



U.S. Department of Justice

Civil Rights Division

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DJ 168-64-30

*Special Litigation Section - PHB  
950 Pennsylvania Ave, NW  
Washington DC 20530*

**JAN 08 2014**

The Honorable Tom Corbett  
Governor's Office  
225 Main Capitol Building  
Harrisburg, PA 17120

Re: Investigation of the State Correctional Institution at Pittsburgh

Dear Governor Corbett:

The Civil Rights Division of the Department of Justice has completed its investigation into the conditions of confinement at the Pennsylvania State Correctional Institution at Pittsburgh. The investigation was conducted pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997. CRIPA authorizes the Department of Justice to seek equitable relief where conditions in state correctional facilities violate the rights of prisoners under the Constitution and/or laws of the United States. We have concluded that there is insufficient evidence to conclude that conditions at the Pittsburgh prison currently violate those rights.

We opened this investigation after local authorities initiated criminal prosecutions against officers for assaulting and sexually abusing prisoners housed on the Pittsburgh prison's F Block. The breadth of the allegations suggested that practices at the prison had gone badly off track, and that prison conditions there were unacceptably dangerous.

During our initial visit to the Pittsburgh prison, we learned that the Pennsylvania Department of Corrections was already undertaking important steps to respond to the serious allegations of officer misconduct. We also witnessed a strong commitment on the part of the Department of Corrections to creating a safer environment for prisoners.

Nonetheless, we remained concerned that the Pittsburgh prison had not yet begun to address certain systemic deficiencies that had led to the officer misconduct. To determine whether the reforms that were already in progress when we opened our investigation would be sufficient, we deferred issuing findings to assess whether the Department of Corrections would follow through with implementing the systemic change needed to prevent misconduct from reoccurring.

We are pleased to report that the Department of Corrections has used the months since we opened our investigation to reform its policies and practices. Many of these new policies and practices were developed and/or implemented in consultation with our security consultant and us. Importantly, the reforms are already translating into safer prison conditions at the Pittsburgh

prison and throughout the Pennsylvania prison system. Indeed, the Department of Corrections has assured us that it is committed to having the Pittsburgh prison audited and deemed fully compliant with the National Standards to Prevent, Detect, and Respond to Prison Rape (“the Standards”) promulgated under the Prison Rape Elimination Act of 2003 (“PREA”) by no later than December 1, 2014.<sup>1</sup>

In view of the significant reforms that have been developed in recent months – a number of which have already been implemented – we have decided to close our investigation. We stand ready to assist the Department of Corrections’ staff in the coming months if they wish to consult with us and our security consultant as they continue refining reforms to their security related practices. We greatly appreciate the cooperation Secretary of Corrections John Wetzel and his staff have provided us throughout our investigation.

## I. INVESTIGATION

On December 1, 2011, shortly after local authorities arrested seven corrections officers from the Pittsburgh prison for misconduct involving assaults and sexual abuse of vulnerable prisoners, we opened our investigation pursuant to our authority under CRIPA. Specifically, we notified you that our investigation would focus on allegations of: (1) inadequate protection from prisoner-on-prisoner and staff-on-prisoner physical and sexual violence; and (2) discrimination in the form of sexual violence and other misconduct against prisoners based on their race, sexual

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<sup>1</sup> See 42 U.S.C. §§ 15601-09; 28 C.F.R. §§ 115.5 through 115.93. The Standards became applicable to state and local confinement facilities on August 20, 2012. 77 Fed. Reg. 37106 (June 20, 2012). While they are not intended to define the contours of constitutionally-required conditions of confinement, substantial departures from the Standards may support claims of unconstitutional conditions. *Id.* at 37107. Although there are no immediate federal consequences for non-compliance with the Standards, each state governor will be required to make an annual certification as to whether confinement facilities under the State’s operational control are in “full compliance” with the Standards. 42 U.S.C. § 15607. The first state certification will be due in the spring of 2014, and the results of the certification may impact federal grant funding to the states for fiscal year 2014 (beginning on October 1, 2013). *Id.* Specifically, states that fail to make the required statutory certification or assurance of future compliance risk a five-percent reduction in certain grant funding from the Department’s Office of Justice Programs and the Office of Violence Against Women. *Id.* In addition, compliance with the Standards requires that each prison operated by an agency be subject to an independent audit by a Department of Justice-certified auditor during three-year cycles which began on August 20, 2013. 28 C.F.R. § 115.401. The Department may send a recommendation to the Department of Corrections for an expedited audit of a prison if it has reason to believe that a particular prison may be experiencing problems relating to sexual abuse. 28 C.F.R. § 115.401(c). The results of these independent audits must be published on the agency’s website or be otherwise publicly available. 28 C.F.R. § 115.403. Finally, accreditation entities who receive federal grant funds, such as the American Correctional Association (“ACA”) and the National Commission on Correctional Health Care (“NCCHC”) are required to adopt accreditation standards consistent with the Standards. 42 U.S.C. § 15609. Hence, noncompliance with the Standards may jeopardize eligibility for ACA or NCCHC accreditation.

orientation, gender identity, or other status. As our investigation developed, we examined the extent to which broader systemic deficiencies contributed to these allegations.

