

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

THE UNITED STATES OF AMERICA

Plaintiffs

CIVIL 94-2080CCC

vs.

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;

ZORAIDA BUXO, 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. NESTOR GALARZA, Director,
Anti-Addiction Services Department, in his
official capacity;

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

PEDRO PIERLUISI, Secretary, Justice
Department of the Commonwealth of
Puerto Rico, in his official capacity;

CARMEN RODRIGUEZ, Secretary,
Department of Social Services, in her
official capacity;

DANIEL VAZQUEZ TORRES, Director
Humacao Detention Center, in his official
capacity;

EDGARD ORTIZ ALBINO, Director,
Mayagüez Industrial School, in his official
capacity;

NORMA CRUZ, Director, Ponce Central
Training School, in her official capacity;

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FRANCISCA APONTE, Director, Ponce Victoria Street Training Center, in her official capacity;

PAULITO DIAZ DE GARCIA, Director, Ponce Detention Center for Girls and Ponce Industrial School for Girls and Boys, in her official capacity;

JULIO CUALIO BONET, Director, Guaynabo Training School, in his official capacity; and

LYDIA LASALLE, Acting Director, Central Metropolitan Training School of Bayamón, in her official capacity;

Defendants

ORDER

The Commonwealth defendants filed on January 18, 2011 a Motion Under the Prison Litigation Reform Act to Terminate Particular Prospective Relief Provisions (docket entry 939) in which, among others, they sought termination of Paragraph 38 of the Settlement Agreement pursuant to 18 U.S.C. § 3626(b). Given that movants failed to discuss then the grounds for termination of Paragraph 38, on August 16, 2011 the Court ordered them (docket entry 981) to show cause why their request for termination of that particular paragraph should not be denied outright for their failure to demonstrate that it no longer complied with the criteria for prospective relief established in the Prison Litigation Reform Act (PLRA). The Commonwealth defendants complied on August 31, 2011, by stating in their Motion in Compliance with Court Order (**docket entry 985**) the reasons in support of their request for termination of Paragraph 38. In the Order issued on October 19, 2011 (docket entry 1001), we expressed that we would entertain said filing as a separate PLRA Motion specifically addressed to Paragraph 38, and that we would rule upon it once

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the Court Monitor submitted his customary PLRA Report, which he did on December 20, 2011 (docket entry 1009).

Paragraph 38 of the Settlement Agreement provides:

A person having knowledge of the NFPA Life Safety Code and of the requirements of the specific building and fire codes of Puerto Rico will be designated as the Fire and Safety Officer. This Fire Safety Officer will have authority to conduct monthly inspections of each facility for compliance with safety and fire prevention requirements. The Fire and Safety Officer shall prepare a monthly report of his findings and submit the report to the Monitor. Defendants shall correct in a timely manner any fire safety deficiency noted in the reports of the Fire and Safety Officer. A staff member in each facility who has received training in and is familiar with weekly inspection procedures, including the use of checklists and methods of documentation, will be appointed to work with the Fire and Safety Officer.

We have carefully considered the Commonwealth defendant's latest PLRA Motion, in which they claim having been in substantial compliance with the requirements of Paragraph 38 for the eighteen (18) months prior to its filing as allegedly evidenced by the Monitor's own compliance ratings for the previous 6 quarters. See docket entries 903-2, 924-1, 933-1, 947-1, 960-1 and 977-1. We have also reviewed the December 20, 2011 Monitor's Expert Report Concerning Paragraph 38 (**docket entry 1009**), which is NOTED, as well as the United States' opposition to the Commonwealth's PLRA Motion (docket entry 994).

As the Commonwealth defendants correctly note, the Monitor's quarterly compliance reports for the First Quarter 2010 (docket entry 903-2), Second Quarter 2010 (docket entry 924-1), Third Quarter 2010 (docket entry 933-1), Fourth Quarter 2010 (docket entry 947-1), First Quarter 2011 (docket entry 9601) and Second Quarter 2011 (docket entry 977-1), all indicate that, with regard to Paragraph 38, they were consistently rated as compliant in the categories of Policy Compliance, Staffing Compliance, Training Compliance and Documentation Compliance. Only in the category of "Resources" were they repeatedly found non-compliant, which they attributed to the Commonwealth's fiscal crisis. Our September 12, 2011 Order (docket entry 991) acknowledged this as a relevant factor in

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assessing compliance. Still, the Commonwealth defendants highlight that the overall balance gleaned from the Monitor's own ratings is that they have been in substantial compliance even under adverse financial circumstances, which they posit is enough to merit termination of the provision of Paragraph 38.

The Court Monitor, and the United States, beg to differ. However, a termination of prospective relief places on the United States the burden to justify the written findings that the Court must make under 18 U.S.C. § 3626(b)(3) in order to continue such relief. Unless the Court makes specific findings on need, termination is mandated.

