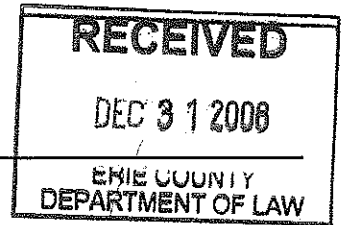




U.S. Department of Justice
Civil Rights Division



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 24, 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 to remind you that the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, prohibits retaliation against anyone who reports conditions which may constitute a violation of the substantive provisions of CRIPA. See 42 U.S.C. § 1997d ("Subsection 1997d"). Similarly, interference with a government investigation by way of intimidation, either physical or verbal, is punishable by law. See 18 U.S.C. §§ 1505, 1512.

As you know, the Civil Rights Division of the United States Department of Justice is conducting an investigation of the Erie County Holding Center ("ECHC") and the Erie County Correctional Facility ("ECCF") pursuant to CRIPA. You are also aware that Department of Justice attorneys and investigators were recently in Buffalo interviewing inmates regarding conditions at both facilities. Our objective in interviewing these inmates was to inquire as to the conditions of confinement at ECHC and ECCF in furtherance of our CRIPA investigation. The communication between the inmates interviewed and the Department of Justice is protected and these inmates are not to be retaliated against in any way, including being singled-out or harassed for reporting to the Department of Justice the conditions at ECHC and ECCF. Subsection 1997d specifically protects such persons who report conditions which may constitute a violation of their constitutional rights from reprisal.

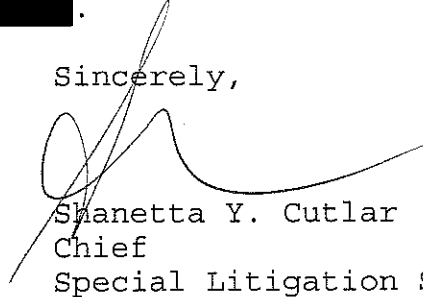
We have learned that on December 18, 2008, Earnest Wallace, a federal inmate housed at ECHC, was reportedly subjected to adverse treatment because Mr. Wallace communicated to us on December 17, 2008, information relevant to our investigation. Specifically, we learned that two attorneys from your office and the ECHC superintendent questioned Mr. Wallace on videotape and asked him to complete and sign some type of document. While we do not know the content of the interview, we are concerned that, given the hostility you have consistently expressed towards our investigation, most recently in telephone conversations on December 17, 2008, that Mr. Wallace was purposefully singled out by the County for questioning merely because he met with representatives of the Department of Justice. We question whether Mr. Wallace's participation in this interview was voluntary, given that he is incarcerated in your facility. If our understanding is accurate, this type of harassment is shocking appears to be a violation of Subsection 1997d and other federal statutes. Inmates who exercise their First Amendment rights to inform the United States of any potential constitutional violations to which they are being subjected should not be subsequently targeted for interrogation by the Jail or the County, nor should they be made to believe that their participation in an on-going investigation would result in harm. Accordingly, any further communication with Mr. Wallace, or any other federal inmate currently housed at ECHC and ECCF with whom we spoke, on the subject of our meeting is, we believe, a clear violation of Subsection 1997d and the inmate's Constitutional rights. Should any harm come of Mr. Wallace, or any of the other federal inmates with whom we spoke, it would be a clear violation of federal law.

We request that your office preserve the video-tape interview of Mr. Wallace and any other documents, including any notes taken of the interview, any forms or other written information given to Mr. Wallace, and any documents that Mr. Wallace signed. We believe that the video-tape and other documents are germane to our investigation. Accordingly, we request that you produce this videotape and, if you refuse, your legal basis for denying our request. This same request is made with respect to any similar questioning that occurred following our interview with federal inmates held at ECHC and ECCF. Our investigation of ECHC and ECCF is an official Department of Justice investigation pursuant to CRIPA. Accordingly, we expect these documents to be preserved in accordance with 18 U.S.C. 1512(c).

We also request that you remind ECHC and ECCF Jail management and staff, in writing, of their non-retaliation obligations. We further request that you detail in writing the steps ECHC and ECCF will take to ensure that retaliation is not occurring and will not recur in the future. Please provide your response no later than December 29, 2008.

Should you wish to discuss this matter further please feel free to contact me at [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read 'Shanetta Y. Cutlar', is written over the typed name and title.

Shanetta Y. Cutlar
Chief
Special Litigation Section

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

Daniel Larish
United States Marshals Service
Western District of New York

Marianne Mariano
Federal Public Defender