On March 26-29, 2012, we conducted an on-site inspection of the Pittsburgh prison with a consultant who is an expert on correctional security, custodial sexual abuse, and prisoner vulnerabilities due to sexual orientation and gender identity. We interviewed administrative staff, security staff, medical and mental health staff, and prisoners. Before, during, and after our visit, we reviewed documents, including policies and procedures, incident reports, investigative reports, prisoner grievances, disciplinary reports, unit logs, orientation materials, and staff training materials. We observed prisoners in a variety of settings, including general population and specialized housing, while conducting a walk-through of the prison. We also observed the preliminary hearings for the criminal cases against the seven charged officers and followed the trials of several of the officers. Consistent with our commitment to providing technical assistance, we conducted an exit conference at the end of our visit in which our consultant provided prison leadership with recommendations as to how to make the prison safer.

On December 17-18, 2012, we conducted a follow-up tour to learn of any improvements made since March to the prison's security conditions. During the tour, we spoke to new leadership at the Pittsburgh prison, and interviewed staff and prisoners. We also reviewed documents that Department of Corrections officials identified as probative of the improvements to prison operations, as well as other documents we considered relevant to assessing current security conditions.

On May 10, 2013, we met with Department of Corrections officials, including the prison's management, to receive updates on the progress that had been made, and to convey our remaining concerns. In a May 24, 2013 letter, we memorialized our remaining concerns with Department of Corrections practices at the Pittsburgh prison.

On September 23-24, 2013, we conducted a second follow-up tour with our consultant. During the tour, we assessed the extent to which newly developed policies and procedures addressed our remaining concerns. Our consultant also provided officials with technical assistance on how to further improve their policies and procedures.

Throughout the investigation, the Department of Corrections has been responsive to our requests for information, highly receptive to our concerns, and willing to revise policies and procedures where necessary. We greatly appreciate this cooperative approach.

## **II. BACKGROUND**

The State Correctional Institution at Pittsburgh is located five miles from downtown Pittsburgh, Pennsylvania. Formerly known as Western Penitentiary, the prison opened in the late 1800s to house maximum security prisoners. The Department of Corrections closed the prison in 2005 and reopened it in 2007 to address an unexpected increase in prisoners across Pennsylvania. It has a rated capacity of 1,755 and houses minimum and lower-medium security prisoners. At the time of our March 2012 tour, the population was approximately 1,715.

The vast majority of prisoners at the Pittsburgh prison are housed in the general population units. These units have a cellblock design, which means that prisoners are housed in

cells along long rows that are stacked in five tiers. Each block houses between 250 and 400 prisoners.

The Pittsburgh prison serves as a permanent housing placement for classified prisoners and as a temporary placement for unclassified prisoners awaiting transfer to the State Correctional Institution at Camp Hill, Pennsylvania's main diagnostic and treatment center. Unclassified prisoners at the Pittsburgh prison are either entering the prison system for the first time or are re-entering the system after having violated the terms of their release. F Block – the unit where most of the known misconduct occurred – is a general population unit, housing roughly 250 prisoners at a time. F Block houses the prison's unclassified prisoners, and many of the prisoners there who were targeted for abuse were encountering the prison system for the first time.

### III. FACTUAL DETERMINATIONS

#### A. Assaults and sexual abuse on F Block.

Our investigation revealed substantial evidence that over the course of roughly two years – from about March 2009 to February 2011 – a group of officers and prisoners assaulted and abused approximately 30 prisoners housed on the Pittsburgh prison's F Block. This conclusion is supported by the record in the criminal proceedings against officers as well as investigative records from the Department of Correction's Office of Special Investigations and Intelligence, and interviews with prisoners and with staff.<sup>2</sup> The Office of Special Investigations conducts investigations of allegations of misconduct by correctional staff. It investigated dozens of alleged staff-on-prisoner and prisoner-on-prisoner assaults (both sexual and non-sexual), as well as threats, harassment, and abuse on F Block that were never criminally prosecuted.<sup>3</sup>

Based on this review, we concluded that there is reasonable cause to believe that two distinct groups of vulnerable prisoners were singled out for sexual assault and degrading or violent abuse: (1) sex offenders (2) and gay, transgender, and gender nonconforming prisoners.<sup>4</sup>

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<sup>2</sup> The Allegheny County District Attorney's Office prosecuted the criminal cases. None of the officers involved were convicted on any of the most serious sexual assault charges. However, after jury trials, one officer was found guilty on 3 counts of criminal solicitation, 12 counts of official oppression, 8 counts of simple assault, 3 counts of indecent exposure, and 1 count of terroristic threats, and sentenced to 5 years of probation, and another officer was found guilty of witness intimidation, simple assault, official oppression, and terroristic threats, and sentenced to 12 years of probation and 1 year of house arrest.

