

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

UNITED STATES OF AMERICA,

Plaintiff;

No. 94-CV-2080 (CCC)

v.

COMMONWEALTH OF PUERTO RICO, et
al.,

Defendants.

**MONITOR'S INTERIM STATUS REPORT REGARDING
CLOSURE OF CDTS HUMACAO AND REQUEST FOR EXPEDITED STATUS
CONFERENCE**

Comes now the Monitor, and hereby submits this Status Report regarding the impending closure of CDTS Humacao by the Department of Corrections. Because of the expedited plan for closure, and concerns raised by the Monitor, as well as by the U.S. Department of Justice, such information is submitted to this Court as an interim report, and prior to the filing of the Fourth Annual Report.

The Monitor was advised for the first time on November 8, 2018 of the possible closure of CDTS Humacao, Puerto Rico's only pre-trial juvenile detention facility, and asked to be advised of any plans for such closure or other movement of youth. Plans submitted to the Puerto Rico Fiscal Oversight and Management Board in September of 2018, as discussed in the Monitor's Third Quarterly Report, identified the possibility of privatization of facilities in 2019, and further downsizing of population as a necessary cost savings to comport with the expectation of reducing the Department of Corrections

and Rehabilitation juvenile programs from approximately 40 million to 19 million dollars annually by 2022.

During a site visit for some of the members of the Monitoring team in the first week of December, it was revealed that CDTS Humacao would close by the end of December, 2018, and that the remaining youth would be split between CTS Ponce and CTS Villalba. The Monitor requested a briefing on with NIJ counsel and Director Raul Cepeda, which was held on December 5. Little detail was provided at that time about the logistics of such a move, resulting in a detailed letter being sent by the Office of the Monitor the following week to Secretary Erik Rolon. The letter (Attachment A) described numerous concerns relative to the expedited nature of the move, including problems with physical plant at the remaining two facilities, lack of adequate space needed to comply with NIJ's classification system, concerns relative to security staff availability, educators and classroom space, and the availability of mental health, social workers, and other providers necessary with the increased population. In short, the Monitor has raised serious concerns regarding the safety of youth as a result of this move, and setbacks on compliance issues in a number of areas.

A call with the Monitor and several of her experts, in response to concerns related to the letter of December 13th, and in response to information learned on the 13th that several youth held as Sumariados were being moved on Sunday the 16th to Ponce. On December 14th, NIJ counsel confirmed that 9 youth currently held in Humacao in two modules would be moved to one module at Ponce on the 16th, and that the facility would close by January 15th.

A subsequent call was held with Secretary Rolon on December 17 relative to the concerns of the Monitor and her team of experts. The Monitor has requested that there be no further movement of youth until such time a detailed plan can be submitted to assure that youth safety is maintained, and that physical plant concerns have been addressed, programming is in place, and adequate staffing and classification concerns have been addressed.

The response by NIJ has been disheartening. Staff at Humacao received little to no notice regarding the closure and have not been part of ensuring a smooth transition by being involved in the planning. Within hours of moving nine (9) Sumariado youth to Ponce, one youth was assaulted with a sharp object, resulting in hospitalization and seven stitches in his forehead. Repairs to malfunctioning air conditioning units, leaky roofs and roof duct problems which have disabled critical space at Ponce and Villalba have not been made. More youth were expected to be moved during the week of Christmas to Villalba and Ponce.

While on paper the remaining two NIJ facilities can accommodate 240 youth as its rated capacity, such numbers do not adequately reflect space needs dictated by NIJ policies on classification, status or other considerations. NIJ was utilizing 20 of the 24 modules within the 3 facilities to comply with its required classification system. Even with 20 units, the use of protective custody and/or "transitional measures" has continued, and has resulted in youth being isolated in other areas, often to be kept safe from other aggressive youth within those 20 modules. NIJ now proposed to use only 16 modules in two facilities. Even assuming all were in working order with air conditioning and roof repairs, which is not the case, the reduction in modules stretches the

classification system to the breaking point, and leaves no room for necessary separation of youth for other reasons.

In an email sent to DCR counsel on Wednesday, December 19th, the Monitor requested copies of the following information prior to moving additional youth to Humacao. The purpose of these request was to ensure that adequate measures were in place to accommodate the additional youth safely in the remaining facilities at Ponce and Villalba, and ensure that adequate planning for physical space and programming were in order.

