

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,)
Plaintiff,)
) Civil No. 86/265
v.)
)
TERRITORY OF THE VIRGIN ISLANDS, et al.,)
Defendants.)
_____)

**UNITED STATES' NOTICE OF OBJECTIONS AND
REQUEST FOR EMERGENCY STATUS CONFERENCE**

The United States respectfully requests that this Court set an emergency status conference with the parties and the Monitor, Mr. Kenneth Ray, to address the issue of the Territory's incomplete, inadequate, and untimely final policy submissions that were due on March 30, 2015, per this Court's implementation schedule (Docs. 863-1, 873). Section IX.3 of the Settlement Agreement provides that the United States may "provide[] written objections" to the policies submitted by the Territory (Doc. 689-1 at 14). An emergency status conference is warranted because the serious deficiencies in the Territory's policy submissions, outlined in more detail below, impede all remaining deadlines in the Court-ordered implementation schedule. Because the Attorneys for the United States will be present in St. Croix as part of the continued mental health and security onsite compliance review on April 20–23, 2015, the United States respectfully requests that, if the Court's docket permits, a status conference be set for a date during that week.¹

¹ Mr. Ray is not scheduled to be present in St. Croix that week, but he has indicated his availability to participate in a status conference telephonically any day that week.

BACKGROUND

Pursuant to the Settlement Agreement, entered as an order of this Court on May 14, 2013 (Doc. 742), the Territory must develop and implement facility-specific policies and procedures consistent with the Constitution and the provisions of the Settlement Agreement (Doc. 689-1). The Court's implementation schedule set March 30, 2015, as the date by which the Territory must have finalized all policies and procedures required by the Settlement Agreement (Doc. 863-1), and submitted them to the Monitor and United States. The final policies would then be ready for implementation at the Golden Grove Adult Correctional Facility ("Golden Grove"). As described below, the Territory has failed to meet this critical deadline, thus placing the remainder of the Court's implementation schedule in jeopardy of further delays.

I. The Territory's Failure to Submit Forty-Eight Policies and Procedures and Its Failure to Address the United States' Comments on the Remaining Policies and Procedures

On March 30, 2015, the Territory submitted, via email, seventeen policies and procedures and four classification forms.² See Exhibits A-R (filed under seal).³ The Territory failed to

² The policies and procedures submitted were (1) Administrative Investigations—Staff Discipline; (2) Classification Housing and Review; (3) Contraband Control and Searches; (4) Environmental Health and Safety; (5) Environmental Health and Safety—Control of Chemicals, Flammables, Toxic and Caustic Materials; (6) Environmental Health and Safety—Food Service Sanitation and Hygiene; (7) Environmental Health and Safety—Inmate/Detainee Clothing, Bedding, and Linen Supplies; (8) Environmental Health and Safety—Vermin and Pest Control; (9) Fire and Life Safety Plan; (10) Prisoner Complaints/Grievance Process; (11) Reporting and Review of Serious and Emergent Incidents; (12) Security Staffing; (13) Sexual Misconduct Policy—PREA; (14) Special Management Housing; (15) Supervision of Prisoners; (16) Training (and Staff Development); and (17) Use of Force. The four forms submitted were (1) Administrative Confinement Placement Form; (2) Protective Confinement Placement Form; (3) Initial Custody Classification; and (4) Reclassification.

³ The policies submitted by the Territory are referenced as Exhibits A-R. Three versions of each policy are provided, separated by a cover sheet: *Version 1* is the version submitted with comments by the U.S. Department of Justice to the Territory on March 4, 2015. *Version 2* is the version submitted by the Territory to the U.S. Department of Justice on March 30, 2015, and April 8, 2015. *Version 3* is a comparison between Versions 1 and 2, created through Microsoft

submit forty-eight policies and procedures. In particular, the Territory did not submit the Inmate Disciplinary Policy, and also *did not submit any of the forty-seven medical or mental health policies*. Instead, the Territory sent an email at 10:51 p.m. on March 30, 2015, requesting a two-week extension:

With respect to the medical and mental health policies, as you all know Ms. Charles has been responsible for finalizing the policies. She has not yet completed them and therefore, the Territory requests an additional two weeks to submit those policies.

Exhibit S. The Territory provided no further explanation for the requested extension or for why the extension was being requested at the eleventh hour on the day of the deadline.