<sup>3</sup> The Department of Corrections terminated four officers who were not criminally prosecuted for having participated in the misconduct.

<sup>4</sup> We want to emphasize the importance of not conflating the two distinct groups of prisoners (sex offenders as separate from prisoners who are gay, transgender, or gender nonconforming) targeted on F Block. See, e.g., *Lawrence v. Texas*, 539 U.S. 558, 583-84 (2003) (O'Connor, J., concurring) (noting that gay persons have been unfairly stereotyped as having a propensity to commit sex crimes). Also, when we state that gay or transgender prisoners were targeted, we

These prisoners were sodomized, forced to perform oral sex and other sexual acts, beaten, humiliated, and harassed.

**B. The Department of Corrections' initial response to the allegations of sexual abuse.**

The Office of Special Investigations opened an investigation into the F Block misconduct in November 2010 after receiving a complaint from a prisoner who alleged he had been abused on F Block but was afraid to report anything until he was transferred to another prison. The investigation was ongoing as of the time of our initial tour and has been extensive, involving more than 100 interviews. We commend the Department for pursuing such a thorough internal investigation.

The investigation prompted the Department of Corrections to remove both the offending staff and their managers and to refer certain allegations to the Allegheny County District Attorney's Office. In early 2011, seven officers allegedly involved in the abuse were suspended.<sup>5</sup> In May 2011, the Department of Corrections removed the prison's leadership team and designated a transition team. The transition team remained in place until August 2011, at which time a new, permanent management team was hired to run the prison.

Although the Department of Corrections moved aggressively against those directly involved in the F Block misconduct and those in leadership who had failed to manage the prison, its transition team did less to address the systemic deficiencies that had allowed the abuse to continue for almost two years. The transition team conducted an internal audit of prison operations that produced few specific reforms to correct system failures. The audit focused too heavily on whether staff members were following policies and not enough on the efficacy of those policies. Additionally, the audit failed to ensure that appropriate data was being collected, reviewed, and acted upon.

The transition team developed an inadequate list of reform measures. Many of the reforms were stated with too high a degree of generality to have any meaning. Others – such as reforms concerning the handling of mail or the temperature of prison food – did little to improve prison safety.

After our initial tour in March 2012, we determined that the Department of Corrections needed to do more to: (1) provide proper oversight and accountability; (2) conduct effective investigations into allegations of abuse and misconduct; (3) adequately screen and house high-

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refer to individuals who were targeted because they were *perceived* to be either gay or transgender, regardless of their actual sexual orientation or gender identity.

<sup>5</sup> In March 2012, an arbitrator found that the Department of Corrections had suspended the officers without due process and ordered their return to work with back pay. In October 2012, a seven-judge panel overturned the arbitrator's decision after concluding that the officers had missed the deadline for filing their grievances. In November 2012, several of the officers filed a civil suit against corrections officials claiming due process violations associated with the dismissals and malicious prosecution based on the officials' testimony in the criminal matter. In the complaint, the plaintiffs challenge the prisoners' accusations as baseless and unsubstantiated. This civil suit is currently in arbitration.

risk prisoners; (4) develop systems specifically geared toward combating sexual abuse; (5) provide an adequate grievance system; and (6) monitor prisoner activity and secure areas of the prison.

However, we also concluded that it would be premature to conclude that the Department of Corrections intended to ignore these systemic deficiencies. The Secretary of Corrections and others had shown a genuine interest in reform that predated our investigation. Moreover, at the time of our initial tour, leadership expressed an interest in adopting additional reforms to improve prison conditions. We therefore decided to delay our determination for a short period of time to assess whether the Department of Corrections would fully embrace reforms necessary to permanently and effectively address underlying safety-related systemic deficiencies.

### **C. Recent efforts to address systemic deficiencies.**

In the months since our initial tour, the Department of Corrections has done a great deal to address the systemic deficiencies threatening the safety of prisoners. Though more still needs to be done, the Department is well into developing responsive and meaningful reforms.

Over the past year, the Department of Corrections has aggressively moved ahead to develop and implement reforms to policies and procedures in each of the six systemic areas of concern to us. The reforms – many of which still need to be refined and/or implemented – will greatly improve prisoner safety, not only at the Pittsburgh prison, but also throughout Pennsylvania’s prison system.

Below, we discuss each of the six areas where we initially saw need for further reform, the steps that have been taken to address our concerns, and, in certain instances, our understanding of the reforms the Department of Corrections intends to adopt and/or implement in the coming months.

