

# Memorandum

CRIPA Investigation, Northern Mariana Islands



PC-MP-0002-0001



SHR:MHN:RJM:ph  
DJ 168-103-2; DJ 168-103-3  
DJ 168-103-4

<b>Subject</b> Recommendation to Investigate the Prison and Jails of the Commonwealth of the Northern Mariana Islands	<b>Date :</b> April 7, 1998
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**To:** Bill Lann Lee  
Acting Assistant Attorney  
General  
Civil Rights Division

**From:** Steven H. Rosenbaum  
*AR* Chief  
Special Litigation Section

## I. RECOMMENDATION

We recommend you authorize an investigation into conditions at the prison and jails of the Commonwealth of the Northern Mariana Islands ("CNMI") pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, et seq., and 42 U.S.C. § 14141. Our recommendation is based upon the request of the United States Attorney for the District of Guam and the CNMI, Frederick Black, who "strongly urges" that we investigate the prison and jail. In addition, Mr. Black informs us that Chief Judge Munson of the Federal District of the CNMI has told him that he, too, urges an investigation of conditions at the prison and jail. The cost of the investigation and subsequent enforcement efforts may be paid through funds already appropriated to the Division for civil rights enforcement in the CNMI.<sup>1</sup> We request expedited review of this matter to save the Division significant funds and resources. The attorneys assigned to this investigation and our expert consultants will be in nearby Guam on another matter from April 14 to 22, 1998, and could conduct the on-site portion of this investigation from April 23 to 25, 1998. Accordingly, because CRIPA requires seven days advance

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<sup>1</sup> In 1997, the Civil Rights Division renewed and amended an earlier Memorandum of Understanding ("MOU") with the Department of Interior to fund civil rights enforcement regarding foreign workers in the CNMI. The subject matter of our investigation likely falls within the MOU's mandate because over half of the CNMI population are foreign workers, and thus the prison and jail are likely to confine many foreign workers. However, the MOU limits the funds to use by the Criminal Section and the Employment Litigation Section. We are preparing a Memorandum from you to Assistant Attorney General Colgate, Justice Management Division, requesting him to seek to amend the MOU to include the Special Litigation Section.

notice, and because the CNMI is a day ahead of us, we must notify the CNMI of our investigation by at least April 9, 1998.

## II. BACKGROUND

The CNMI consists of the three main islands of Saipan, Tinian and Rota, each of which is its own municipality, and several smaller islands. Economic Service Counsel, The U.S. Commonwealth of the Northern Mariana Islands, p.3 (available at <http://www.saipan.com>). The island of Saipan is approximately 46 square miles and has a total 1990 population of 38,869, of whom 14,420 are indigenous. The island of Tinian is located six miles south of Saipan and has a land area of 39.2 square miles and a 1990 population of approximately 2,300, of whom 1,226 are indigenous. The island of Rota is 69 miles south of Saipan and 47 miles north of Guam, has an area of 32.8 square miles, and a population of 2,295, of whom 1,508 are indigenous. These municipalities are governed by the CNMI, which is modeled on a typical state government with executive, legislative, and judicial branches.

The prison and jails in the CNMI are operated by Department of Public Safety of the executive branch of the CNMI. Seed v. Hudson, 1994 WL 229096 (May 11, 1994 D.N. Mar. I.) (prison conditions case).<sup>2</sup> This agency runs the police force and officers are assigned to the prison and jail as needed; there are no officers assigned exclusively to corrections work. National Institute of Corrections, Federal Bureau of Prisons, An Assessment of Correctional Services in the Commonwealth of the Northern Mariana Islands (March 12, 1995) ("NIC Report") (on March 18, 1998, the Chief of the NIC Section who wrote this Report informed us that this is still the case). The correctional facilities consist of a correctional complex on Saipan with a jail, prison, women's unit, and a work release unit; a jail on Tinian; and a jail on Rota. Id. The prison and jail do not take regular population counts, but the NIC estimates that the population of November 1997 was approximately 120 prisoners and inmates in Saipan, and another ten to twenty in Tinian and Rota.

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<sup>2</sup> In Seed, the plaintiff, a federal detainee, brought a § 1983 action regarding the conditions of his confinement in the Saipan jail in 1991. The Court determined on summary judgment that conditions in the Saipan jail violated the Eighth Amendment in that plaintiffs were denied mattresses and blankets, the ability to wash clothes, exercise, adequate lighting, and adequate plumbing. Seed, 1994 WL 229096, \*7. As relief, Mr. Seed was released from the facility on bond. Id. at \*1. As discussed below, our evidence indicates conditions at the Saipan and other CNMI facilities continue to violate the Eighth Amendment.