Physical Plant Issues:

1. Identification of the problems and the recommendations for the repairs in the specific locations at Villalba and Ponce concerning leaking roof, air conditioning units, and problems with ducts. As of last week, Curtiss Pulitzer indicated that there were at least 11 AC units that were not operating in day rooms and sleeping rooms. (there are additional units that were out of service such as in counseling spaces).
2. The schedule for repair and operationalization of the repaired AC units at both facilities and proof that such work has been adequately done.
3. The schedule for construction and completion date to create a proper detention receiving area at Ponce (similar to what was created for Humacao) if that is to become the central receiving point for detention kids
4. The schedule and completion date to repair the gyms and any leaking roofs within classrooms at Villalba and Ponce, as well as evidence of the work upon completion.

Mental Health Services:

1. Documentation of how you will maintain the programming at PUERTAS.
2. Documentation as to mental health staffing by site, discipline, hours and days of the week.

Staffing and Classification:

1. Weekly staff youth ratio forms through total facility closure, as well as Ponce and Villalba module classification assignments.
2. Documentation regarding the most current versions of the staffing workbook, including UOF, TM and PC, including for Humacao until all youth are out

Education, including Special Education:

1. Please provide a list of all education staff for Ponce and Villalba currently, including any vacancies, and a plan for the number of new educational staff needed for the additional population from Humacao, including special education teachers, and how these new staff will be determined by January 15.
2. Please include a plan for how the existing or proposed new classrooms at Ponce and Villalba will accommodate youth starting in January after break, including the provision of a full school day for youth who are in TM or PC status.

Incident Reports:

1. Please provide the incident report and accompanying documentation, including the 284 investigation report concerning the incident between Sumariados which occurred during or around the time of the move last Sunday, December 16 resulting in hospitalization and stitches to the forehead of one of the youth.
2. Provide all other notices of 284 investigations - levels 1 and 2, within 24 hours after they are prepared during the remaining month of December and throughout January.

Please also provide documentation used to support the determination of a \$680/day per diem rate provided to the Fiscal Management and Oversight Board, and the budget and/or audit upon which this number is based.

Please also provide a copy of the projected budget for 2019-2020 as provided to the legislature for NIJ operations.

If an RFP has been prepared, please also send us a copy of that RFP for girls, or any other segment of the population which you intend to privatize.

The United States Department of Justice, on December 20th, echoed concerns raised by the Monitor in a separate letter sent to DCR counsel Ms. Arlene Perez Borrero, noting several provisions of the Settlement Agreement and Consent Decree which may be compromised by the quick movement of youth out of Humacao. That letter also requested additional information about the move relative to physical plant, mental health services, staffing, education, and restrictive placements.

To date, little information has been provided to the Monitor relative to the move, and what has been provided is largely without sufficient detail to address the concerns raised. Information provided on education scheduling for Villalba and Ponce, for example, clearly indicates that some youth will not receive an adequate number of hours of education programming. For most youth, the school day appears to be cut short an hour from the prior schedule, with an hour of professional planning taking up the last hour of the day. Only one hour of education programming is scheduled for youth in Transitional Measures for core classes. To accommodate mental health programming, NIJ provided only a letter from its provider Professional Consulting Psychoeducational Services (PCPS) indicating they are “doing the steps necessary to give continuity to mental health services with the new correctional composition.” There were no details provided as to how relocation of existing resources or recruitment of new resources would be done.

Similarly, an inspection was done on December 17th by a company being considered for physical plant repairs. A verbal report by counsel indicated that they did not believe that most of the air conditioning units were malfunctioning, but rather that ducts needed repair instead, which was easier and less expensive. No written report

has been provided to the Monitor's office to identify the company, the analysis they did, and the work orders. The verbal information received is contradictory to what has been identified previously by DCR physical plant staff, as well as the Monitor's expert on physical plant issues.

The safety and security of youth in the care of NIJ remains of paramount concern to the Monitor and her team. The Monitor has requested that further movement of youth from Humacao to the remaining facilities be delayed until such time NIJ can provide adequate documentation that compliance on remaining claims will not be adversely impacted, including the provision of required services, and adequate staffing and physical plant issues are addressed.