#### **1. Reforms to oversight and accountability.**

Our initial review revealed problems with oversight and accountability. We identified serious gaps in management’s ability to prevent or detect staff misconduct and to hold staff accountable when misconduct occurred. Specifically, prison leadership failed to: (1) meaningfully follow up on indications of misconduct and, where necessary, hold staff accountable; (2) gather qualitative information through routinely speaking to prisoners and staff; and (3) appropriately aggregate and analyze the information it collects to conduct effective risk assessments.

First, prison managers routinely failed to meaningfully follow up on indications of misconduct and hold staff accountable. For example, during the period of the F Block misconduct, although at least five managers noticed that requests for protective custody or self-lockup were disproportionately coming from F Block, none of them followed up on the matter. By way of another example, while at least two managers were alerted to the high number of unplanned uses of force on F Block, these managers admitted to looking into the issue informally, without documenting what they had learned. Similarly, our review of use of force reviews suggested that supervisors failed to hold staff accountable when engaged in a pattern of misconduct. Since the prison did not track staff disciplinary actions, it also failed to identify officers in need of counseling, additional training, or discipline, *before* a serious event took

place. In 2012, five separate instances occurred where a particular lieutenant led operations involving planned uses of force where lapses of policy occurred. Notwithstanding his poor track record and the requirement that he complete additional training, officials had not identified him as a staff member in need of discipline. We only learned of the problems associated with his performance through piecing together information gleaned from individual use of force reviews.

Second, leadership failed to adequately gather qualitative information through speaking to prisoners and staff. During the F Block misconduct period, supervisors conducted superficial oversight tours of the housing units, consisting of only a few routine questions posed to security staff. If managers had engaged in meaningful inquiries, indicators of problems would have surfaced much earlier.

Even before the F Block misconduct, tensions between managers and staff interfered with management's ability to obtain meaningful qualitative information about prison conditions. A 2008 character profile assessment<sup>6</sup> showed that 62% of staff disagreed or strongly disagreed with the proposition that the administration was concerned for their safety; more than two-thirds of staff did not believe that management had a positive effect on morale in the prison; and nearly 70% of staff did not believe that management communicated well with staff.

Third, we found that prison officials did not adequately aggregate and analyze the information it collects to conduct effective risk assessments. There was no tracking system that would flag anomalies or a process to collect and share information that might serve as a warning that a problem exists. For example, the prison collected information about prisoner fights through the medical incident/injury reports and misconduct reports, but often these reports were kept in a binder and not input into a computer database to be analyzed for patterns. In addition, there was no risk management policy identifying key outcome measures and the methods to collect and analyze those measures.

In the months since we identified the above described problems, the Department of Corrections has started to develop important accountability related reforms. First, they now require weekly managerial visits to include contact with prisoners as well as examinations of unit visibility, safety issues, prisoner programming and staff professionalism. These rounds are now documented with accompanying follow-up tasks such as looking further into an incident by checking for supporting documentation. The documented rounds are also discussed in weekly staff meetings to identify trends or gaps in reporting and corrective action plans are created.

Second, visitors to the Prison are now surveyed to obtain their perspective on prison conditions, including security conditions. This practice provides prison management with another source of information on the experiences of prisoners that comes to them unfiltered by line staff.

Third, Department of Corrections officials have started to develop an early warning system, which will enable them to more effectively track staff misconduct.

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<sup>6</sup> This character profile assessment was an internal assessment surveying staff and prisoners regarding their perception of the culture of the prison.

Fourth, the Department of Corrections recently conducted a management review of the data it collects. It has used that review to inform a newly created Risk Management Procedures Manual. The manual, while still in draft form, outlines new information sources and risk factors for data collection; requires action plans to address high risk areas; creates a risk management committee to track trends quarterly; and sets out a variety of prison inspections, including external audits by the American Correctional Association and a Certified PREA Auditor. The Department is continuing to add to the Manual and to ensure it is consistent with its revised PREA policy.

## **2. Reforms to the way the Department of Corrections investigates allegations of abuse and misconduct.**

Our initial review of documents revealed deficiencies in policies and procedures for formally investigating serious incidents. The policies failed to provide guidance on how to handle potential criminal violations, outline the procedures for working with local law enforcement and preserving evidence, or provide clear direction on which types of allegations should be investigated at the prison level and which should be referred to the Office of Special Investigations.

Other problems included: the absence of a memorandum of understanding between the prison and local law enforcement; poor training for the “Intelligence Captain;” inadequate training on crime scene preservation; a lack of communication between the Intelligence Captain and Office of Special Investigations following a completed investigation of staff; and a failure to consistently interview alleged victims. These problems frequently led to ineffective, disjointed, and incomplete investigations.

After we brought these issues to the Department of Corrections’ attention, its leadership moved quickly to conduct a review of its policies and procedures concerning investigations. The review has already led to a series of reforms. For example, leadership is in the process of developing an investigations checklist and revising policies to provide those charged with conducting or managing investigations with a much clearer roadmap of how to go about investigating any given incident. Another example: the Department has recently entered into a number of agreements with county prosecutors and state police to coordinate criminal investigations. These and other reforms that have been or are in the process of being developed, will significantly improve the ability of corrections officials to effectively investigate misconduct at the Pittsburgh prison and other Pennsylvania prisons.