### III. APPLICATION OF CRIPA AND 14141 TO THE CNMI

The 1978 "Covenant to Establish A Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" ("Covenant") is a negotiated agreement between the United States Government and the people of the CNMI. Under the terms of the Covenant, citizens of the CNMI are not allowed to vote in presidential elections, but they enjoy all of the other benefits of U.S. citizenship. The CNMI controls its own immigration, labor, tax and wage laws.<sup>3</sup> The Covenant acknowledges Congressional power over territories as provided in the Constitution's Territorial Clause which provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const., art. IV, § 3. The terms of the Covenant limit Congress' power over the CNMI. Saipan Stevedore Co. v. Director, Office of Workers' Comp. Programs, 133 F.3d 717, 721 (9th Cir. 1998).

Section 105 of the Covenant states that the "United States may enact legislation in accordance with its constitutional processes which will be applicable to the Northern Mariana Islands, but if such legislation cannot be made applicable to the several States the Northern Mariana Islands must be specifically named therein for it to become effective in the Northern Mariana Islands." Statutes enacted by Congress that are applicable to the states are thus applicable to the CNMI.<sup>4</sup> Saipan Stevedore, 133 F.3d at 721. Because CRIPA applies generally to the States, it applies in the CNMI.<sup>5</sup> See

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<sup>3</sup> Foreign workers comprise over half of the CNMI population. They work in deplorable conditions: "Thousands of Chinese workers, mostly young women, bend over sewing machines for 12-hour days, sometimes longer, six or seven days a week in Saipan's sweatshops, then sleep behind inward-leaning barbed wire in crowded, tiny barracks rooms in compounds from which they are not allowed to leave." Alexis Herman & Bruce Babbitt, "Saipan Sweatshop Wage Loopholes," editorial, The Washington Times, March 29, 1998, at B3. Congress conducted hearings regarding these and other matters involving the CNMI on March 31, 1998.

<sup>4</sup> "The general application of federal statutes to the Commonwealth contains one proviso: if congressional legislation is not applicable to the states, the Commonwealth must be specifically named in the legislation to be effective in the Northern Mariana." Saipan Stevedore, 133 F.3d at 721. Likewise, laws enacted prior to the enactment of the Covenant in 1978 are applicable to the CNMI if they were generally applicable to the states and applicable to Guam. Id.

<sup>5</sup> CRIPA defines the term "state" as used in section 1997a(a) to include "the several States, the District of Columbia, the

also Office of the Solicitor, Dep't of the Interior, The Application of Federal Laws in the Northern Mariana Islands, Vol. 3 (1993) (CRIPA applies in the CNMI). Section 14141 applies to "any governmental authority." 42 U.S.C. § 14141(a). Therefore, section 14141 also applies to the CNMI because the broad "governmental authority" includes state and local governments. Because there appears to be no distinction between police officers and corrections officers in the CNMI, we request you authorize us to conduct this investigation pursuant to section 14141 as well as CRIPA.

#### IV. PRISON AND JAIL CONDITIONS IN THE CNMI

Under a program established through the Department of the Interior, representatives from the National Institute of Corrections ("NIC") of this Department have been monitoring the conditions in the CNMI's prison and jails from 1994 to the present. In 1995, after touring the prison and jail, the NIC issued a report finding systemic problems with the conditions of confinement in the CNMI's prison and jails. In their Report, the NIC finds that the CNMI's prison and jails "do not meet the American Correctional Association Standards, the United Nations Standards, or any other professional standards." NIC, An Assessment of Correctional Services in the Commonwealth of the Northern Mariana Islands, at 3 (March 12, 1995) ("NIC Report"). After approximately three years of providing technical assistance and monitoring the CNMI's response to the NIC Report, the NIC has found no change in conditions and no progress toward improving conditions in the prison and jail. Telephone Interview with William Wilkey, Chief, International Programs, NIC, March 18, 1998. Likewise, we have been informed by Mr. Frederick Black, United States Attorney for the District of Guam and the CNMI, that conditions in the prison and jail are so poor that, once the new federally funded facility is built on Guam, the United States will no longer house inmates there.<sup>6</sup> Our information indicates that the conditions described by the NIC, and the other sources, as described below, violate the Fourteenth Amendment rights of jail detainees, and the Eighth Amendment Rights of prisoners. Helling v. McKinney, 509 U.S. 25, 33 (1993) ("It is cruel and unusual punishment to hold convicted criminals in unsafe conditions.").

