



## U.S. Department of Justice

## Civil Rights Division

SYC:DHW:ZIL:AF:BJ:NA:prw  
DJ 168-53-41, 168-53-42

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

December 12, 2008

VIA FIRST CLASS MAIL AND FACSIMILE

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 write in response to your December 5, 2008, letter denying the Department of Justice access to inmates of the Erie County Holding Center ("ECHC") and the Erie County Correctional Facility ("ECCF"). As you know, we are conducting an investigation of ECHC and ECCF pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, which gives the Attorney General standing to address alleged deprivations of rights, privileges, or immunities secured or protected by the Constitution of the United States.

We initiated this investigation on November 13, 2007, following several reports of inmate suicide and excessive use of force by facility staff. We have received correspondence from inmates housed at ECHC and ECCF alleging questionable conditions of confinement and have reviewed reports that suggest unconstitutional conditions exist at these facilities. Indeed, in 2008 alone, we have learned of two suicides and four attempted suicides, the most recent occurring on December 3, 2008, involving a female inmate with a history of attempted suicide. In furtherance of our investigation we requested to interview inmates at both facilities to allow them an opportunity to address any concerns they have regarding conditions at ECHC and ECCF with government representatives in person. Your denial of this request, given the severity of the incidents that have transpired since 2007, is unsettling. These incidents include the reported suicide of an inmate who dove off a 15-foot railing in an ECHC common area and the death of another inmate who

- 2 -

reportedly died of pneumonia brought on by starvation and dehydration after just four months in ECHC.

Your letter requests we provide legal authority that requires the County to provide DOJ access to the facilities. We readily concede that CRIPA does not expressly provide such authority when a jurisdiction fails to cooperate. It is the intent of Congress that the local and federal governments work cooperatively to ensure that the constitutional rights of inmates are protected. This cooperation was clearly contemplated in the passage of CRIPA, but is not mandated by the statute. Importantly, we are now seeking access limited to ECHC and ECCF inmates.

It is well-settled that inmates have a First Amendment right to confidential communications with the United States regarding any potential federal constitutional or statutory violations that have occurred at the facilities. See In Re Quarles, 158 U.S. 532, 535-36 (1895) (discussing the rights of citizens to communicate with federal law enforcement officials regarding violations of federal law); see also Hudson v. Palmer, 468 U.S. 517, 523 (1984) (noting that "prisoners have the constitutional right to petition the Government for redress of their grievances, which includes a reasonable right of access to the courts"); Colon v. Coughlin, 58 F.3d 865, 872 (2d Cir. 1995) (noting same); Mahotep v. DeLuca, 3 F.Supp.2d 385, 388 (W.D.N.Y. 1998) (noting the same is "well-settled"). Inmates are entitled to raise those concerns with governmental officials. Inmates are precluded from exercising their constitutional right to petition the government for redress of their grievances if they are denied the opportunity to speak to government officials, such as ourselves, who aim to address those grievances. We believe that the County has neither the legal authority nor any legitimate penological concern<sup>1</sup> to deny ECHC and ECCF inmates the right to petition the government for redress of grievances. Therefore, we hope you will reconsider your position, and allow ECHC and ECCF inmates the opportunity to meet with us during routine visiting hours on December 15, 16, and 17, 2008, should they wish to do so.

We continue to encourage Erie County to cooperate with our investigation. Our previous offer to confer in person regarding this investigation and to address any questions you may have about our investigative process remains open. We welcome the

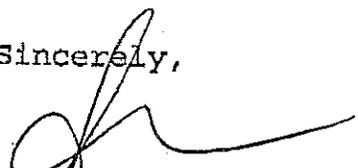
---

<sup>1</sup> Notably, we are prepared to meet with inmates in the same manner and area designated for any other form or legal visits provided to inmates.

- 3 -

opportunity to discuss this investigation with you, in person, at any time, in Erie County, Washington, D.C., or any other location of your choosing. As you are aware our scheduled December visit is for inmate interviews, but we are willing to schedule a meeting with you and other County officials at your convenience. It is still our hope that our two governmental agencies can work cooperatively to resolve our investigation. Should you wish to discuss this matter further, or to schedule a meeting, please feel free to contact me at [REDACTED]

Sincerely,



Shanetta Y. Cutlar  
Chief  
Special Litigation Section

cc: Terrance P. Flynn  
United States Attorney  
Western District of New York