## **3. Reforms to procedures for intake screening and housing of high risk prisoners.**

When we first toured, we found that inadequate screening and housing placement procedures exposed the new, unclassified prisoners to an unacceptably high risk of abuse. Specifically, we found that new, unclassified prisoners entering the prison were “double celled” (i.e., two prisoners per cell) for days, even though prison officials knew almost nothing about their backgrounds. When these prisoners were eventually screened for risk, the screening failed to appropriately evaluate the prisoners’ risk of predation or victimization.<sup>7</sup> After the initial

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<sup>7</sup> The “Suicide Risk Indicators Checklist” assessed a prisoner’s risk of self-harm with only one question about whether the prisoner has been assaulted by another prisoner in the past and did



screening, prisoners were returned to double cells, again exposing them to an unacceptably high risk of harm. Next, they were transferred to F Block, where they were a potential danger to each other and the general population prisoners housed on the same unit.

In the last few months, the prison has dramatically improved its intake and housing procedures. First, it moved the least-known prisoners – those who are brand new to the prison – to an area of the prison where they can be more closely observed and will have less ability to interact with potential attackers from other areas of the prison. It also moved the medically cleared prisoners awaiting classification to a unit that is more physically removed from general population and exclusively houses these prisoners.

Second, prison officials have improved procedures for obtaining information about new prisoners' backgrounds. Under state law, county jails are obligated to provide background information about prisoners prior to sending them to the prison. The information that jails are obligated to provide includes information pertaining to current criminal charges, prior felony convictions, misconduct narrative reports, gang involvement, medical history, current medications, and previous suicide attempts. In the past, officials in the Pittsburgh prison have failed to ensure that local jails comply with this state law requirement. Now prison officials are insisting on compliance and report that they will refuse prisoners when the local jail has not provided the required information.

The Department of Corrections has also begun to develop procedures and policy changes to improve intake throughout Pennsylvania's prison system. For instance, the Department drafted a PREA Risk Assessment tool, which will be used to identify prisoner vulnerabilities and risk of sexual abusiveness during intake. Officials are now working on implementing the tool by incorporating it into policies, developing a scoring mechanism and manual for how to use it, and providing staff training.

#### **4. Reforms to systems specifically geared toward combating sexual abuse.**

Despite what had happened on F Block, at the time of our initial tour, we found that more needed to be done to reform many of those policies, procedures, and practices directly related to combating sexual abuse.

First, staff required policies and training that provided clearer guidance on how they should respond to and prevent sexual violence. For example, the policies were virtually silent on how staff should address the safety concerns of vulnerable populations, including gender nonconforming prisoners and prisoners perceived to be gay or transgender.

Second, the Department of Corrections had created two new positions responsible for combating sexual abuse – the statewide PREA Coordinator and the prison PREA Compliance Manager – without adequately detailing their duties, training them, and defining their roles within the bureaucracy. We found that at the Pittsburgh prison, the failure to empower the

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not evaluate whether he is vulnerable in the future. The “Diagnostic – Classification Report Reception Checklist” assessed medical issues with only one question about “signs of assaultiveness (verbally abusive, uncooperative, threatening, history of violence)” which may not fully capture whether the prisoner is a predator.

PREA Coordinator had hindered the reform effort. For example, when we toured in March 2012, we found that psychology staff members were unaware of the useful formal recommendations the PREA Coordinator had made the previous year as to how they could improve their responses in cases involving sexual assault.

Third, the prison was not doing enough to educate prisoners about how to prevent, detect, and report sexual abuse. At the time of our December 2012 tour, the prison's education effort consisted of providing prisoners a brochure and showing them an ineffective and poorly produced video on the subject when they first came to the prison.

Since our tours, the Department of Corrections has developed a new PREA policy that addresses a comprehensive set of issues related to sexual abuse. The policy incorporates a "Zero Tolerance" rule against sexual abuse and harassment and includes procedures for vulnerable populations. It also defines the responsibilities of the PREA Coordinator and PREA Compliance Manager, and these roles have been filled by qualified individuals. The policy also identifies mechanisms for reporting and tracking allegations of abuse and sets forth a comprehensive response plan. Finally, the policy outlines a more thorough program for educating prisoners on sexual abuse in prison. In accordance with the policy, prisoners are given a brochure and watch an informative, professionally-produced video. Correctional officials are working on fully implementing the policy, training staff on it, and improving the prisoner orientation program to make it more interactive.

