

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

UNITED STATES OF AMERICA,

Plaintiff

v.

COMMONWEALTH OF PUERTO RICO, et al.,

Defendants.

No. 94-CV-2080 (CCC)

**MONITOR'S SECOND INTERIM REPORT ON THE
CLOSURE OF HUMACAO**

Comes now the Monitor, and respectfully submits the following for consideration by the Court:

1) On December 31, 2018 the Monitor filed an Interim Status Report Regarding the Closure of CDTS Humacao and Request for Expedited Status Conference as a result of the impending closure of the Humacao facility. (ECF No. 1360)

2) The Interim Status Report raised numerous concerns and questions 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.

3) The Report raised serious concerns regarding the safety of youth as a result of this move, and setbacks on compliance issues in a number of areas, and sought the assistance of the Court through a Status Conference to address these issues and to ensure that adequate measures are in place to address compliance concerns, particularly in light of safety and security issues.

4) On February 28, 2019 the Court held an in-chambers status conference, and as a result, ordered the Commonwealth to provide, by March 15th, a deadline date for 1) the installation of cameras in CTS Villalba, and 2) the date by which the Commonwealth would complete mold eradication from ceilings in living units, as well as repairs to leaky roofs and nonfunctioning air conditioning units in CTS Ponce and CTS Villalba.

5) The Commonwealth filed its Informative Motion and in Compliance with Order on March 15 relative to both issues.

6) This Second Interim Report addresses the response of the Commonwealth and further questions raised as a result, and provides updated information about the initial concerns raised by the Monitor in her December 31, 2019 Interim Report as follows:

A) Physical Plant Issues

The consolidation of youth from three facilities to two has raised concerns regarding physical plant issues which minimize the use of much needed space at Ponce and Villalba, and/or which pose a health or safety risk to residents. To be clear, the Monitor does not wish to re-open provisions of the Settlement Agreement previously terminated, and respects the position of the Commonwealth on this issue. However, to the extent physical plant issues impede the necessary resources to comply with classification policies, necessary classroom space, programming, services or sufficient room to separate youth as needed, these aspects of the Settlement Agreement remain non-compliant, or at risk for being non-compliant.

The Commonwealth's CTS Facilities Status Report describes completed work in both facilities by unit. Assuming that the classification of "functional" indicates that there are no remaining issues with mold, air conditioners or roof leaks, the Report notes remaining work to be done in Villalba in Unit A-2 in rooms left down side, and rooms left upper side; leakage in 2

rooms in Unit B-1 left upper side; and leakage in Unit C-1 in rooms left upper side. A list of outstanding improvements include air conditioning units which are in requisition process, partial roof sealant work, and interior room and door painting.

Some classroom space at Villalba has been repaired, including new air conditioning units in at least 2 classrooms, air conditioning repairs, and roof sealant. Outstanding roof sealant work remains in areas including the infirmary and chapel, gym and court office spaces.

At Ponce, improvements completed include replacement and/or repair of some non-functioning air conditioning units, and plumbing and water heater issues. Numerous improvements are outstanding, including air conditioning ductwork and cleaning, repairs to roof leaks, replacement of several air conditioning units, and interior and door painting.

The school area in Ponce also remains in need of multiple repairs and/or replacement items including repair of roof water leakage, broken air conditioning units, and ductwork cleanup. The work includes several classrooms, the infirmary, chapel and gym.

There was no master project plan submitted which describes in detail the work to be done, who is completing the work internally or through external contracts, and a time table for work completion. Such plan would aid the Office of the Monitor in tracking the remaining repairs with set time frames.

b) Video Cameras in Villalba

Video surveillance cameras are not currently in place in Villalba. As NIJ's facility housing Level 4 and 5 youth, and now much of the juvenile detention population, video cameras are an essential tool for keeping youth and staff safe, and critical for thorough and accurate investigations of incidents. The Commonwealth has the ability now to utilize video surveillance equipment for Villalba previously purchased and intended to be installed at Humacao.

The Commonwealth has provided little information about the status of when this process will be complete, but indicates that once additional needed equipment is purchased and delivered, 8 – 10 weeks to complete installation is necessary.

