UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WOMEN PRISONERS OF THE DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS, et al.,	)	
Plaintiffs,	)	Civil Action No. 93-2052 JLG
v.	)	
DISTRICT OF COLUMBIA, et al.,	)	
Defendants.	)	

PLAINTIFFS' REVISED PROPOSED CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court hereby makes its conclusions of law:

GENERAL

1. The Court has subject matter jurisdiction over this action. 28 U.S.C. §§ 1331, 1343(3).

2. The Court has pendent jurisdiction to consider the state law claims. John Doe v. District of Columbia, 697 F.2d 1115 (D.C. Cir. 1983).

3. This case was properly certified as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(1), and 23(b)(2). The class is defined as all women prisoners who are incarcerated in the District of Columbia correctional system as of October 1, 1993, and all women prisoners who will hereafter be incarcerated in the D.C. correctional system.

SEXUAL MISCONDUCT

Equal Protection

4. Sexual harassment by a person acting under color of state law is a violation of the Equal Protection Clause of the Fourteenth Amendment that is actionable under 42 U.S.C. § 1983. Pontarelli v. Stone, 930 F.2d 104, 113-114 (1st Cir. 1991); Starrett v. Wadley, 876 F.2d 808, 814 (10th Cir. 1989); Bohen v. City of East Chicago, Ind., 799 F.2d 1180, 1185 (7th Cir. 1986); Poulsen v. City of North Tonawanda, N.Y., 811 F. Supp. 884, 894 (W.D.N.Y. 1993). The equal protection component of the Fifth Amendment provides the same guarantee of protection to the residents of the District of Columbia as the Equal Protection Clause of the Fourteenth Amendment does to residents of the fifty states. Bolling v. Sharpe, 347 U.S. 497 (1954).

5. Defendants, as supervisors, exhibit reckless indifference to their employees' violations of women prisoners' constitutional rights and therefore are liable for the sexual harassment perpetrated by their employees, who are acting under color of state law. Murphy v. Chicago Transit Auth., 638 F. Supp. 464, 470 (N.D. Ill. 1986).

6. Defendants, as supervisors, are liable under 42 U.S.C. § 1983 because of their failure to take corrective action after being put on notice that their employees were harassing women prisoners on the basis of gender. Murphy v. Chicago Transit Auth., 638 F. Supp. 464, 470 (N.D. Ill. 1986).

7. Defendant District of Columbia and its agencies are liable to the class of women prisoners under 42 U.S.C. § 1983 because its policies or customs have deprived the women of rights secured by the U.S. Constitution and federal laws. Monell v. Department of Soc. Servs., 436 U.S. 658 (1978); Starrett v. Wadley, 876 F.2d 808, 818 (10th Cir. 1989); Morgan v. District of Columbia, 824 F.2d 1049, 1058 (D.C. Cir. 1987); Poulsen v. City of North Tonawanda, N.Y., 811 F. Supp. 884, 896 (W.D.N.Y. 1993).

8. The policies or customs that have led to the constitutional harm include the Defendants' "actual practice" and not necessarily what is found in the District's laws and regulations. LaShawn A. v. Dixon, 762 F. Supp. 959, 990 (D.D.C. 1991), aff'd in part, rev'd in part, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, 114 S. Ct. 691 (1994); Parker v. District of Columbia, 850 F.2d 708, 714 (D.C. Cir. 1988), cert. denied, 489 U.S. 1065 (1989); Haynesworth v. Miller, 820 F.2d 1245, 1248 & n.1 (D.C. Cir. 1987); Poulsen v. City of North Tonawanda, N.Y., 811 F. Supp. 884, 896 (W.D.N.Y. 1993).