#### **5. Reforms to the grievance system.**

Our initial review of grievance practices at the Pittsburgh prison revealed the following weaknesses. First, not all housing units had clearly-labeled grievance boxes. Second, officials sometimes failed to investigate or follow-up on serious allegations contained in prisoner grievance forms. And third, even when grievances were investigated, officials frequently told prisoners that their grievances had been "denied" because of procedural problems with the way in which the grievance forms had been prepared or submitted. For instance, a prisoner who had filed a grievance in 2011 when an officer had called her<sup>8</sup> "a faggot freak" received a notice that her grievance had been "denied" because she had used more than two pages to write her complaint, in violation of prison rules.

In the months since our initial tour, Department of Corrections officials have made a number of significant improvements to their grievance practices. At the prison, clearly-labeled grievance boxes have been installed on each of the units. Systemwide, important revisions have been made to the grievance policy. For instance, a new the policy now requires staff members to prioritize the investigation of grievances involving allegations of sexual abuse. The policy also states that if a grievance is in violation of prison procedures, the prisoner is to be notified that, despite the violation, the grievance will be referred to the Security office for investigation. In addition, the Department is working on further revising the language of the policy to ensure it does not discourage prisoners from reporting.

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<sup>8</sup> We refer to this prisoner as a "her" because that is how she referred to herself.

## **6. Reforms to the way prison officials at the Pittsburgh prison monitor prisoners and secure areas of the prison.**

Although the 2011 transition team had assessed and sought to improve the safety of the prison's physical plant, when we first toured the prison, we observed that parts of it remained inadequately monitored and/or unsecured. Some areas of the prison were poorly supervised at certain times because of low staffing levels. Other areas needed better camera coverage. Moreover, prisoners and staff could readily access parts of the prison that should have been off limits to them. Specifically, the prison had failed to secure access to its empty fifth tiers even though officer Nicoletti and others had allegedly used the cells on these tiers to engage in misconduct.

In the months since we first toured, Pittsburgh prison officials have done a great deal to improve how they monitor prisoners and secure the prison's physical plant. Prison officials have conducted an assessment of the prison's camera coverage and developed a camera plan to provide coverage where needed. During our September 2013 tour, we observed new cameras installed in hard-to-monitor areas including under stairwells on C, D and F Blocks. The camera plan also modified recording coverage for certain critical areas and identified equipment that will need to be replaced in the near future. Pittsburgh prison officials also constructed a fence to limit access to the prison's empty fifth tiers. Entrance to those tiers is logged now and keys are only available in the prison's central control area. Lastly, Pittsburgh prison officials recently conducted a staffing analysis. Following the recommendations of the analysis, they have submitted to central office a request for additional staffing. Based on the assurances provided us, we expect the request to be approved, and that additional staffing will be provided to increase coverage in a number of areas, including adding officers to monitor the fourth tiers.

## **IV. LEGAL ANALYSIS**

Given our factual determinations, we conclude that there is no basis for finding that security practices currently violate the U.S. Constitution or the laws of the United States. Below we briefly outline the pertinent constitutional and statutory standards and apply them to the facts of our investigation.

### **A. The evidence reviewed does not support a finding of ongoing Eighth Amendment violations.**

The evidence we have reviewed does not establish that practices at the Pittsburgh prison violate the Eighth Amendment. Though conditions have not been fully addressed, we have concluded that the evidence does not establish that prison officials are acting with deliberate indifference to current risks of harm to prisoner safety.

The Eighth Amendment's prohibition against "cruel and unusual punishments" reflects society's "evolving standards of decency," and obligates prisons to protect prisoners from conditions that substantially imperil their safety. *Farmer v. Brennan*, 511 U.S. 825, 833-34 (1970) ("[G]ratuitously allowing the beating or rape of one prisoner by another serves no legitimate penological objective, any more than it squares with evolving standards of decency.") (internal references omitted). The Amendment prohibits prison officials from acting with "deliberate indifference" toward a substantial risk of serious harm to prisoners. *Helling v.*

*McKinney*, 509 U.S. 25, 35 (1993). Prison officials may be found to have acted with deliberate indifference if they ignore known systemic deficiencies that in combination make the Prison unsafe for prisoners. See *Wilson v. Seiter*, 501 U.S. 294, 304 (1991) (“Some conditions of confinement may establish an Eighth Amendment violation in combination . . . when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need,” such as protection from harm.). Prison officials do not satisfy the requirements of the Eighth Amendment when they merely introduce some new safety measures, but ignore numerous other problems that they knew about and failed to address. *Tafoya v. Salazar*, 516 F.3d 912, 918 (10th Cir. 2008) (“A prison official may be liable for a substantial risk of serious harm to inmates in spite of efforts reasonably calculated to reduce the risk, if he intentionally refuses other reasonable alternatives and the dangerous conditions persist.”).