A more defined Project Management Plan which provides greater details about the various steps in the process should include the following information:

1. What is the video system design including logistics of location of video system monitors?
2. What additional pieces of video equipment are needed that requires an 8-10 week extension?
 - a. Is that additional equipment procured by DCR or by a private contractor?
3. Who is doing the installation?
 - a. Will this work be done by DCR or a private contractor?
4. What are the electrical requirements and installation plan?
 - a. Will this work be done by DCR or a private contractor?
5. Camera, cabling and server installations
6. Staffing required to operate video system
 - a. Will a room be designated for the primary on-site monitors?
 - b. What video management will occur at the facility versus what will occur at DCR Central
7. What is the schedule for video system testing?
8. What is the schedule for video system training?
9. What is planned for the video system backup aside from the facility generator?
 - a. Is there an emergency power battery backup source planned?
10. What is the system for backups of recorded video at the facility and/ or at DCR?
11. What is the schedule for Villalba video system activation?

The Project Management Plan should also address the logistics, staff and space necessary for operating a video system at Villalba. For example, it should describe whether an officer will be assigned to view and oversee the cameras as is the case at Ponce. It should specify whether there will be a room be designated for the primary on-site monitors. And it should indicate what will occur at the facility versus what will occur at DCR central, and what is the system will be in place for backups at the facility and-or at DCR.

c) Addressing Remaining Concerns Relative to Humacao Closure

The Monitor raised a number of other issues in the December 31 Interim Status Report concerning safety and security matters. The First Quarterly Report will address these issues in more detail given the recent onsite inspections, interviews and documentation reviews completed by the Monitor and Consultants. It is important, however, to provide updated information in this report about ongoing concerns for the safety of youth in the remaining two facilities.

The dynamic changes in the reduction of NIJ facilities and youth population, absent most recently accentuated by the closure of Humacao, has challenged the system's ability to adequately provide for the safety and treatment of youth, while placing them in the least restrictive setting possible. The Monitor and Consultants expressed concerns prior to the closure of Humacao about the risk of backsliding on compliance on Paragraph 48 (staffing), 52 (classification), 79 (use of isolation), and 80 (protective custody).

Information obtained to date during this quarter suggests that these concerns are valid. Compliance with staffing has dropped from 100% during the Third Quarter, down to 96% in the Fourth Quarter, with current quarter staffing ratios now at only 90% of shifts during waking hours at Villalba. Similarly, the number of youth in transitional measures and protective custody increased from 12% of the average monthly population to 21% this quarter. These youth are confined to their assigned rooms for most hours of the day, segregated from other youth for the most part, and do not receive required educational services and programming. The highest percentage of non-compliant staffing ratios, and the highest percentage of youth on TM/PC measures are disproportionately among youth classified and placed as Level 4.

The volume of youth being placed on transitional measures has created a hybrid classification state which needs to be addressed quickly and effectively to ensure compliance

with paragraphs 79 and 80, but also to ensure that youth are being placed in the least restrictive settings under paragraph 52. The agency has not done a sufficient annual review to policies and practice relative to classification. In short, NIJ's classification options are limited as a result of the closure of Humacao. That, in conjunction with the failure to provide minimum required staff ratios, has increased restrictive housing options resulting in extended room confinement with limited services and education availability.

Bob Dugan has prepared an interim report which explains this in greater detail and is attached as Appendix A.

While these issues are beyond the scope of the Status Conference on Friday, March 29th, they remain critical to resolve for the safety and wellbeing of youth in Villalba and Ponce. Protection from harm issues remain one of the most critical pieces remaining in this Settlement Agreement. The ability to provide adequate staffing which will keep youth safe, separate youth appropriately according to needs and risk levels, and to allow youth to engage in services and programming in the least restrictive manner are significantly interrelated and should be addressed as such.

The First Quarterly Report will make specific recommendations designed to engage key staff and administrators in problem solving these lingering issues, and to establish a concrete plan and timeframe for implementation. The Monitor will keep this issue before the Court through the quarterly report process, or interim reports as needed.

Wherefore, the Monitor recommends that the Commonwealth be required to submit more detailed plans and time tables as described above relative to physical plant repairs and replacement, as well as the installation and operation of video surveillance equipment at Villalba.

The Monitor further recommends another status conference within 30 days.

Submitted this 25th day of March, 2019 by:

/s/Kim Tandy

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Certificate of Service

I HEREBY CERTIFY that this, I electronically filed the foregoing with the Clerk of the Court on March 25, 2019 using the CM/ECF system, which will simultaneously serve notice of such filing to counsel of record to their registered electronic mail addresses.

Respectfully Submitted,

/s Kim Tandy

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