9. Defendants' deliberate indifference towards women prisoners, including the failure to train its employees on proper treatment of women prisoners, constitutes a policy or custom that is actionable under 42 U.S.C. § 1983. Canton v. Harris, 489 U.S. 378, 389 (1989); Parker v. District of Columbia, 850 F.2d 708, 714 (D.C. Cir. 1988), cert. denied,

489 U.S. 1065 (1989); Morgan v. District of Columbia, 824 F.2d 1049, 1058 (D.C. Cir. 1987).

Constitutional Right to Bodily Privacy

10. Women prisoners have a constitutional right to bodily privacy. Fortner v. Thomas, 983 F.2d 1024, 1030 (11th Cir. 1993); Bowling v. Enomoto, 415 F. Supp. 210, 203 (N.D. Cal. 1981)("Inmates retain [a] constitutional right to privacy in [her] own person."); Forts v. Ward, 621 F.2d 1210, 1213 (2d Cir. 1980)("Inmates retain some residual privacy rights.").

11. Defendants have violated women prisoners' constitutional right to privacy by failing to prevent and remedy "the unrestricted observation of their genitals and bodily functions by prison officials of the opposite sex under normal prison conditions." Bowling v. Enomoto, 415 F. Supp. 210, 204 (N.D. Cal. 1981).

12. Defendants have violated women prisoners' constitutional right to privacy by failing to prevent and remedy the involuntary exposure of women prisoners' genitals to persons of the opposite sex. Lee v. Downs, 641 F.2d 1117, 1119 (4th Cir. 1981).

13. Defendants have violated women prisoners' constitutional right to privacy by failing to remedy and prevent women prisoners from being viewed completely or partially unclothed by men. Forts v. Ward, 621 F.2d 1210, 1214 (2d Cir. 1980).

Eighth Amendment

14. Defendants' failure to prevent and remedy the sexual assault of women prisoners constitutes unnecessary and wanton infliction of pain that is inflicted "maliciously and sadistically for the very purpose of causing harm." Hudson v. McMillian, 112 S. Ct. 995, 998 (1992).

15. Plaintiffs have suffered significant injury from sexual harassment and sexual misconduct by DCDC employees. Jordan v. Gardner, 986 F.2d 1521, 1526 (9th Cir. 1993) (en banc); United States v. Clark, No. 91-2059, 1992 U.S. App. LEXIS 2815, *2-3 (10th Cir. 1992).

16. Sexual harassment and sexual misconduct suffered by women prisoners constitutes an unconstitutional condition of confinement to which Defendants have been deliberately indifferent. Hovater v. Robinson, 1 F.3d 1063, 1066 (10th Cir. 1993); McKenzie v. Wisconsin Dep't of Corrections, 138 F.R.D. 554, 555 (E.D. Wis. 1991); Fair v. Brown, No. K85-535, 1990 U.S. Dist. LEXIS 13428, *40 (W.D. Mich. 1990); Garnett v. Kepner, 541 F. Supp. 241 (M.D. Pa. 1982); Battle v. Seago, 431 S.E.2d 148, 149 (Ga. Ct. App. 1993).

17. Defendants' deliberate indifference to the sexual harassment and sexual misconduct suffered by women prisoners is established by their knowledge of this conduct and their failure to remedy the abuse. Farmer v. Brennan, No.

92-345, slip op. at 10-11 (U.S. June 6, 1994); Wilson v. Seiter, 501 U.S. 294, 300-02 (1991).

18. Knowledge of a significant risk of serious injury can be inferred from "the very fact that the risk was obvious." Farmer v. Brennan, No. 92-345, slip op. at 16 (U.S. June 6, 1994).

Due Process

19. Defendants have violated the Due Process Clause of the Fifth Amendment by punishing pretrial detainees without due process of law. Bell v. Wolfish, 441 U.S. 520, 535 (1979). See Campbell v. McGruder, 580 F.2d 521, 531 (D.C. Cir. 1978).

D.C. Code

20. The sexual harassment and sexual misconduct to which women prisoners are subjected is a violation of D.C. Code § 24-442 which requires Defendants to be responsible for the safekeeping, care, protection, instruction, and discipline of all persons committed to its correctional institutions. John Doe v. District of Columbia, 697 F.2d 1115 (D.C. Cir. 1983); District of Columbia v. Mitchell, 533 A.2d 629 (D.C. App. 1987).

