



THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

September 14, 2017

Ms. Catalina Devandas Aguilar
Special Rapporteur on the rights of persons with disabilities

Mr. Dainius Pūras
Special Rapporteur on the right of everyone
to the enjoyment of the highest attainable
standard of physical and mental health

Mr. Nils Melzer
Special Rapporteur on torture and other cruel
inhuman or degrading treatment or punishment

Dear Ms. Devandas Aguilar, Mr. Pūras, and Mr. Melzer:

We received your letter dated June 28, 2016, requesting information regarding prisoners with psychological disabilities. Attached, please find the United States' response to your inquiry.

Please note that the Annex cites UN principles and standards that do not constitute binding obligations on the United States under international law. The United States nevertheless provides the following information in response to your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason R. Mack".

Jason R. Mack
U.S. Deputy Permanent
Representative to the UN Human
Rights Council

SUBJECT: U.S. Response to Special Procedures Mandate holders Regarding Prisoners with Psychological Disabilities

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

Federal prisons

The United States Bureau of Prisons (“BOP”) recognizes the importance of providing treatment and services to inmates with mental illness.¹ Therefore, BOP has a national policy designed to ensure standardized and appropriate treatment to inmates with mental illness. *See* BOP Program Statement 5310.16, *Treatment and Care of Inmates with Mental Illness* (implemented May 1, 2014).² The policy objectives include, among other things, identifying inmates with mental illness through screening; extending support for inmates with mental illness beyond traditional professional services through creation of supportive communities, specialized staff training, inmate peer support programs, care coordination teams, and institutions with specialized mental health missions; enhancing continuity of care through a network of accessible treatment providers when inmates transfer between institutions or to the community; and reducing the proportion of inmates with mental illness in restrictive housing settings.

Concerning discipline, BOP policy requires that mental health treatment staff provide consultation to ensure that the BOP disciplinary process is applied appropriately to inmates with mental illness. If it appears that an inmate is mentally ill at any stage of the disciplinary process, the inmate will be examined by a mental health care professional. *See* 28 C.F.R. § 541.6. If an inmate cannot understand the nature of the disciplinary proceedings, the proceedings may be postponed until that inmate is competent to participate.

¹ BOP intends the terms “mental illness” and “mental disorders” to be used synonymously with the term “psychosocial disability.”

² BOP’s internal policies implementing statutory mandates are referred to as “Program Statements.” All referenced program statements are available, in full, on the BOP’s website, www.bop.gov.

With respect to the use of force, BOP policy requires that staff use force only as a last alternative after all other reasonable efforts to resolve a situation have failed. *See* 28 C.F.R. § 552.20. Even then, staff must use only that amount of force necessary to gain control of an inmate; to protect and ensure the safety of the inmates, staff, and others; to prevent serious property damage. Force may never be used to punish an inmate. *See* 28 C.F.R. § 552.22. For any calculated use of force, a designated mental health professional is involved in information gathering about the inmate and the immediate situation. *See* 28 C.F.R. § 552.23. BOP does not utilize or authorize electronic stun devices within its institutions.

Regarding food and hydration, BOP policy mandates that food will not be withheld, or the standard menu varied, as a disciplinary measure. *See* BOP Program Statement 4700.06, *Food Service Manual* (implemented September 13, 2011). Further, as will be discussed further below, inmates with mental health issues in restrictive housing are provided medical and mental health review.

As the letter references, the U.S. Department of Justice (“DOJ”) undertook a thorough review of the use of restrictive housing in U.S. correctional facilities. That review culminated in the January 2016 report, *The U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing* (“DOJ Report”). The DOJ Report made specific policy recommendations, including a recommendation to limit restrictive housing for prisoners with serious mental illnesses. Even prior to the DOJ Report, BOP aimed to avoid prolonged placement of inmates with mental illness in restrictive housing settings, and DOJ is currently evaluating the further recommendations from the report.

BOP Program Statement 5270.11, *Special Housing Units* (implemented November 23, 2016) addresses Special Housing Units, which are housing units in BOP institutions where inmates are separated from the general population. The policy states:

- An inmate who has been identified by psychology staff as having serious mental health needs shall not be placed in Special Housing unless he/she presents an immediate and/or serious danger to self or staff;
- If an inmate with serious mental illness is placed in Special Housing, psychology services will be notified and will conduct a mental health evaluation within 24 hours of placement;
- An inmate's placement in Special Housing will be regularly reviewed to monitor for any medical or mental health deterioration.

See P.S. 5270.11.