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Commonwealth of Puerto Rico, or any of the territories and possessions of the United States." 42 U.S.C. § 1997(4). Therefore, regardless of whether the CNMI is included as a "territory" or "possession," the CNMI is covered because CRIPA is generally applicable to the states.

<sup>6</sup> The United States Marshal Service currently houses approximately 10 jail inmates in the prison/jail complex on Saipan. The federally funded 80-bed jail in Guam is estimated to be completed by August 1998.

The NIC Report and recent NIC tours have found that the CNMI prison and jails are unsafe facilities due to inadequate fire-safety and sanitation conditions. All of the facility buildings are inadequate with severe safety, health, sanitation, and security deficiencies. Id. Cells are locked with padlocks, some of which share common keys, some of which do not. Telephone Interview with Deputy U.S. Marshal Richard Lumagui, March 31, 1998 (Mr. Lumagui inspects the CNMI prison and jails for the USMS). The fire alarm has been in disrepair and not functioning for some time. Id. The showers are caked with mildew and mold. Id. There is little to no artificial lighting in any of the buildings. Id. These allegations indicate that the CNMI is violating the constitutional rights of prison inmates and jail detainees to a safe environment. Hoptowit v. Spellman, 753 F.2d 779, 784 (9th Cir. 1985) (inmates and prisoners may not be subjected to unreasonable risks of injury from fire or poor sanitation); Jones v. City and County of San Francisco, 976 F. Supp. 896, 908-09 (N.D. Cal. 1997) (adequate fire safety, sanitation, and freedom from harm, ventilation and adequate medical care are required under Eighth and Fourteenth Amendments).

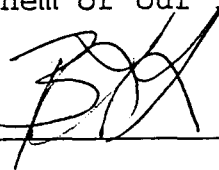
Our information indicates that the CNMI is also failing to provide inmates with proper medical care. None of the facilities have any medical or nursing personnel. Lumagui Interview. There is little to no inmate health screening and no tuberculosis testing. NIC Report at 3. The CNMI is currently experiencing a tuberculosis epidemic, with tuberculosis cases doubling every year and the infection rate in the CNMI at 1:566 persons (versus 1:12,500 persons in the United States). Pacific Daily News, "High TB Rate Spurs Need for Mandatory Tests," February 24, 1998, at A8. The facilities have no forced air ventilation. Therefore, it is likely that inmates are being subjected to a serious risk of tuberculosis infection. Our information indicates medical conditions at the CNMI's prison and jail violate the constitutional rights of jail inmates and prison detainees. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976) (Eighth Amendment requires prison to attend to serious medical needs).

Often only one or two staff are assigned to supervise over 100 inmates in the Saipan complex. Lumagui Interview. Recently, three inmates escaped for an afternoon, but they simply walked back into the prison while staff were trying to locate them in the community. Id. The NIC Report and recent NIC tours have found that the CNMI prison and jails fail to meet penological standards ensuring safe confinement. Staff are not assigned to regular shifts, nor do they regularly count the number and presence of inmates in the facilities. NIC Report at 3. Staff receive only police officer training, and do not receive any corrections training. Id. There are no written policies and procedures. Id. There is no inmate classification system. Id. Inmates are almost completely idle, there are little to no education, work, or recreational activities. Id. Our information indicates that such complete lack of staffing,

training, policies and procedures, and lack of classification creates a serious risk of harm in violation of the Constitution. Helling, 509 U.S. at 33.

V. CONCLUSION

For the reasons discussed above, I recommend you authorize an investigation into conditions at the prison and jails of the Commonwealth of the Northern Mariana Islands ("CNMI") pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, et seq., and 42 U.S.C. § 14141.<sup>7</sup> Attached for your signature are letters to Hon. Pedro P. Tenorio, Governor of the CNMI, and Mr. Eduardo Gonzalez, Director of the U.S. Marshal Service, notifying them of our investigation.

Attachments 

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Comments:

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<sup>7</sup> Robert Moossy is the attorney assigned to this matter. Mellie Melson is the reviewer.