21. By housing women in co-correctional facilities and then failing to protect them from sexual harassment and sexual misconduct, Defendants have failed to house women prisoners in appropriate facilities in violation of D.C. Code § 24-425. Twelve John Does v. District of Columbia, 841 F.2d

1133 (D.C. Cir. 1988); Pitts v. Meese, 684 F. Supp. 303 (D.D.C. 1987), aff'd, 866 F.2d 1450 (D.C. Cir. 1989).

GYNECOLOGICAL AND OBSTETRICAL CARE

Eighth Amendment

22. The Eighth Amendment prohibits Defendants from maintaining a system of medical care characterized by deliberate indifference to the serious medical needs of women prisoners. Estelle v. Gamble, 429 U.S. 97, 103 (1976); Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 350 (3d Cir. 1987), cert. denied, 486 U.S. 1006 (1988); French v. Owens, 777 F.2d 1250, 1254 (7th Cir. 1985), cert. denied, 479 U.S. 817 (1986); Wellman v. Faulkner, 715 F.2d 269, 271 (7th Cir. 1983), cert. denied, 468 U.S. 1217 (1984); Ramos v. Lamm, 639 F.2d 559, 574 (10th Cir. 1980), cert. denied, 450 U.S. 1041 (1981); Inmates of Allegheny City Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979); Todaro v. Ward, 431 F. Supp. 1129, 1132 (S.D.N.Y.), aff'd, 565 F.2d 48, 52 (2d Cir. 1977), aff'd, 652 F.2d 54 (1981).

23. Adequate gynecological and obstetrical care is a serious medical need of women. See, e.g., Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 348 (3d Cir. 1987), cert. denied, 486 U.S. 1006 (1988); Archer v. Dutcher, 733 F.2d 14, 16 (2d Cir. 1984); Todaro v. Ward, 431 F. Supp. 1129 (S.D.N.Y.), aff'd, 565 F.2d 48, 52 (2d Cir. 1977).

24. Defendants have been deliberately indifferent to the serious medical needs of women prisoners at CTF, and thus have violated the Eighth Amendment. See Wilson v. Seiter, 501 U.S. 294 (1991); Estelle v. Gamble, 429 U.S. 97, 103 (1976); Eades v. Thompson, 823 F.2d 1055, 1060-61 (7th Cir. 1987); Duncan v. Duckworth, 644 F.2d 653, 654 (7th Cir. 1981); Todaro v. Ward, 565 F.2d 48 (2d Cir. 1977).

25. Defendants' deliberate indifference is established by their knowledge that their practices and procedures placed women prisoners at CTF at a substantial risk of serious injury, including gynecological infection, sterility, cancer, complication during pregnancy, infant deformity, and infant mortality. Farmer v. Brennan, No. 92-345, slip op. at 10-11 (U.S. June 6, 1994); Helling v. McKinney, 113 S. Ct. 2475 (1993); Boretti v. Wiscomb, 930 F.2d 1150, 1155 (6th Cir. 1991); DeGidio v. Pung, 920 F.2d 525, 533 (8th Cir. 1990).

26. Defendants have violated the Eighth Amendment because there are systematic and gross deficiencies in the procedures which Defendants use to provide gynecological and obstetrical care to women prisoners, effectively delaying and denying women prisoners access to adequate care. See Estelle v. Gamble, 429 U.S. 97, 104-105 (1976); Kaminsky v. Rosenblum, 929 F.2d 922, 926 (2d Cir. 1991); Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 346 (3d Cir. 1987); Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 704

(11th Cir. 1985); Archer v. Dutcher, 733 F.2d 14, 17 (2d Cir. 1984); Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983), cert. denied, 468 U.S. 1217 (1984); Ramos v. Lamm, 639 F.2d 559, 577 (10th Cir. 1980), cert. denied, 450 U.S. 1041 (1981); Todaro v. Ward, 565 F.2d 48, 52 (2d Cir. 1977), aff'd, 652 F. 2d 52 (1981); Hurst v. Phelps, 579 F.2d 940, 941-942 (5th Cir. 1978); Isaac v. Jones, 529 F. Supp. 175, 180 (N.D. Ill. 1981).