Upon review of what the Territory did submit on March 30th, it was evident that the policies and procedures were not in final form and failed to address most of the concerns that the United States raised in its written comments submitted on March 4th—well in advance of its March 16, 2015 deadline. Although the United States provided comprehensive comments and redline edits to the submitted policies and further discussed the comments during three teleconferences with the Territory during the week of March 9th, it appears that the majority of the comments and concerns went completely unaddressed.⁴

The United States has several concerns with the submitted policies and procedures, including: (1) procedures do not adequately and clearly detail the specifics of what staff must do and which staff members are responsible for completing the task, *see, e.g.*, Exhibit A, USDOJ Comment 72; Exhibit B, USDOJ Comment 77; Exhibit E, USDOJ Comment 31; Exhibit F,

Word's "compare" feature to identify the changes made by the Territory. The United States requests, by separate motion, to file these and other policy drafts under seal to protect against unwarranted disclosure of Golden Grove operations that could undermine the facility's safety and security.

⁴ The United States also offered to review policies on a rolling basis before the March 30 deadline. The Territory did not submit any policies for review.

USDOJ Comment 23; Exhibit G, USDOJ Comment 11; Exhibit O, USDOJ Comment 18; Exhibit Q, USDOJ Comment 39;⁵ (2) procedures contravene the Settlement Agreement and Constitution, or do not implement all provisions of the Settlement Agreement, *see, e.g.*, Exhibit C, USDOJ Comment 82; Exhibit N, USDOJ Comment 18; Exhibit P, USDOJ Comments 1, 2; Exhibit R, USDOJ Comments 1, 13, 42, 46; and (3) placeholders such as “[WHO?]” and “XXXX” remain in documents the Territory submitted as “final” policies, *see, e.g.*, Exhibit K, USDOJ Comments 35, 53, 61; Exhibit O, USDOJ Comment 38; Exhibit P, USDOJ Comments 23, 36; Exhibit R, USDOJ Comment 113.

II. The United States’ Objections to the Territory’s Policy Submissions

The United States sent a letter to the Territory on April 1, 2015, objecting to the Territory’s policy submissions and its request for a two-week extension to submit the medical and mental health policies. *See* Exhibit T. The United States sought Mr. Ray’s immediate mediation of these issues per Section IX.2 of the Settlement Agreement, and requested the Territory’s written response by April 8, 2015. *See id.* at 3. In its letter, the United States also provided several examples of substantive concerns that were not addressed by the Territory’s March 30th submissions:

- **Use of Force:** We have twice raised objections to Section IV, which describes the permissible uses of force [*see* Exhibit R, USDOJ Comment 10], on the basis that Section IV, as written, does not comport with constitutional limits on the use of force in correctional facilities. Nonetheless, the Territory does not appear to have made any changes to Section IV.
- **Prisoner Complaints/Grievance Process:** The grievance process remains insufficiently detailed and confusing. The policy continues to reference “informal resolution” [*see, e.g.*, Exhibit K, USDOJ Comments 5, 32, 64], notwithstanding the fact that the Territory had previously deleted all description of informal resolution procedures on February 2, 2015.

⁵ “USDOJ Comment NN,” as used in this motion, refers to the NNth comment by the United States in the third version of a policy—the “compare” version that identifies the changes made by the Territory in response to the United States’ comments.

- **Special Housing Management:** We have twice raised objections to the frequency of review for prisoners with mental illness, noting that the Settlement Agreement explicitly prohibits placing prisoners with serious mental illness in any form of isolation, and stating that there should be periodic medical and mental health assessments to monitor and physical and mental well-being of prisoners in segregation [*see* Exhibit O, USDOJ Comment 67]. Nonetheless, the Territory does not appear to have made any substantive changes to the policy.
- **Supervision of Prisoners:** We have requested clarification as to what procedures are in place to maintain the confidentiality of attorney-client communications during attorney visitation [*see* Exhibit P, USDOJ Comment 98]. The Territory responded, “No confidentiality is maintained.”
- **Contraband:** We have noted that the policy appears to be missing discussion of “[a]dmission procedures and escorts for visitors to the facility” [*see* Exhibit C, USDOJ Comment 82 (quoting Settlement Agreement § IV.B.1.e)]. Nonetheless, the Territory does not appear to have made any substantive changes or additions to the policy.

Id. at 2.

The United States concluded: “Although the monitoring team provided the Territory with technical assistance in establishing the framework for many—if not all—of the Territory’s policies and procedures using models from other jurisdictions, it is imperative that the Territory independently utilize the expertise of someone well-versed in corrections to complete the policies and tailor them to the Golden Grove Adult Correctional Facility.” Exhibit T at 2.