In this case, we have determined that the evidence does not show that corrections officials have shown deliberate indifference to known safety risks. In the past, conditions posed an excessive risk of harm to prisoners, which is why egregious misconduct occurred on F Block for almost two years. However, when officials learned of these dangerous conditions, they moved quickly against those responsible for the misconduct as well as those who had ineffectually managed the prison. Moreover, while the Department of Corrections still has further steps to take to address all of our safety concerns, its willingness to meaningfully confront all of the principal systemic challenges at the Pittsburgh prison is evidence of its genuine concern for prisoner safety.

#### **B. The evidence reviewed does not support a finding of ongoing Equal Protection violations.**

We likewise conclude that the evidence we have reviewed does not show that SCI-P is currently violating the Fourteenth Amendment rights of gay, transgender, and gender nonconforming prisoners. Specifically, the evidence does not show that a pattern or practice of intentional discrimination on the basis of sexual orientation or gender identity is ongoing or likely to recur at the Pittsburgh prison.

The Fourteenth Amendment of the Constitution protects vulnerable prisoners from harm and discriminatory treatment on the basis of their sexual orientation or gender identity.<sup>9</sup> The Fourteenth Amendment’s Equal Protection Clause prohibits officials from engaging in impermissible intentional discrimination. *Glenn v. Brumby*, 663 F.3d 1312, 1315 (11th Cir. 2011) (“The Equal Protection Clause requires the State to treat all persons similarly situated alike or, conversely, to avoid all classifications that are ‘arbitrary or irrational’ and those that reflect ‘a bare . . . desire to harm a politically unpopular group.’” (quoting *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 446-47 (1985))).

The prohibition extends to discrimination based on sexual orientation, gender identity, or gender non-conformance. *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013); see also

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<sup>9</sup> Our discussion below regarding the appropriate constitutional analysis for government action that targets gay and transgender individuals is in no way meant to suggest that there is ever a legitimate justification served when prison officials target any group of people, including convicted sex offenders, for the kind of physical and sexual abuse that took place.

*Carrasca v. Pomeroy*, 313 F.3d 828, 834 (3d Cir. 2002) (involving park rangers who treated a family of Mexican-Americans differently from non-Latino persons when they arrested the Mexican-Americans for swimming after hours). Indeed, discrimination based on sexual orientation warrants heightened scrutiny, based in part on the long history of discrimination against lesbian, gay, and bisexual individuals. Brief for the United States on the Merits Question at 21-22, *Windsor*, 133 S. Ct. 2675 (No. 12-307), 2013 WL 683048; *accord Golinski v. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, 989-90 (N.D. Cal. 2012); *Pedersen v. Office of Pers. Mgmt.*, 881 F. Supp. 2d 294, 318 (D. Conn. 2012).<sup>10</sup> The same factors that warrant heightened scrutiny of discrimination based on sexual orientation are also present with respect to gender identity, including a long history of animus and deeply rooted stereotypes about transgender individuals. See *Glenn*, 663 F.3d 1312, 1319-21 (11th Cir. 2011) (holding that discrimination based on gender identity is a form of sex discrimination and thus subject to heightened scrutiny).

Past conditions at the Pittsburgh prison violated the Amendment's Equal Protection Clause. At the time of the misconduct on F Block, officials did little to prevent discrimination against gay, transgender, and gender nonconforming prisoners. The prison had grossly inadequate policies on how to protect these vulnerable prisoners, and failed to provide its staff with training on the issue. These systemic deficiencies set the stage for the F Block abuses. The evidence we reviewed strongly indicates that staff members intentionally targeted certain prisoners precisely because of their sexual orientation and/or gender identity.

Recent reform efforts give us reason to conclude that conditions at the prison no longer violate the mandates of the Fourteenth Amendment. There are now detailed policies and procedures on how to provide security for gay, transgender, and gender nonconforming prisoners. It has also developed staff trainings concerning how to protect vulnerable prisoners, including gay, transgender, and gender nonconforming prisoners. Additionally, the many other recent security related reforms discussed above, especially those directly relating to compliance with PREA, will ward against future discrimination on the basis of sexual orientation or gender identity at the prison.

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<sup>10</sup> The Supreme Court's recent decision in *Windsor* also suggests that heightened scrutiny applies in cases where a government entity has discriminated against gay, lesbian, or bisexual people, 133 S. Ct. at 2693-94. Under mere rational basis review, a court "ignore[s] the actual legislative history" and instead searches for "any reasonably conceivable state of facts that could provide a rational basis for the classification." *Lofton v. Sec'y of the Dep't of Children & Family Servs.*, 377 F.3d 1275, 1277-78 (11th Cir. 2004) (Birch, J., concurring) (quoting *Heller v. Doe*, 509 U.S. 312, 320 (1993)). Rather than taking this approach in analyzing the Defense of Marriage Act ("DOMA"), however, the *Windsor* Court examined the "history of DOMA's enactment and its own text" to determine that the law's "principal purpose [was] to impose inequality." *Windsor*, 133 S. Ct. at 2693-94. Moreover, in Justice Scalia's dissent, he wrote that "the Court certainly [did] not *apply* anything that resembles that deferential [rational basis] framework." *Id.* at 2706. This strongly suggests that discrimination on the basis of sexual orientation is subject to a higher level of scrutiny than mere rational basis.