27. Defendants have violated the Eighth Amendment by failing to provide women prisoners with adequate preventive health care, routine gynecological examinations, and health education. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982); Lareau v. Manson, 651 F.2d 96, 109 (2d Cir. 1981); Ramos v. Lamm, 639 F.2d 559, 574 (10th Cir. 1980).

28. Defendants have violated the Eighth Amendment by failing to carry-out prescribed medical treatment. Johnson v. Hay, 931 F.2d 456, 461 (8th Cir. 1991); Boretti v. Wiscomb, 930 F.2d 1150, 1154 (6th Cir. 1991); Gill v. Mooney, 824 F.2d 192, 196 (2d Cir. 1987); Jorden v. Farrier, 788 F.2d 1347, 1349 (8th Cir. 1986); Kelsey v. Ewing, 652 F.2d 4, 5-6 (8th Cir. 1981); Todaro v. Ward, 431 F. Supp. 1129, 1151 (S.D.N.Y. 1977), 565 F.2d 48, 52 (2d Cir. 1977), aff'd, 652 F. 2d 52 (1981); Riddick v. Bass, 586 F. Supp. 881, 882-883 (E.D. Va. 1984).

D.C. Code

29. Defendants' failure to provide adequate staff, equipment, and facilities for the delivery of health services

to women prisoners violates D.C. Code §§ 24-442, which imposes on Defendants an affirmative duty of care with respect to the health care provided to prisoners. District of Columbia v. Mitchell, 533 A.2d 629, 648 (D.C. App. 1987); Yarbaugh v. Roach, 736 F. Supp. 318, 319 (D.D.C. 1990).

PROGRAMS

30. Defendants' provision of unequal programs and opportunities to women prisoners on the basis of a facial classification of segregating prisoners based on sex demonstrates intent to discriminate as a matter of law under both the equal protection and Title IX analyses. Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724-25 (1982); Klinger v. Nebraska Dep't of Correctional Servs., 824 F. Supp. 1374, 1388, 1433 (D. Neb. 1993); Canterino v. Barber, 564 F. Supp. 711, 714 (W.D.Ky. 1983) ("Canterino III"); Glover v. Johnson, 478 F. Supp. 1075, 1080 (E.D. Mich. 1979).

31. Women prisoners are "similarly situated" to those men prisoners with similar custody levels, sentence structures, and general purposes of incarceration and programming. Klinger v. Nebraska Dep't of Correctional Servs., 824 F. Supp. 1374, 1359, 1431-34 (D. Neb. 1993); Glover v. Johnson, 478 F. Supp. 1075, 1082 (E.D. Mich. 1979). See, e.g., McCoy v. Nevada Dep't of Prison, 776 F. Supp. 521, 533 (D. Nev. 1991); Bukhari v. Hutto, 487 F. Supp. 1162, 1171 (E.D.Va. 1980).

Title IX

32. Title IX, 20 U.S.C. §§ 1681-1688, which prohibits sex discrimination in education programs and activities by entities receiving federal financial assistance, applies to prisons such as the District of Columbia Department of Corrections that receive federal funds. Klinger v. Nebraska Dep't of Correctional Servs., 824 F. Supp. 1374, 1359, 1431 (D. Neb. 1993); Beehler v. Jeffes, 664 F. Supp. 931, 940 (M.D.Pa. 1986), aff'd without opinion, 989 F.2d 486 (3d Cir. 1993); Canterino v. Barber, 564 F. Supp. 711, 714-15 (W.D.Ky. 1983) ("Canterino III"); Canterino v. Wilson, 546 F. Supp. 174, 209-10 (W.D. Ky. 1982), rev'd in part on other grounds, 869 F.2d 948 (6th Cir. 1989).

33. Defendants have provided women prisoners with unequal opportunity in programs and activities in the areas of education, vocation, apprentice training, occupational work training, and industries in violation of Title IX. Klinger v. Nebraska Dep't of Correctional Servs., 824 F. Supp. 1374, 1432 (D. Neb. 1993); Canterino v. Barber, 564 F. Supp. 711, 714-15 (W.D.Ky. 1983) ("Canterino III"); Canterino v. Wilson, 546 F. Supp. 174, 210 (W.D. Ky. 1982), rev'd in part on other grounds, 869 F.2d 948 (6th Cir. 1989); 34 C.F.R. §§ 106.31, 106.34, Pt. 100, App. B, VII-A & VII-B.

