



U.S. Department of Justice

Civil Rights Division

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DJ 168-53-41, 168-53-42

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

August 19, 2009

Via First Class Mail

Cheryl A. Green  
County Attorney  
Erie County  
69 Delaware Avenue  
Buffalo, NY 14202

RE: Investigation of the Erie County Holding Center and  
the Erie County Correctional Facility

Dear Ms. Green:

We are in receipt of your August 12, 2009 letter. As you know, and contrary to the assertions in your letter, at the conclusion of our meeting on August 10 with Deputy Assistant Attorney General Samuel Bagenstos, Kathleen Mehlretter, United States Attorney for the Western District of New York, myself and my team, you expressly agreed to a process by which the parties would work toward an amicable resolution of the Department's investigation of the Erie County Holding Center ("ECHC") and the Erie County Correctional Facility ("ECCF"). We are disappointed and concerned by your change of position and assertions that no such agreement was reached. We respectfully remind you that the serious nature of our findings requires an expedient resolution. We, therefore, can not agree to the time frame you now propose in your August 12, 2009 letter.

While we certainly spent significant time during our August 10 meeting discussing areas where the Department and the County are not in agreement, we were pleased that by the conclusion of the meeting the parties agreed to a process for resolution that would promptly address agreed-upon deficiencies, allow for discussion of areas of disagreement, and would conserve judicial resources. You represented that the County had already taken a number of measures to address certain issues identified in our July 15, 2009 findings letter and that you were aware of other areas which needed attention. You acknowledged, however, that

the Department has not been able to assess or verify these representations given the County's refusal to allow us to visit the facilities or to talk with inmates. We agreed that it was in the interest of all concerned for the Department to promptly assess the measures taken in order to appropriately tailor any negotiated resolution.

In light of your refusal, for the past year, to cooperate with our investigation, and in light of our findings of extensive constitutional violations at ECHC and ECCF, we cannot agree to a process that promises yet more delay in providing relief for those violations. (In this connection, we remind you that our findings are consistent with the findings of both the New York State Commission on Corrections and the National Commission on Correctional Health Care.) Your August 12 letter not only retreats from your previous position, but sets forth a one-sided process that imposes unprecedented preconditions that risk delaying relief indefinitely. We welcome your renewed agreement to enter into the fair and open process set forth in our August 11 letter to resolve this matter amicably. But, given the prior course of dealings in this matter, we cannot commit to stand aside until September 10 in the hope that the information you unilaterally choose to provide on that date will demonstrate your willingness to commit to good-faith negotiations. As you know, the Civil Rights of Institutionalized Persons Act entitles us to file suit 49 days after the issuance of our findings letter, which in this case is September 1. Should you continue to refuse to stand by the agreement we made at our August 10 meeting, we will continue to assess our alternatives and urge the County to reconsider its position.

Sincerely,

*Shanetta Y. Cutlar* by JCP

Shanetta Y. Cutlar  
Chief  
Special Litigation Section

cc: Kathleen M. Mehlretter,  
Acting United States Attorney  
Western District of New York