A status conference was requested by the Monitor for a date in late February at which time a more complete report on compliance can be made. However, concerns raised in this Status Report provide sufficient urgency such that an earlier Status Conference is hereby requested by teleconference at the convenience of the Court.

WHEREFORE, the Monitor respectfully requests this Court schedule an expedited Status Conference to address the issues raised in the report regarding the closure of Humacao to ensure that adequate measures are in place to address compliance concerns, particularly in light of safety and security issues. The United States Department of Justice has indicated that it supports the request for a Status Conference as well.

RESPECTFULLY SUBMITTED, this 31th day of December, 2018.

s/ Kim Tandy
Kim Tandy, Federal Monitor
Office of the Monitor, U.S. v. Commonwealth of Puerto Rico
SPEHCE, VIG Tower 1225
Avidena Ponce de Leon, 8th Floor, Office #31
San Juan, Puerto Rico 00907
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to all attorneys of record.

s/ Kim Tandy
Kim Tandy, Federal Monitor
Office of the Monitor

Kim Tandy, Office of the Monitor

SPEHCE, VIG Tower 1225, Avidena Ponce de Leon, 8th floor, Office #31, San Juan, Puerto Rico 00907

December 13, 2018

Secretary Rolon
Department of Corrections and Rehabilitation
Urb Tres Monjita Ind Park
San Juan, PR 00919

Dear Secretary Rolon:

Thank you in advance for agreeing to speak with me next Monday, December 17 about the potential closing of Humacao and plans moving forward for privatization. Given some of the recent progress we have been making toward compliance with the Settlement Agreement in *USA v. Commonwealth of Puerto Rico*, it is my hope, and I'm sure yours as well, that we ensure compliance is not hampered, nor youth harmed in any way as a result of either action.

At a briefing last week by Raul Cepeda, I learned that Humacao may close as soon as December 31, 2018 (or soon thereafter), and that plans were being made to draft and release a request for proposal to privatize the remaining facilities in 2019. This letter is intended to provide comments regarding potential harm to youth and the impact on compliance which may come with either decision. It is also intended to raise questions of an urgent nature that we believe should be addressed prior to moving ahead on either plan.

Humacao Closure:

The concerns about the closure of Humacao are significant and are identified below in terms of protection from harm categories, including classification, staffing, use of force and TM/PC measures, as well as social work, mental health, and education. In addition, the fact that such information has not been shared with staff – at least as of the time of our briefing last week – yet is widely rumored, indicates that they have not been an integral part of ensuring that the move can be made in a way which minimizes disruption to staff, youth and families. This is of particular concern given that the facility serves as the island's only pre-trial detention center, and is necessarily engaged closely with law enforcement, courts, probation and other stakeholders.

Classification and Youth Safety:

The potential closure of Humacao would limit NIJ to two facilities with a total of 16 housing modules and two admission areas, and restrict the flexibility in managing the existing population and thus maintaining the integrity of the NIJ classification process. The current classification anticipates:

- 1) mental health modules (2);
- 2) girl's modules (2): committed and detention
- 3) committed youth evaluation module (1):
- 4) male detention level modules (4): intake, low, moderate, federal
- 5) Sumariados modules (2);
- 6) committed classification levels (4): Level 2 , Level 3, Level 4 and Level 5.

Currently, NIJ's present modules for detention, evaluation, Sumariados, girls committed and detention, and Puertas require a minimum of ten housing units. CTS Villalba is housing two classification levels in six housing modules. CTS Ponce is housing two male classification levels in four housing modules. This means 20 modules are current being utilized between the 3 facilities.

Although some classification modules could be consolidated to maximize module bed capacity of 15 and a youth population volume of 15 even with the minimum staff youth ratio being maintained, this will likely create unique and challenging youth safety and behavior management dynamics that do not presently exist. Increasing module populations will likely negatively impact youth and staff safety, increasing the need for protective custody and transitional measure events. Negative youth group dynamics, youth group intimidation, and group youth assaults and violence can be expected. The present facility population and level management distribution and practices have greatly contributed to the reduction in protective custody and transitional measure events and minimum staffing ratio compliance. Youth at risk for violence will likely require more protective custody events, which will have a significant and immediate impact on safety. Recently, as a result of incentivized resignations, there has been a deterioration of meeting minimum staff youth ratios.