Equal Protection

34. Defendants' facial classification of prisoners based on sex triggers intermediate or "heightened" scrutiny

under the equal protection component of the Fifth Amendment. J.E.B. v. Alabama, 114 S. Ct. 1419 (1994); Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724-25 (1982); Pitts v. Thornburgh, 866 F.2d 1450, 1455 (D.C. Cir. 1989). See Klinger v. Nebraska Dep't of Correctional Servs., 824 F. Supp. 1374, 1390-91 (D. Neb. 1993); Canterino v. Wilson, 546 F. Supp. 174, 210 (W.D. Ky. 1982), rev'd in part on other grounds, 869 F.2d 948 (6th Cir. 1989); Bukhari v. Hutto, 487 F. Supp. 1162, 1171 (E.D.Va. 1980); Glover v. Johnson, 478 F. Supp. 1075, 1078-83 (E.D. Mich. 1979). See also Bolling v. Sharpe, 347 U.S. 497 (1954).

35. Defendants have failed to provide women prisoners with programs and opportunities in education, vocation, work, recreation, religion, and privileges in parity with those provided to similarly situated men prisoners in violation of the equal protection component of the Fifth Amendment to the United States Constitution and 42 U.S.C. § 1983. Klinger v. Nebraska Dep't of Correctional Servs., 824 F. Supp. 1374, 1398-1411, 1427-29 (D. Neb. 1993) (education, vocation, recreation); Glover v. Johnson, 721 F. Supp. 808, 827, 835-36, 841 (E.D. Mich. 1989) ("Glover III") (education); Canterino v. Wilson, 546 F. Supp. 174, 212, 215 (W.D. Ky. 1982) (vocation, work, recreation), rev'd in part, 869 F.2d 948 (study and work release programs); Glover v. Johnson, 478 F. Supp. 1075, 1086-93 (E.D. Mich. 1979) (vocation, work). See Pitts v. Thornburgh, 866 F.2d 1450, 1461-63 (D.C. Cir.

1989); Pitts v. Meese, 684 F. Supp. 303, 313 (D.D.C. 1987), aff'd, 866 F.2d 1450 (D.C. Cir. 1989).

36. There is no "exceedingly persuasive justification" for Defendants' gender-based classification and therefore it cannot survive constitutional scrutiny. J.E.B. v. Alabama, 114 S. Ct. 1419, 1425 (1994); Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724-25 (1982).

D.C. Code

37. Defendants have provided women prisoners with inadequate programs and opportunities in education, vocation, work, recreation, and religion in violation of state law which requires Defendants to exercise reasonable care in the provision of care and instruction to all inmates. D.C. Code § 24-442. See Fulwood v. Clemmer, 206 F. Supp. 370 (D.D.C. 1962).

38. By continually housing women under a series of ad hoc arrangements that do not provide equal and adequate programs and services to women prisoners, Defendants have failed to house women prisoners in appropriate institutions in violation of state law. D.C. Code Ann. § 24-425. Twelve John Does v. District of Columbia, 841 F.2d 1133 (D.C. Cir. 1988); Pitts v. Meese, 684 F. Supp. 303 (D.D.C. 1987), aff'd, 866 F.2d 1450 (D.C. Cir. 1989).

PHYSICAL CONDITIONS OF CONFINEMENT

Eighth Amendment

39. Defendants have been deliberately indifferent to the risk associated with the physical conditions of confinement of the women prisoners who are housed at the Annex and at CTF. Farmer v. Brennan, No. 92-345, slip op. at 10-11 (U.S. June 6, 1994); Wilson v. Seiter, 501 U.S. 294 (1991).

