed with older, more predatory juveniles. Affidavit at ¶ 29. Juveniles with mental illness are left to mutilate themselves without staff intervention or appropriate treatment. Affidavit at ¶ 37. Most juveniles with substance

abuse problems do not receive any treatment for these problems while confined in the facilities. Affidavit at ¶ 39. Juveniles throughout the system continue to receive insufficient opportunities for exercise. Affidavit at ¶ 61.

In addition, juveniles do not receive adequate educational services. For example, only five of 190 juveniles at Bayamon attended school during the monitor's tour in January 1997. Affidavit at ¶ 53. In June 1997, the Director of Mayaguez reported that only 40% of the juveniles at that facility receive educational services. Id. None of the juvenile facilities assess, detect, and provide appropriate services for juveniles with disabilities who have special educational needs. Affidavit at ¶ 58.

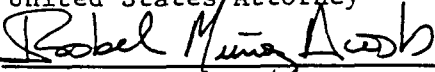
The Monitor has reviewed the proposed settlement agreement and concludes that its remedial measures are narrowly tailored and are the necessary and least intrusive remedial measures to correct the deficiencies in the system. Affidavit at ¶¶ 5, 8, 13, 19, 22, 27, 30, 35, 40, 50, 52, 57, and 60.

For the above reasons, the United States respectfully requests that the Court enter the settlement agreement as an

order of the Court and find it in compliance with the requirements of the PLRA.

Respectfully submitted,

GUILLERMO GIL  
United States Attorney



ISABELLE MUNOZ-ACOSTA  
Assistant U.S. Attorney  
U.S. Attorney's Office  
Federal Office Building  
Room 452  
150 Carlos E. Chardon Ave.  
Hato Rey, Puerto Rico 00918  
(809) 766-5656



JUDITH C. PRESTON  
Senior Trial Attorney  
U.S. Department of Justice  
Civil Rights Division  
Special Litigation Section  
10th & Pennsylvania Ave., N.W.  
Washington, D.C. 20530  
(202) 514-6258

CERTIFICATE OF SERVICE

I hereby certify that a copy of the United States' Motion to Enter Settlement Agreement as an Order of the Court and for a Finding of Compliance with the Prison Litigation Reform Act and a proposed order was sent by first class mail, postage prepaid, this 6 day of October, 1997 to counsel of record in this case:

Luis F. del Valle-Emmanuelli  
Department of Justice of Puerto Rico  
Federal Litigation Division  
Olimpo Street 1st Floor  
Miramar  
San Juan, Puerto Rico 00907

  
Isabelle Muñoz-Acosta