Although the present total population would appear to fit within two facilities based on the facility capacity, aside from the negative impact to the module milieu and youth capacity to cohabitate, it leaves NIJ no flexibility for managing sub-classifications, special populations (TM and PC), nor facility module maintenance and repairs, and would require all housing modules and programming spaces be fully operational 100% of the time. That has not historically been the case.

Staffing and Youth Safety:

As has occurred with previous facility closures and staff and population reassignment, there is a period of instability and storming as the facilities adjust to the new classification configurations and staff and youth composition. Housing modules with youth populations between 12 and 15 youth will consistently require a minimum of two staff for both the first and second shifts.

With the influx of recent and anticipated resignations, fiscal restraints on overtime for double shifting, the projection of meeting minimum requirements for staff youth ratios seems unlikely. Additionally, meeting the minimum staff youth ratio of two staff for a housing module of a large youth population may not be adequate to assure youth safety.

With a CD Humacao closure, reconfigured facility Master Rosters at both CTS Ponce and CTS Villalba will be essential and immediate. In light of the geographic distance and residency of CD

Humacao staff, the proposed closure of CD Humacao cannot be expected to provide an infusion of direct care staff to CTS Ponce and CTS Villalba. As in previous closures, the reassignment of staff from the closed facility to the open facilities is a process that is not assured as to whether staff will accept the assignments. At the same time the two facilities require an influx of direct care staff and professional staff to meet the staffing, programming and service requirements of the Settlement Agreement.

The reconfiguration of youth populations will initiate new dynamics in the facilities and housing modules. Managing youth "leaders" and maintaining safe and secure environments would require strong and persistent staff leadership and a level of direct care staff active behavior management skills and practice that does not consistently exist at this time in NIJ facilities. Consequently, not only a facility closure, but the staff training, skill development and programming development to manage a reduced but significantly more challenging youth population would be a crucial component for successful implementation.

Based on what the Monitor is aware of in regards to classification, youth population, special populations, protection from harm and facility operations, there is a significant risk to youth safety in moving forward with a facility closure at this time and without significant preparation and planning. If there are agency youth population projections that would indicate that agency population will continue to decrease along with the creation of less secure alternatives to detention and lower level committed custody populations, a facility closure might be feasible at a yet some time in the future and yet to be established predetermined agency population.

Use of Force/Restrictive placements in Transitional Measures and Protective Custody

The closure of Humacao would likely mean personnel changes at Villalba and Ponce with an influx of Humacao employees. Staff morale is expected to be low as people find themselves working hours away from home or in facilities other than where they have spent much of their careers. Without a well-planned transition process there will be significant changes to the "culture" of the facilities with a new mix of employees, supervisors and facility leadership.

The disruption can also be very stressful for youth, and may affect their programming, relationships with staff, and other aspects of their incarceration. With movement of youth at this scale, there will also be struggles for leadership within the modules. With fewer housing options available to integrate youth into general population, it is likely to increase the number of youth in transitional measures and protective custody. An increase in youth behavior issues as a result of the transition may also result in an increase in the use of force.

Physical Plant

Given the analysis above regarding classification, the lack of flexibility for housing placement in only two facilities will necessitate thorough and effective maintenance throughout so there are no physical plant disruptions (i.e. A/C, roofing or plumbing issues) This includes not only housing units, but other areas which have remained in need of repair, including classrooms and gymnasiums.

As noted in the Monitor's Third Quarterly Report, funding and resources have been insufficient to address physical plant issues in all 3 facilities, including leaking roofs, mold from water

damage, and inoperable or defective air conditioning units. In spite of the best efforts of staff to make repairs, the Monitor's office has not been apprised that such repairs have been adequately completed in anticipation of such move. As of the writing of this letter there were three housing units at Ponce and five housing units at Villalba that had some rooms with inoperable air-conditioning. Furthermore, the ability to close a housing unit for routine maintenance, make plumbing repairs, and/or to paint will become nearly impossible without jeopardizing proper classification procedures by mixing non-compatible populations who must vacate their living unit and move to another unit. Last, Humacao recently renovated their admissions area to provide a proper receiving area for new juvenile detainees. Neither Ponce nor Villalba presently have a similar setup.