40. Defendants' deliberate indifference to the physical conditions of confinement of the women prisoners is established by their knowledge of these conditions and the subsequent failure to take reasonable steps to remedy them. Farmer v. Brennan, No. 92-345, slip op. at 10-11 (U.S. June 6, 1994); Wilson v. Seiter, 501 U.S. 294, 300-02 (1991).

41. Defendants' knowledge of a significant risk of serious injury can be inferred by "the long duration of a cruel prison condition." Wilson v. Seiter, 501 U.S. 294, 300 (1991).

42. Defendants' knowledge of a significant risk of serious injury can be inferred from "the very fact that the risk was obvious." Farmer v. Brennan, No. 92-345, slip op. at 16 (U.S. June 6, 1994).

43. In a suit for injunctive relief, such as this one, knowledge of a significant risk of serious injury can be obtained in the course of litigation. Farmer v. Brennan, No. 92-345, slip op. at 20 & n.9 (U.S. June 6, 1994).

44. Defendants' deliberate indifference to the physical conditions of confinement of the women prisoners who

are housed at the Annex and at CTF satisfies the "subjective" component of Eighth Amendment analysis. Farmer v. Brennan, No. 92-345, slip op. at 10-11 (U.S. June 6, 1994); Wilson v. Seiter, 501 U.S. 294, 298, 303 (1991).

45. The "objective" component of Eighth Amendment is likewise satisfied because Defendants have deprived the woman prisoners at the Annex and CTF of "essential human needs" including warmth, sanitation, exercise, food that is safe to eat, and basic safety and security in their environment. Wilson v. Seiter, 501 U.S. 294, 304 (1991); Rhodes v. Chapman, 452 U.S. 337, 348 (1981); Inmates of Occoquan v. Barry, 844 F.2d 828, 836 (D.C. Cir. 1988).

46. Some of the women prisoners' conditions of confinement establish an Eighth Amendment violation "in combination," even though each would not do so alone, because "they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need . . . for example, a low cell temperature at night combined with a failure to issue blankets." Wilson v. Seiter, 501 U.S. 294, 304 (1991); Rhodes v. Chapman, 452 U.S. 337, 347 (1981); Inmates of Occoquan v. Barry, 844 F.2d 828, 836-37 (D.C. Cir. 1988); Doe v. District of Columbia, 701 F.2d 948, 961 (D.C. Cir. 1983).

47. The overcrowding at the Annex, while itself not an Eighth Amendment violation, Rhodes v. Chapman, 452 U.S. 337, 348 (1981), has so overtaxed the facility that the

resulting unhealthy and unsafe environment constitutes a deprivation of adequate shelter and security and an Eighth Amendment violation. Williams v. Griffin, 952 F.2d 820, 824-25 (4th Cir. 1993); Williams v. Adams, 935 F.2d 960, 962 (8th Cir. 1991); Tillery v. Owens, 907 F.2d 418, 423 (3rd Cir. 1990); Akao v. Shimoda, 832 F.2d 119, 120 (9th Cir. 1987), cert. denied, 485 U.S. 993 (1988); Toussaint v. Yockey, 722 F.2d 1490, 1492 (9th Cir. 1984).

48. Defendants have violated the Eighth Amendment by failing to protect the women prisoners from excessively cold or hot temperatures and by failing to provide decent ventilation and insulation. Wilson v. Seiter, 501 U.S. 294 (1991); French v. Owens, 777 F.2d 1250, 1255 (7th Cir. 1985), cert. denied, 479 U.S. 817 (1986); Madison County Jail Inmates v. Thompson, 773 F.2d 834, 838-39 (7th Cir. 1985); Hoptowit v. Spellman, 753 F.2d 779, 784 (9th Cir. 1985); Ramos v. Lamm, 639 F.2d 559, 566 (10th Cir. 1980), cert. denied, 450 U.S. 1041 (1981); Hutchings v. Corum, 501 F. Supp. 1276, 1282 (W.D. Mo. 1980).

