



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

October 16, 2020

By Electronic Mail

Joseph K. Spano
Commissioner of Correction
County of Westchester
Westchester County Jail
Valhalla, New York 10595

David M. Bogard
Pulitzer Bogard & Associates LLC
8 Saratoga Street
Lido Beach, NY 11561

Re: *Agreement Between the United States and the Westchester County Department of Correction Concerning the Civil Rights of Institutionalized Persons Act*

Dear Messrs. Spano and Bogard:

As you know, on August 30, 2007, the United States Attorney's Office for the Southern District of New York commenced an investigation into conditions at Westchester County Jail ("WCDOC"), pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. §§ 1997(b)(a)(2)(B), 1997g. On November 19, 2009, this Office issued a Findings Letter, concluding that certain conditions at WCDOC violated the constitutional rights of detainees, and in November 2015, WCDOC entered into an Agreement resolving this Office's investigation. Pursuant to the Agreement, David Bogard was selected by the parties to serve as the independent monitor for the correctional, medical, and mental health provisions of the Agreement.

The Agreement contains 25 provisions with 82 sub-provisions detailing requirements concerning protection from harm, medical care, mental health care, and treatment of minors. The Agreement further provides:

This Agreement shall terminate three years from [January 1, 2016], if the Parties agree that the County is in substantial compliance with all provisions of this Agreement and have maintained substantial compliance of all provisions for 24 months.

Agreement at ¶ 69.

Since his selection as monitor in 2016, Mr. Bogard has issued detailed bi-annual Compliance Reports, outlining WCDOC's Non-, Partial, or Substantial Compliance with the 25 provisions in the Agreement. In the monitor's 5th Compliance Report, issued on June 15, 2018, Mr. Bogard concluded that seven provisions had reached and remained in Substantial Compliance for the requisite 24-month time period, and thus reported that "seven provisions were terminated on my recommendation and by mutual consent of the parties[.]" 6th Compliance

Report at 15 (describing 5th Compliance Report). He also rated “17 of the remaining 18 provisions as [achieving] Substantial Compliance.” *Id.* In the monitor’s 6th Compliance Report, issued on December 18, 2018, Mr. Bogard for the first time rated the final provision as Substantially Compliant, “meaning that all 25 provisions were either terminated or in Substantial Compliance status,” and further recommended the termination of two additional provisions. 6th Compliance Report at 16. In the monitor’s 7th Compliance Report, issued on June 17, 2019, Mr. Bogard recommended that “five additional provisions [be] terminated,” and rated “each of the remaining [eleven] provisions . . . as [continuing in] Substantial Compliance.” 8th Compliance Report at 13 (discussing 7th Compliance Report). In the monitor’s 8th Compliance Report, issued on December 19, 2019, Mr. Bogard determined that an additional four provisions had achieved substantial compliance for 24 months, and therefore recommended termination pursuant to the terms of the Agreement. Further, the monitor noted:

I can point to the very substantial steps taken by WCDoc over the past three and a half years to revamp and enhance use of force/de-escalation policies, procedures, training, practices, oversight, and staff accountability. Additionally, the agency has significantly improved data and statistical reporting of use of force through the implementation of numerous monthly reports that address types of force employed, use of de-escalation, video availability, narrative descriptions of incidents and, in the process, increased transparency. Furthermore, as [an] outgrowth of stable and committed leadership, and targeted training and accountability, use of force by ERT has decreased significantly.

8th Compliance Report at 14.

Finally, on June 25, 2020, the monitor issued a draft of his 9th Compliance Report, recommending that the remaining seven provisions be elevated to ‘Substantial Compliance/Termination’ status. Mr. Bogard concluded, “As such, if the parties agree to my recommendation of termination for each of the seven (7) provisions . . . , the result would be that 100% of the 25 Settlement Agreement provisions will have advanced to termination status.” 9th Compliance Report at 14.

This Office, in consultation with the United States Department of Justice, Civil Rights Division, has reviewed the monitor’s 9th Compliance Report and recommendation. We are pleased to announce that, as authorized by the Assistant Attorney General for the Civil Rights Division, the United States has accepted the monitor’s recommendation. As a result, all twenty-five provisions have reached substantial compliance for the requisite timeframe, and the Agreement is hereby terminated.

We acknowledge the tremendous efforts that WDOC’s leadership and staff have made over the years. At every step along the way, WDOC has been a willing partner in creating lasting reforms that have significantly improved the quality of life for inmates and detainees within the facility. This remarkable result could not have occurred without WDOC’s leadership and continued commitment to improvement, and we hope and expect that commitment to endure even absent the requirements of the Agreement. We also acknowledge Mr. Bogard’s and his team’s diligent efforts over the years; we are grateful for their service.

Thank you to everyone for your cooperation. Please let me know if you have any questions.

Sincerely,

AUDREY STRAUSS
Acting United States Attorney

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