Mental Health, Social Work and Education

Services must continue for youth who are moved from Humacao to either Ponce or Villalba, including mental health, social work and education. These services are integral to treatment and rehabilitation of youth in the facilities, but mandated by the Settlement Agreement and Consent Order.

Planning for the increase of youth at Ponce and Villalba must include how the influx of youth will be absorbed by these facilities for the provision of mental health, education and social work services. It is likely not practical to plan for existing staff from Humacao to transfer to new positions at Ponce or Villalba in these service areas. Whether new social workers, teachers and mental health providers are available by the targeted date has not been indicated. Whether new teachers are available midyear at these facilities is questionable. Compliance regarding education staffing, including special education teachers, could be significantly impacted, particularly in light of the traditionally higher number of youth with special education status at Humacao.

It is imperative to ensure that adequate classroom space is also available between Villalba and Ponce since committed and detained youth have different educational needs which must be met simultaneously during the school year. A schedule will need to be developed to ensure that the current facilities can properly provide educational classrooms for the additional youth given their classification.

PCPS must also have sufficient mental health providers in Ponce and Villalba to accommodate an expected increase from Humacao youth. Staff turnover at PCPS has been a concern noted by the Monitor in prior reports. Adding additional youth without assuring that sufficient mental health staff are available in both facilities will effect compliance ratings in a number of areas, including recent achievements in treatment planning and behavior modification.

Preparing staff, youth and parents for a facility closure, reassignment of youth classifications to different facilities, reassessment of Master Rosters, assuring the educational, programming and treatment needs to youth are being provided at expected levels requires a well thought out transition plan, training, and preparation that does not appear present at this time, or has not been provided to me or my consultants and staff. To move forward with the closure at this time, absent such a plan, will no doubt significantly impact the status of compliance, but more importantly places the agency at great risk of jeopardizing its duty to protect youth from harm.

Privatization of existing facilities:

The privatization of correctional facilities in Puerto Rico has historically had mixed results, both for youth and adults. The Monitor's office would like to better understand the rationale for why such measures are being considered, and the hoped for results for privatization. Privatization of services for all or any part of the plaintiff class will necessitate the Office of the Monitor working with a new provider to ensure that the remaining compliance issues are being met by that provider. Privatization of services using the same facilities, if Humacao is closed, will add yet another layer of disruption to what will likely be a challenging situation absent addressing the above concerns sufficiently.

I am encouraged by the continued drop in the population of youth in the NIJ system. Further analysis should be done to determine why this has occurred and whether present circumstances are likely to continue to support this lower number, or a number even lower, on a consistent basis. Efforts to further reduce the population of youth in NIJ facilities in a way which does not impact public safety is certainly encouraged, including early release initiatives, increased diversion efforts, and less restrictive community based alternatives where youth remain close to family, schools and community services. There are many examples from states which have achieved excellent results in keeping their population of detained youth low. Such efforts may be a more important first step before determining needed closures or privatization of services. They also require the cooperation and collaboration with courts and other stakeholder groups and agreement on common goals and purpose for the changes.

I am requesting that DCR provide to the Monitor's office any plans for the closure of Humacao, including targeted dates, transitional plans for youth and staff, notices to juvenile courts, attorneys and other stakeholder groups with responsibility for youth being held at Humacao. In addition, we would like to see revised Master Rosters, agreements with PCPS and the Department of Education relative to provision of adequate staffing and services, physical plant repairs which address current deficiencies at Villalba and Ponce, a plan for adequate classroom space for the detention population and any other considerations which are being made to keep youth safe and to avoid any significant disruption which would adversely impact compliance issues.

We would also like to be apprised of DCR's efforts for further population reduction, and any efforts being made to privatize part of all of the existing services for youth. I am hopeful that on Monday we can have a discussion about the intentions of DCR moving forward with this plan, and the outcomes you hope to achieve.

Thank you again in advance for your willingness to communicate with my office, and to continue to examine ways to best serve youth who are committed to the care of NIJ, and as required within the provisions of the Settlement Agreement. I am optimistic that we can work jointly to ensure that youth are protected and well served while accomplishing the goals set out by DCR.

Best regards

A handwritten signature in blue ink that reads "Kim Tandy". The signature is fluid and cursive, with a large loop at the end of the last name.

Kim Tandy
Federal Monitor

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Kimtandy@justicebydesign.net