BOP Program Statement 5217.02, *Special Management Units* (implemented August 9, 2016), addresses Special Management Units, which are units with enhanced management tools, in which the conditions are more restrictive than general population units.

The policy states:

- All inmates referred to the Special Management Unit will be reviewed by the Psychology Services Branch to determine if mental health concerns preclude an inmate from placement in the Special Management Unit;
- An inmate in the Special Management Unit may be removed if it becomes clear his/her mental health does not reasonably allow him/her to complete the program;
- Each inmate in the Special Management Unit will be evaluated by mental health staff every 30 days. Emergency mental health care is always available.

See P.S. 5217.02.

Finally, national policy provides that inmates with a serious mental illness will be excluded from the Administrative Maximum Facility ("ADX") in Florence, Colorado, unless extraordinary security concerns exist that cannot be met elsewhere. The ADX has developed procedures for heightened review of inmate requests related to mental health issues and referrals for mental health services. To avoid deterioration of an inmate's mental health while in the

ADX, BOP policy requires that staff provide ongoing support to all segregated inmates: (1) during rounds, all staff make themselves available for brief conversations that demonstrate concern for inmates' needs and their availability to provide assistance; (2) inmates are removed from their cells for private or extended interviews with Psychology and Psychiatry Services staff as a standard procedure; (3) in-cell activities (e.g., books, puzzles, games, audio/video entertainment, and programming, where applicable) are provided to inmates; (4) and close attention is paid to the importance of out-of-cell, unstructured recreation time specific to inmates' needs and encouraging inmates to take advantage of out-of-cell activities.

State and local prisons and jails

The Department of Justice's Civil Rights Division has open matters involving the Muscogee County Jail in Georgia and the Dallas County Jail in Texas.

2. Please provide information relative to measures taken to ensure the physical and psychological integrity of persons with psychosocial disabilities in prisons and jails in the United States.

General

The U.S. Constitution guarantees prisoners' rights to be protected from harm (*see Farmer v. Brennan*, 511 U.S. 825, 833 (1994)), and serious risk of harm (*see Helling v. McKinney*, 509 U.S. 25, 33-35 (1993)). In defining the scope of prisoners' Eighth and Fourteenth Amendment rights, the Supreme Court has held that corrections officials must take reasonable steps to guarantee inmates' safety and provide "humane conditions" of confinement. *See Farmer*, 511 U.S. at 832; *Bell v. Wolfish*, 441 U.S. 520 (1979). Conditions must satisfy prisoners' basic needs, including their needs for mental health care. *See Farmer*, 511 U.S. at 832-834; *Estelle v. Gamble*, 429 U.S. 97, 103-05 (1976). The responsibility to provide adequate mental health care is "no less serious than addressing prisoners' serious physical needs. *See Gates v. Cook*, 376 F.3d 323, 343 (5th Cir. 2004). Adequate mental health care includes the requirement for correctional facilities to provide adequate suicide precautions. *See Yellow Horse v. Pennington County*, 225 F.3d 923, 927 (8th Cir. 2000); *Waldrop v. Evans*, 871 F.2d 1030, 1033 (11th Cir. 1989).

Federal prisons

With regard to federal prisons, BOP respectfully refers the Special Rapporteurs to the following policies:

- BOP Program Statement 5310.16, *Treatment and Care of Inmates with Mental Illness* (implemented May 1, 2014);
- BOP Program Statement 5310.17, *Psychology Services Manual* (implemented August 25, 2016);
- BOP Program Statement 6010.03, *Psychiatric Evaluation and Treatment* (implemented July 13, 2011);
- BOP Program Statement 6031.04, *Patient Care* (implemented June 3, 2014).

These policies ensure that inmates with mental illness are appropriately assessed and treated.

State and local prisons and jails

Under the Civil Rights of Institutionalized Persons Act (“CRIPA”), 42 U.S.C. § 1997, the Special Litigation Section of the Department of Justice’s Civil Rights Division can investigate complaints concerning conditions in state or locally operated prisons, jails, and correctional facilities. When a “pattern or practice” or systemic deprivation of constitutional rights exists, the Civil Rights Division has the authority to initiate civil action against state or local officials to remedy the unlawful conditions.³

3. Please provide the details, and where available the results, of any investigation, medical or forensic examinations, and judicial or other

³ Authority under CRIPA does not extend to investigating incidents that affect only a single individual. Nor is the Special Litigation Section authorized to seek relief for, or to represent, a specific person under CRIPA. The Section does not have the authority to directly assist individuals with resolving their personal grievances. However, where the Section receives information that may implicate violations of federal criminal law, it may refer the incident to the Criminal Section of the Civil Rights Division.

inquiries carried out in relation to the alleged use of force, lack of adequate medical care, food and, water, death in custody and solitary confinement of prisoners with psychosocial disabilities. Have penal, disciplinary or administrative sanctions been imposed on prison staff or supervisors? If no inquiries have taken place, or if they have been inconclusive, please explain why?

