

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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JOSEPH MARONE, PAUL NANTISTA, and the :
NEW YORK CIVIL LIBERTIES UNION, :
:
Petitioners, : Index No. _____
:
-against- :
:
NASSAU COUNTY and EDWARD P. MANGANO, :
in his official capacity as Nassau County Executive, :
:
Respondents. :
:
For a Judgment Pursuant to Article 78 :
of the Civil Practice Law and Rules :
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**MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS'
VERIFIED ARTICLE 78 PETITION**

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New York, New York

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INTRODUCTION

For the more than 10,000 people per year who spend time in the Nassau County Correctional Center (NCCC) awaiting trial or serving sentences for minor crimes, a stay risks becoming a death sentence. In a little over one year, seven inmates have died in custody. Some of those deaths have been labeled clearly preventable by state authorities.

See Verified Petition (March 21, 2012) ¶¶ 9-14. Over the same period, Petitioner New York Civil Liberties Union (NYCLU) has received more than 200 complaints from inmates about the failure to provide necessary medication, the failure to treat chronic and life-threatening conditions, the mistreatment of persons with disabilities, and the lack of mental health services at the jail. *Id.* ¶ 20-21. The number of complaints has only escalated since the County shifted responsibility for medical and mental health care to a new private contractor. *Id.* ¶ 22.

The present situation is only the latest chapter in a long history of failing to protect human rights and human life in NCCC. More than two decades ago, Nassau County took an important step toward addressing this problem. Chapter XX, Section 2004 of the Nassau County Charter mandates that the County Executive appoint seven qualified persons to a Board of Visitors with wide-ranging powers to oversee operations at NCCC. The Board of Visitors has the authority to investigate inmate grievances, inspect the facility, examine records, create reports, and advise the Sheriff's Department about changes that could improve the jail and prevent unnecessary deaths. The Charter provision mandating the creation of the Board is a non-discretionary duty of the County specifically passed in order to address the County's long and ignominious history of neglecting the human rights and dignity of inmates in the jail. Yet, for more than two

decades, the County has ignored that duty. The Court should order the County to comply with its own law and take this necessary and important step toward addressing a crisis in the County jail.

FACTS

In 1990, the Nassau County Board of Supervisors passed legislation to create a Board of Visitors Oversight Committee with authority over NCCC. At the time, County officials stated that the Board of Visitors had been recommended by both a consultant's study on the jail and by the State as a response to systemic problems in the jail. Verified Petition ¶¶ 42-43.

Indeed, Nassau County has a long history such problems. In 1981, the Nassau County Sheriff entered into a consent judgment with inmate plaintiffs who had complained of unconstitutional conditions of confinement at NCCC. This consent judgment ordered that the County increase available cell space and contained provisions relating to medical services, food, recreation, telephones, contact visits, and staffing. *See Badgley v. Varelas*, 729 F.2d 894, 896 (2d Cir. 1984).

Throughout the 1980s, NCCC inmates brought and won a series of lawsuits arising out of Nassau County's failure to comply with this consent judgment. *See Badgley v. Varelas*, 729 F.2d 894 (2d Cir. 1984); *Badgley v. Santacroce*, 800 F.2d 33 (2d Cir. 1986), *cert. denied*, 479 U.S. 1067 (1987); *Badgley v. Santacroce*, 815 F.2d 888 (2d Cir. 1987); *Badgley v. Santacroce*, 853 F.2d 50 (2d Cir. 1988). The Second Circuit described these cases as “a Dickensian saga of prison overcrowding and bureaucratic excuse and delay” in the course of finding the County Sheriff in contempt of court. *Badgley v. Santacroce*, 800 F.2d 33, 33 (2d Cir. 1986).

This saga continued into the next decade. According to local media, on January 13, 1999, inmate Thomas Pizzuto died in the custody of NCCC, allegedly due to a beating he received at the hands of NCCC corrections officers. As a result of Mr. Pizzuto's case, four correction officers received prison sentences. Verified Petition ¶ 35. Following that incident, the United States Department of Justice (DOJ) investigated NCCC and concluded that the conditions there rose to the level of constitutional violations because of deliberate indifference to inmates' serious medical needs, the provision of medical care by unlicensed and untrained staff, failure to ensure that inmates in need of routine or acute medical care were seen by medical staff in a timely manner, failure to ensure that inmates with chronic diseases receive timely and appropriate follow-up treatment or medication, failure to identify, monitor or treat communicable diseases, failure to adequately manage medication and medical records and excessive use of force against inmates. *Id.* ¶¶ 35-37. Following a lawsuit by DOJ, the County settled and agreed to a consent order but, on February 17, 2009, less than a year after DOJ ended its oversight, the Commission of Correction reported that NCCC was substantially out of compliance with minimum standards for correctional facilities. *Id.* ¶ 38.

The County's legislation in 1990 was meant to establish powerful, local oversight of NCCC to ensure consistently that such non-compliance did not occur. The provision of the County Charter codifying this legislation reads as follows:

§ 2004. Nassau County Correctional Center Board of Visitors; membership; appointment, compensation and expenses; power and duties.