49. Defendants have violated the Eighth Amendment by depriving the women prisoners of a safe and sanitary environment through their failure to provide proper plumbing, adequate hot water, adequate lighting, and adequate cleaning supplies and their failure to follow sanitary laundry procedures. French v. Owens, 777 F.2d 1250, 1252 (7th Cir. 1985), cert. denied, 479 U.S. 817 (1986); Madison County Jail

Inmates v. Thompson, 773 F.2d 834, 838-39 (7th Cir. 1985); Hoptowit v. Spellman, 753 F.2d 779, 783-84 (9th Cir. 1985); Ramos v. Lamm, 639 F.2d 559, 569-70 (10th Cir. 1980), cert. denied, 450 U.S. 1041 (1981); Hite v. Leeke, 564 F.2d 670, 672 (4th Cir. 1977).

50. Defendants have violated the Eighth Amendment by failing to provide food that has been prepared under safe and sanitary conditions. French v. Owens, 777 F.2d 1250, 1255 (7th Cir. 1985), cert. denied, 479 U.S. 817 (1986); Madison County Jail Inmates v. Thompson, 773 F.2d 834, 838-39 (7th Cir. 1985); Ramos v. Lamm, 639 F.2d 559, 571 (10th Cir. 1980), cert. denied., 450 U.S. 1041 (1981); Lightfoot v. Walker, 486 F. Supp. 504, 524 (S.D. Ill. 1980).

51. The presence of vermin is evidence of a failure to maintain facilities in a constitutionally adequate manner. Kost v. Kozakiewics, 1 F.3d 176, 188 (3rd Cir. 1993); Hoptowit v. Spellman, 753 F.2d 779, 784 (9th Cir. 1985); Wellman v. Faulkner, 715 F.2d 269, 274 (7th Cir. 1983), cert. denied, 468 U.S. 1217 (1984).

52. Prisoners have the right not to be subjected to the unreasonable threat of injury or death by fire and need not wait until actual casualties occur in order to obtain relief. Inmates of Occoquan v. Barry, 717 F. Supp. 854, 867 (D.D.C. 1989); see also Helling v. McKinney, 113 S. Ct. 2475, 2479-80 (1993). Therefore, Defendants have violated the Eighth Amendment by failing to provide an adequate level of

fire safety at CTF and the Annex. Hoptowit v. Spellman, 753 F.2d 779, 783 (9th Cir. 1985); Santana v. Callazo, 714 F.2d 1172, 1183 (1st Cir. 1983), cert. denied, 466 U.S. 974 (1984); Leeds v. Watson, 630 F.2d 674, 675 (9th Cir. 1980); Hutchings v. Corum, 501 F. Supp. 1276, 1293 (W.D. Mo. 1980).

D.C. Code

53. The physical conditions of confinement of the women prisoners at the Annex and CTF constitute violations of D.C. Code § 24-442 which requires Defendants to be responsible for the safekeeping, care, and protection of all persons committed to its correctional institutions. John Doe v. District of Columbia, 697 F.2d 1115 (D.C. Cir. 1983); District of Columbia v. Mitchell, 533 A.2d 629 (D.C. App. 1987).

54. Defendants have failed to house women prisoners in appropriate facilities in violation of D.C. Code § 24-425. Twelve John Does v. District of Columbia, 841 F.2d 1133 (D.C. Cir. 1988); Pitts v. Meese, 684 F. Supp. 303 (D.D.C. 1987), aff'd, 866 F.2d 1450 (D.C. Cir. 1989).

NEED FOR INJUNCTIVE RELIEF

55. When conditions of confinement violate constitutional rights, a federal court must "discharge [its] duty to protect constitutional rights" by entering an order for injunctive relief. Rhodes v. Chapman, 452 U.S. 337, 352 (1981).

56. Even in those instances where Defendants have taken steps to address the constitutional violations,

injunctive relief is still appropriate if Defendants have not proven that they will not "revert to their obduracy upon cessation of the litigation." Farmer v. Brennan, No. 92-345, slip op. at 20 n.9 (U.S. June 6, 1994).

57. In this regard, the Court can take notice of Defendants' long record of willful, contemptuous, and contumacious behavior in related litigation involving the D.C. prison system.

June L. Green
U.S. District Judge

DATED: _____

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