

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, )  
 )  
 PLAINTIFF, )  
 )  
 v. )  
 )  
 ERIE COUNTY, NEW YORK; )  
 CHRIS COLLINS, COUNTY EXECUTIVE; ) Civil No. \_\_\_\_\_  
 ANTHONY BILLITTIER, IV, MD, COUNTY )  
 HEALTH COMMISSIONER; )  
 TIMOTHY B. HOWARD, ERIE COUNTY )  
 SHERIFF; RICHARD T. DONOVAN, )  
 ERIE COUNTY UNDERSHERIFF; )  
 ROBERT KOCH, SUPERINTENDENT, )  
 ADMINISTRATIVE SERVICES DIVISION, )  
 JAIL MANAGEMENT DIVISION; )  
 BARBARA LEARY, FIRST DEPUTY )  
 SUPERINTENDENT FOR ERIE COUNTY )  
 HOLDING CENTER; DONALD LIVINGSTON, )  
 FIRST DEPUTY SUPERINTENDENT FOR )  
 ERIE COUNTY CORRECTIONAL FACILITY, )  
 )  
 DEFENDANTS. )

**COMPLAINT**

PLAINTIFF, THE UNITED STATES OF AMERICA ("Plaintiff"),  
by its undersigned attorneys, hereby alleges upon  
information and belief:

1. The Attorney General files this Complaint on behalf  
of the United States of America pursuant to the Civil Rights  
of Institutionalized Persons Act of 1980, 42 U.S.C. § 1997,

to enjoin the named Defendants from depriving persons incarcerated at the Erie County Holding Center ("ECHC") in Buffalo, New York, and the Erie County Correctional Facility ("ECCF") in Alden, New York, of rights, privileges, or immunities secured and protected by the Constitution of the United States.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action under 28 U.S.C. § 1345.

3. The United States is authorized to initiate this action pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all pre-filing requirements specified in 42 U.S.C. § 1997b have been met. The Certificate of the Attorney General is appended to this Complaint as Attachment A and is incorporated herein.

5. Venue in the United States District Court for the Western District of New York is proper pursuant to 28 U.S.C. § 1391.

**DEFENDANTS**

6. Defendant ERIE COUNTY (the "County") is a governmental subdivision created under the laws of the State of New York. The Erie County Sheriff's Office is a division

of the Erie County government. The County owns and operates ECHC and ECCF. This action concerns the administration of persons confined at ECHC and ECCF, which house pre- and post-trial detainees.

7. Defendant ERIE COUNTY is the entity charged by the laws of the State of New York with authority to maintain ECHC and ECCF and is responsible for the conditions of confinement and health and safety of persons incarcerated at ECHC and ECCF.

8. Defendant CHRIS COLLINS is the County Executive and serves as the chief administrator of the County government. County Executive COLLINS is sued in his official capacity.

9. Defendant ANTHONY BILLITTIER, IV, MD, is the County Health Commissioner and is responsible for the daily oversight of health care employees at ECHC and ECCF. County Health Commissioner BILLITTIER is sued in his official capacity.

10. Defendant TIMOTHY B. HOWARD is the Sheriff of Erie County and is responsible for the day-to-day operations of ECHC and ECCF. In his official capacity as Sheriff, he has the custody, control, and charge of ECHC and ECCF and the inmates confined within. Sheriff HOWARD is sued in his official capacity.

11. Defendant RICHARD T. DONOVAN is the Undersheriff of Erie County and is responsible for the day-to-day operations of ECHC and ECCF. In his official capacity as Undersheriff, he has the custody, control, and charge of ECHC and ECCF and the inmates confined within. Undersheriff DONOVAN is sued in his official capacity.

12. Defendant ROBERT KOCH is the Superintendent of ECHC and ECCF and is responsible for the Administration, Security, and Programs of both facilities. In his official capacity as Superintendent, he has the custody, control, and charge of ECHC and ECCF and the inmates confined within. Superintendent KOCH is sued in his official capacity.

13. Defendant BARBARA LEARY is the First Deputy Superintendent of the Jail Management Division of Erie County and is responsible for the day-to-day operations of ECHC. In her official capacity as First Deputy Superintendent, she has the custody, control, and charge of ECHC and the ECHC overflow annex located at ECCF and the inmates confined within. First Deputy Superintendent LEARY is sued in her official capacity.

14. Defendant DONALD LIVINGSTON is the First Deputy Superintendent of the Jail Management Division of Erie County and is responsible for the day-to-day operations of

ECCF. In his official capacity as First Deputy Superintendent, he has the custody, control, and charge of ECCF and the inmates confined within. First Deputy Superintendent LIVINGSTON is sued in his official capacity.

15. Defendants are legally responsible, in whole or in part, for the operation and conditions of ECHC and ECCF, and for the health and safety of persons incarcerated in ECHC and ECCF.

16. At all relevant times, the Defendants or their predecessors in office have acted or failed to act, as alleged herein, under color of state law.

#### **FACTUAL ALLEGATIONS**

17. ECHC and ECCF are institutions within the meaning of 42 U.S.C. § 1997(1).

18. Persons confined to ECHC are pre-trial detainees.

19. Persons confined to ECCF are sentenced inmates, with the exception of pre-trial detainees who are held in the ECHC overflow annex located at ECCF.