### **C. Prison officials are making steady progress toward meeting the Standards under PREA.**

To meet the recently promulgated Standards under PREA, prisons must ensure that they have effective systems in place to protect prisoners from sexual abuse. By making a concerted effort to address the security concerns we have brought to their attention, officials have been making steady progress toward meeting the Standards.

PREA was passed in 2003. 42 U.S.C. § 15601, *et. seq.* On June 20, 2012, the Department of Justice promulgated implementing regulations consisting of the National Standards to Prevent, Detect, and Respond to Rape in the federal register. The Standards became effective with respect to state and local confinement agencies on August 20, 2012. The PREA Standards for adult prisons and jails are codified at 28 C.F.R. §§ 115.5-115.93, and are available at <http://www.prearesourcecenter.org/library>.

The PREA statute provides that states that are unable to make required certifications of compliance with the PREA Standards in a given year risk losing five percent of the Department of Justice's grant funding otherwise provided to the State for "prison purposes" in the following fiscal year. *See* 42 U.S.C. § 15607. Additionally, the Department of Justice is required to publish a list of each state grantee that is not in compliance with the PREA Standards by September 30th of each year. *Id.*

The Standards address many of the systemic deficiencies cited in this letter:

- (1) **Screening and housing:** The Standards require effective screening to identify risk of prisoner sexual victimization and to use that information in housing determinations. 28 C.F.R. §§ 115.41-42. Prisoners at high risk for sexual victimization shall not be placed in involuntary segregated housing *unless* an assessment of all available alternatives has been made. 28 C.F.R. § 115.43.
- (2) **Sexual abuse prevention:** The Standards require that the prison promulgate and educate prisoners about sexual abuse prevention policies and procedures. 28 C.F.R. § 115.33.
- (3) **Grievances and investigations:** The Standards require facilities to provide an adequate mechanism for prisoners to report instances of threatened or actual sexual assault and sexual harassment, 28 C.F.R. § 115.51, and ensure that that allegations are adequately investigated by specially-trained staff, 28 C.F.R. §§ 115.22; 115.34; 115.71.
- (4) **Data collection and response:** The Standards require facilities to conduct a timely analysis and respond to data demonstrating potential problems related to sexual abuse. 28 C.F.R. §§ 115.86-88.
- (5) **PREA Coordinator and PREA Compliance Manager:** The Standards require each agency to designate an upper level PREA Coordinator with sufficient time and authority to implement and oversee compliance with the Standards, and require each prison to designate a PREA Compliance Manager to facilitate the agency's PREA

implementation efforts, 28 C.F.R. § 115.11. The Standards set forth certain enumerated duties for the PREA Coordinator, such as participating in an annual review of each prison's staffing plans. 28 C.F.R. §§ 115.11(b); 115.13(c).

As described in Section III.C. of this letter, the reforms already undertaken by Department of Corrections officials address many of these PREA Standards. Those reforms include creating a PREA Risk Assessment screening tool, improving policies and training for educating prisoners on sexual abuse, revising grievance and investigation policies, creating policies on data collection and risk management, and defining the responsibilities of the PREA Coordinator and PREA Compliance Manager. Because of their continued reforms, we conclude that the Department of Corrections is making substantial progress towards aligning itself with these Standards.

The Department has assured us that conditions at the prison will fully meet the PREA standards by no later than December 1, 2014. It intends to make good on this commitment by having the prison audited by a PREA certified auditor by no later than May 1, 2014.

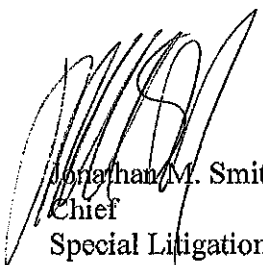
#### V. CONCLUSION

The significant progress that the Department of Corrections has made since our initial tour as well as their commitment to sustaining the current reforms has led us to conclude that there is insufficient evidence to find a pattern or practice of violations under CRIPA. While implementation has not occurred in some areas, we are convinced that leadership and staff will complete what they have set out to do, which is to ensure that they comply with federal law by providing prisoners with a secure environment.


Corrections leadership has informed us that they will ensure that the Pittsburgh prison meets the PREA Standards by no later than December 1, 2014. To achieve this goal, they have committed to rapidly finalizing and implementing the many reforms currently in development and to having the prison audited by a PREA auditor prior to May 1, 2014.

We would like to thank Secretary of Corrections John Wetzel and his staff for their cooperation with our investigation. For any questions about this letter, please contact Jonathan M. Smith, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-5393. Please note that this letter is a public document, and will be posted on the Civil Rights Division's website.

Sincerely,



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