Federal prisons

It is not clear whether any of the allegations contained in the letter apply to instances within BOP institutions. The BOP Standards of Employee Conduct state that employees may not use brutality, physical violence, or intimidation toward inmates, or use any force beyond what is reasonably necessary to subdue an inmate. *See Program Statement 3420.11, Standards of Employee Conduct* (implemented December 6, 2013). Violations of these standards may result in referral for investigation to the BOP Office of Internal Affairs, followed by disciplinary action up to and including employment termination.

State and local prisons and jails

The Department of Justice's Civil Rights Division has conducted numerous investigations pursuant to CRIPA to remedy a pattern or practice of failing to provide prisoners with mental illness with reasonable safety or adequate mental health care. In recent years, the Civil Rights Division negotiated settlements with the Pennsylvania Department of Corrections, the Hinds County Adult Detention Center in Mississippi, the Sebastian County Adult Detention Center in Arkansas, the Piedmont Regional Jail, in Virginia, the Dallas County Jail, the Miami-Dade County jail system in Florida, the Erie County, New York, St. Tammany Parish, Louisiana, Los Angeles County, California, and Lake County in Merrillville, Indiana.

- 4. Please provide information regarding current prison conditions and procedures for ensuring access to food, water, and adequate medical care and support, including mental health care and psychosocial support, for prisoners with psychosocial disabilities.**

General

As noted earlier, humane conditions of confinement, including adequate medical and mental health care and reasonable safety, are guaranteed under the U.S. Constitution. See *Farmer v. Brennan*, 511 U.S. 825, 833 (1994); *Bell v. Wolfish*, 441 U.S. 520 (1979); *Estelle v. Gamble*, 429 U.S. 97, 103-05 (1976).

Federal prisons

As described in response to the first query above, BOP appropriately provides access to food, water, and adequate medical care and support for prisons with psychosocial disabilities.

With respect to mental health care, all BOP facilities employ psychologists skilled in the screening, diagnosis, and treatment of mental disorders. All institutions, regardless of care level, provide services for inmates with mental illness.

Psychology Services and Health Services departments within each BOP institution ensure that every inmate with a clinically identified need for psychological treatment has access to mental health care. The two departments ensure that inmates undergo appropriate screening, assessment, and referral to identify and address their mental health, substance abuse, and other behavioral health needs. Psychology Services departments offer a variety of services and programs for inmates – psycho-educational groups, brief counseling, individual and group psychotherapy, crisis intervention, suicide prevention, and residential treatment programs. Health Services departments provide inmates with access to appropriate psychiatric medications to address identified mental health conditions.

For additional information, BOP refers the Special Rapporteurs to P.S. 5310.16, *Treatment and Care of Inmates With Mental Illness*.

State and local prisons and jails

When the Department of Justice conducts an investigation pursuant to CRIPA, it seeks remedies to ensure constitutional conditions of confinement for all prisoners.

5. Please provide information on measures taken to reduce the use of solitary confinement and to abolish the prolonged solitary confinement of prisoners with psychosocial disabilities.

Federal prisons

For information concerning policies and procedures related to restrictive housing, please see the above concerning Special Housing Units, Special Management Units, and the ADX. Again, the information provided is applicable only to the federal government; state and local correctional organizations may have separate policies and procedures. BOP would welcome any specific information concerning allegations of mistreatment that may have occurred within facilities operated by the federal government.

State and local prisons and jails

Many of the agreements referenced above include limitations on the use of solitary confinement for prisoners with mental illness. For example, the Hinds County consent decree included remedies to limit the use of restrictive housing, ensure welfare checks on persons placed in restrictive housing, and alternatives to restrictive housing. In the Miami-Dade case, the court-ordered consent decree requires the jail to implement a number of safeguards around the placement of prisoners with SMI in segregation, including sign-off on such placement by qualified mental health professionals, mandatory 15- or 30-minute visual checks, and a heightened level of care while in solitary confinement. The consent decree also prohibits the use of long-term solitary confinement for prisoners with SMI.