20. Defendants have repeatedly and consistently disregarded known or serious risks of harm to inmates at ECHC and ECCF, as detailed in the letter issued by Acting Assistant Attorney General Loretta King on July 15, 2009, detailing the investigative findings of conditions at ECHC

and ECCF ("Findings Letter"). The Findings Letter is appended to this Complaint as Attachment B and is incorporated by reference herein.

21. Defendants have repeatedly failed to take reasonable measures to prevent staff from inflicting serious harm on inmates, even in the face of the obvious and substantial risk that staff will inflict such harm and the multiple occasions in which ECHC and ECCF staff in fact have inflicted such harm. These failures have manifested themselves in the following respects, among others outlined in the Findings Letter:

- a. inadequate protection from staff abuse, including failing to adequately investigate allegations of excessive use of force, notwithstanding multiple occasions on which staff have used excessive force on inmates; and
- b. inadequate protection from harm and serious risk of harm caused by sexually abusive behavior between staff and inmates at ECHC and ECCF.

These failures continue.

22. Defendants have repeatedly failed to take reasonable measures to protect inmates against the serious harm inflicted on them by other inmates, even in the face of the obvious and substantial risk that inmates will inflict such harm and the multiple occasions in which ECHC and ECCF inmates have in fact inflicted such harm. These failures have manifested themselves in the following respects, among others outlined in the Findings Letter:

- a. inadequate protection from inmate-on-inmate abuse, including failing to protect vulnerable inmates from harm, such as those who are at risk of harm from other inmates;
- b. inadequate protection from harm and serious risk of harm caused by a failure to protect inmates vulnerable to sexual abuse by other inmates at ECHC and ECCF; and
- c. failure to implement an inmate classification system that adequately assesses the risk factors for inmate-on-inmate violence.

These failures continue.

23. Defendants have, in the following specific respects, among others outlined in the Findings Letter, repeatedly failed to provide adequate mental health and

medical treatment and services to inmates with serious mental health and medical needs that are known or obvious:

- a. inadequate suicide prevention (including the placement of suicidal inmates in cells that contain multiple means for committing suicide) and inadequate mental health care resulting multiple suicides and attempted suicides between 2007 and 2008, as well as multiple episodes of suicidal ideation and self-injurious behavior;
- b. inadequate management of medical services and treatment;
- c. inadequate administration of medication, including controlled dangerous substances, resulting from nursing staff being untrained in critical areas of security, accountability, and common side effects of medications; and
- d. inadequate infection control, including failing to test timely for Tuberculosis and/or supervise at ECHC and failing to adequately treat, contain, and manage



infectious diseases such as Methicillin-resistant *Staphylococcus aureus*.

These failures continue.

24. Defendants have pervasively maintained a physical environment at ECHC that poses an unreasonable risk of serious harm to inmates' health and safety by failing to correct facility maintenance problems that pose a risk of harm to the safety of inmates and staff within the facility and its exterior as outlined in the Findings Letter. Defendants have continued to maintain such an environment notwithstanding these known or obvious risks.

25. The factual allegations set forth in paragraphs 17 through 24 and outlined in the Findings Letter have been obvious and known to Defendants for a substantial period of time, yet Defendants have failed to adequately address the conditions described.

26. The factual allegations set forth in paragraphs 17 through 24 and outlined in the Findings Letter are supported by the findings made by several other entities tasked with reviewing ECHC and ECCF, including the New York State Commission of Correction and the National Commission on Correctional Health Care.

**VIOLATIONS ALLEGED**

27. The United States incorporates by reference the allegations set forth in paragraphs 1 through 26 as fully set forth herein.

28. Through the acts and omissions alleged in paragraphs 17 through 24 and outlined in the Findings Letter, Defendants have exhibited deliberate indifference to the health and safety of ECHC and ECCF inmates, in violation of the rights, privileges, or immunities of those inmates as secured or protected by the Constitution of the United States. U.S. Const. amend. VIII, XIV.

29. Unless restrained by this Court, Defendants will continue to engage in the acts and omissions set forth in paragraphs 17 through 24 and outlined in the Findings Letter that deprive persons confined in ECHC and ECCF privileges or immunities secured or protected by the Constitution of the United States.

**PRAYER FOR RELIEF**

30. The Attorney General is authorized under 42 U.S.C. § 1997 to seek equitable and declaratory relief.

WHEREFORE, the United States prays that this Court enter an order:

a. declaring that the acts, omissions, and practices of Defendants set forth in paragraphs 17 through 24 above and outlined in the Findings Letter deprive inmates confined at ECHC and ECCF of rights, privileges, or immunities secured or protected by the Constitution of the United States;

b. permanently enjoining Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, omissions, and practices set forth in paragraphs 17 through 24 above and outlined in the Findings Letter and requiring Defendants to take such actions as will ensure lawful conditions of confinement are afforded to inmates at ECHC and ECCF; and

c. granting such other and further equitable relief as it may deem just and proper.

Respectfully submitted,

*s/ Eric H. Holder, Jr.*

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Attorney General of the  
United States

*s/ Kathleen M. Mehlretter*

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