III. Mediation by the Monitor

In response to the United States’ April 1, 2015 letter requesting mediation by the Monitor, Mr. Ray scheduled a telephone conference for April 8, 2015. Mr. Ray began by seeking additional information from the Territory to justify the requested two-week extension to submit the medical and mental health policies. The Territory again stated that Ms. Charles has been in charge of working on the medical and mental health policies and that although she had been provided with staff assistance with formatting, Ms. Charles was not able to complete the revision process. The Territory added that Ms. Charles has recently had to appear in court for

two hearings on unrelated matters with little advance notice. The Territory explained that no advance notice was given to the United States or Monitor about the delay because the Territory attorneys only learned of the status of the policies on March 30th—the day they were due. The Territory was unable to respond to the United States’ repeated requests for an explanation as to how the additional two-week timeframe would in fact be sufficient. Given the Territory’s response, the United States renewed its objection to the Territory’s requested extension and noted that because the March 30th deadline is court-ordered, the Territory is now in violation of that order and must seek leave of the Court for any extension of time.⁶

The United States asked about the status of the appointment of a Bureau of Corrections (“BOC”) Director or Warden for Golden Grove, and whether these individuals would ensure that there is someone on staff with corrections expertise to finalize the policies and procedures. The Territory said that neither a BOC Director nor a new Warden for Golden Grove has been appointed, and the Territory could not give any information on a timeframe for selection. The Territory also could not identify anyone with the requisite corrections expertise who would be working directly on the policies and procedures to address the United States’ concerns and get the policies and procedures into final approval form. Instead, the Territory asked Mr. Ray if he would undertake the task of completing the remaining work on the policies and procedures. Mr. Ray stated that he would only consider doing this if the Territory committed to providing all staff necessary for that process. Mr. Ray also explained that, due to other work commitments, he and Mr. Manuel Romero would not be available to begin this task until July 2015 at the earliest—months *after* training on the policies and procedures is scheduled, by this Court’s order, to begin on May 29, 2015 (*see* Doc. 863-1).

⁶ As of this date, the Territory has not filed any motion to extend time.

The United States concluded the call by repeating its objection to any further delay of the Court's implementation schedule, noting that any delays with the policies and procedures will set back the remainder of the Court-ordered deadlines, and stating its intent to seek judicial intervention. Mr. Ray concluded that he did not have authority to adjust the Court-ordered deadlines. Accordingly, the United States advised Mr. Ray and the Territory that it planned to file objections with the Court pursuant to Section IX.3 of the Settlement Agreement.

IV. The Territory's Written Response

The Territory emailed a letter to the United States at 9:07 p.m. on April 8th, confirming the Territory's request for Mr. Ray to begin additional work on the policies in July and repeating its request for a two-week extension to submit the outstanding medical and mental health policies and procedures. *See* Exhibit U. The Territory also attached the outstanding Inmate Disciplinary Policy. *See* Exhibit J. Although the Territory stated this policy had been omitted from the March 30 submission "[t]hrough inadvertence," *see* Exhibit U at 1, the policy included revisions made the evening of April 8th. On April 9, 2015, the Territory sent, via email, fifteen of the forty-seven medical policies and three medical forms. *See* Exhibit V.

RELIEF REQUESTED

The United States seeks an emergency status conference to address the following issues:

First, the United States maintains that the submitted policy documents, although sent electronically on March 30, 2015, fail to meet the implementation schedule's deadline for submitting policies and procedures in "final approval" form (Doc. 863-1). Thus, the Territory is in violation of this Court's order.

Second, the United States objects, under Section IX.3 of the Settlement Agreement, to any of the submitted policies and procedures being promulgated until the Territory addresses the United States' comments and develops the drafts into final form.

Third, the United States objects to the Territory's request for a two-week extension to submit the outstanding medical and mental health policies and procedures. The Territory has not provided a valid reason for further delaying its development of critical policies and procedures.

Fourth, the United States objects to the Territory's request that Mr. Ray and Mr. Romero undertake the work of finalizing its policies and procedures, as (a) this is work that must be done by the Territory itself to build a solid foundation to address serious and persistent constitutional violations at Golden Grove, and to ensure the Territory has the requisite personnel on staff to develop, implement, review, and revise policies and procedures as necessary; (b) having Mr. Ray and Mr. Romero finalize the policies and procedures removes them from their roles as independent monitors and places them in positions more akin to *de facto* receivers; and (c) even if this were an appropriate role for Mr. Ray and Mr. Romero to undertake, this work would not begin until July 2015, *at the earliest*, rendering the current Court-ordered implementation schedule impossible to meet.

The United States further requests that in ordering any status conference, the Court specifically order not only officials from the Virgin Islands Bureau of Corrections to appear, but also a Territorial official who has knowledge of the status of appointing a new BOC Director and Warden for Golden Grove.

DATED this 10th day of April, 2015
Washington, District of Columbia

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 10, 2015, I electronically filed the foregoing using the CM/ECF system, which will send electronic notification to the following:

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Respectfully submitted,

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