Paragraph 38 of the Settlement Agreement has four specific components: (1) designation of a person having knowledge of the NFPA Life Safety Code and of the requirements of the building and fire codes of the Commonwealth of Puerto Rico as the Fire and Safety Officer of the AIJ, (2) monthly inspections of each facility for compliance with safety and fire prevention requirements, (3) monthly reports of the Fire and Safety Officer's findings to the Monitor based on such inspections, and (4) a timely correction by defendants of fire safety deficiencies "noted in the reports of the Fire and Safety Officer." The Monitor's Expert Report dated December 20, 2011 (docket entry 1009) states at page 4 that "the Commonwealth has appointed both a Fire Safety Officer in the AIJ Central Office, and Fire Safety Coordinators at each of the facilities and procedures for documenting inspections and deficiencies have been developed." This is also certified by Pedro Santiago, AIJ Fire Safety and Prevention Officer, in docket entry 986-1 dated August 29, 2011, in which he provides information as to his training in the Life Safety Code of the NFPA and its amendments, as well as training on the Code of Fire Prevention of the Commonwealth of Puerto Rico; that he appointed and trained eight staff members as AIJ Fire Safety protection officers of each individual AIJ facility; that each conducts monthly inspection of fire safety conditions at his/her assigned institution and submits monthly reports to him; and that he, in turn, requests corrective action of the report's findings from the Fire Safety Protection

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officers and holds quarterly meetings with them to discuss fire safety, protection and prevention issues.

This notwithstanding, the Monitor refers to “a steady deterioration by the Commonwealth in [its] responsibilities in maintaining appropriate fire safety conditions in the facilities and informing the Monitor’s Office through proper documentation when fire safety problems have occurred and when and how they were being remedied.” Id. There is a reference by the Monitor that this has occurred “since the issuance of the Court’s Order,” id., in reference to ‘the Court’s termination of several mayor fire safety provisions in May 2007.’ Id. (emphasis ours). Despite the four year period of “steady deterioration” claimed, the statement contains no reference to specific deficiencies related to fire safety conditions in the facilities or as to which “fire safety problems have occurred,” when, or where, unreported to the Monitor during that period. He does observe that “for the past twelve months, it has mainly been this Court’s consultant and/or the deputy monitors who have discovered the fire safety violations while touring the facilities during normal monitoring tours, rather than being informed per Paragraph 38 that a problem existed.” Id. Again, there is no mention of which problems were actually discovered by the Monitor or Deputy Monitors during those which were withheld by the Fire Safety coordinators or Fire Safety Officers in their monthly reports to the Monitor’s Office.

The mention immediately thereafter to “fire exit doors” which did not open electronically or were “caked with dust” (id., at p. 5) are not cross-referenced to any specific findings or observations included in the Monitor’s Quarterly Reports. That mention in the Monitor’s PLRA Report of December 20, 2011 has to do with paragraphs 34 and 35 of the Settlement Agreement, not with paragraph 38. Nor does the Monitor give any indication in his PLRA Report of when, where, or how frequent, were there problems with fire exit doors at the AIJ facilities. The Monitor concludes that “[t]hese observations are indicative that the fire safety coordinators have not been performing their duties” and that “[t]heir lack of

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proper training in the NFPA Life Safety Code and the pertinent fire codes of Puerto Rico may also be at fault here.” Id.

Regarding the Monitor’s findings that his Office does not see compliance with the part of Paragraph 38 requiring that defendants correct in a timely manner any fire safety deficiencies noted in the monthly reports, he makes a general reference to non “code compliance relating to Paragraph 31, which the Court upheld in its order of September 30th, 2011.” Id. It should be noted that the Court’s analysis in the September 30, 2011 Order on Paragraph 31 of the Settlement Agreement divided that Paragraph into 31(a) - compliance with federal, state and or local building codes, Paragraph 31(b) - size of sleeping area, Paragraph 31(c) - toilet ratio, and Paragraph 31(d) - access to operable wash basins, showers and potable drinking water. The only part that was continued was Paragraph 31(a) based on concrete violations to the Life Safety Code which had been documented at the beginning of 2011. The Court notes that the Monitor’s Report for the First Quarter 2011 and Second Quarter 2011, covering periods from January-March 2011 and April-June 2011, do not include any instances of non-compliance with timely correction of any fire safety deficiencies. At page 5 of the December 20, 2011 PLRA Report, the Monitor makes a general statement that “while the staff are in place to complete inspections, corrective actions are not completed on a timely basis” and that “[t]he lack of general compliance is evidenced by the pervasive uncorrected code violations.” Id. (emphasis ours). Despite the reference to pervasive lack of corrective actions, there is only a reference to “two recent intervals at CD Bayamón where the sprinklers systems were not operating for periods lasting several months.” Id.

Given the circumstances outlined above, the Court is convinced that the United States has not met its burden to justify the written findings required by § 3626(b)(3) in order to continue the prospective relief mandated by Paragraph 38 and, as a result, GRANTS the

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request for termination of said Paragraph made by the Commonwealth defendants in their Motion in Compliance With Court Order (**docket entry 985**).

SO ORDERED.

At San Juan, Puerto Rico, on September 28, 2012.

S/CARMEN CONSUELO CEREZO
United States District Judge