- A. There shall be within the Division of Corrections a Nassau County Correctional Center Board of Visitors. It shall consist of seven members, including a chairperson, each of whom shall be appointed by the County Executive subject to confirmation by the County Legislature. As far as may be practicable, the members shall possess a working knowledge of the correctional system.

- B. All members of the Board shall be Nassau County residents.
- C. All members of the Board shall be voting members.
- D. The term of office of each member shall be three years, except that members first appointed shall be appointed as follows: four for a term of one year, two for a term of two years, and one for a term of three years. Upon expiration of the term of office of any member, his successor shall be appointed for a term of three years. Any appointed member of the Board may be removed by the County Executive for cause after an opportunity to be heard in his defense. Any member chosen to fill a vacancy created other than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. Vacancies caused by the expiration of term or otherwise shall be filled in the same manner as original appointments.
- E. Members shall serve without compensation. The Board of Supervisors may appropriate sufficient sums to meet the expenses actually and necessarily incurred by members of the Board in the performance of their duties hereunder.
- F. The Board and each member thereof shall have the following powers and duties:
 - 1. To investigate, review or take such other actions as shall be deemed necessary or proper with respect to inmate complaints or grievances regarding the correctional center as shall be called to their attention in writing.
 - 2. To have access to the correctional center and all books, records and data pertaining to the correctional center which are deemed necessary for carrying out the Board's powers and duties.
 - 3. To obtain from correctional center personnel any information deemed necessary to carry out the Board's powers and duties.
 - 4. To request and receive temporary office space in the correctional center for the purpose of carrying out the Board's powers and duties.
 - 5. To report periodically to the Sheriff and, where appropriate, to make such recommendations to the Sheriff as are necessary to fulfill the purposes of this section.
 - 6. To advise the Sheriff in developing programs for improving correctional center services and duties and for coordinating the efforts of correctional center officials in respect to improving conditions of inmate care, treatment, safety, rehabilitation, recreation, training and education.
 - 7. To meet on a regular basis at a time and place designated by the Chairman of the Board.

Although it would appear that some members were appointed in 1999 and 2001, and additional members were considered but not appointed in 2003, the County Executive has never nominated the required seven members, and appears not to have nominated any person to the Board in the last decade. Verified Petition ¶¶ 45-47. As a

result, no independent authority in Nassau County has the power to oversee the operations of the jail or to address inmate grievances.

ARGUMENT

I. The Nassau County Charter Creates an Enforceable, Non-Discretionary Duty in the County Executive To Appoint Qualified Members to a Board of Visitors With Authority to Oversee the Nassau County Jail.

The Nassau County Charter creates a non-discretionary duty to establish a Board of Visitors with wide-ranging powers to investigate and review operations at the Nassau County Correctional Center. NASSAU COUNTY CHARTER, ARTICLE XX, § 2004. The Board is to consist of seven members, including a chairperson, all residents of Nassau County appointed by the County Executive and subject to confirmation by the County Legislature. § 2004(A),(B). The language of this Charter provision is unequivocally mandatory, using the term “shall” throughout, including with respect to the County Executive’s mandate to nominate qualified members for the legislature’s approval. § 2004(A).

Unfortunately, the County Executive has not nominated any members to the Board since 2001. Verified Petition ¶ 45-48. Moreover, although a few people were appointed in 1999 and 2001, it would appear that the Board was never fully appointed and thus never truly functioned, as a result of the County Executive’s failure to fulfill his duty under the Charter. *Id.*

Article 78 of the New York Civil Practice Laws and Rules (CPLR) provides a mechanism for the court to compel a government agency or officer to perform such a mandatory duty in a wide variety of situations. *See, e.g., People ex rel. Baird v. Bd. of Sup’rs*, 138 N.Y. 95, 115 (1893) (“[W]here the thing to be done does not rest in

discretion and is to be performed by a public body or officer, and the act is of a public nature . . . its performance may be compelled by mandamus"); *Cohalon v. Caputo*, 94 A.D.2d 742 (2d Dep't 1983) (granting an Article 78 petition to compel the Suffolk County Comptroller to release funds requested by County Executive for the purchase of police vehicles, where the Comptroller's "duty in this situation is ministerial, since he does not have any discretion" about how funds are spent); *Peirez v. Caso*, 72 A.D.2d 797 (2d Dep't 1979) (noting that Article 78 may compel action that "is ministerial, non-discretionary and nonjudgmental, and is premised upon specific statutory authority mandating performance in a specified manner").

In a case indistinguishable from this one, the Court of Appeals enforced a mandamus order requiring the City of New York to create a charter-mandated budgetary agency that the mayor had refused to appoint and fund. *New York Public Interest Research Group v. Dinkins*, 83 N.Y.2d 377 (1994). See also *Caputo v. Halpin*, 78 N.Y.2d 117, 126 (1991) (holding that although a county executive has authority to issue a "temporary hiring freeze" to control a budget deficit, he may not "effectively abolish positions" by failing to fill them in violation of county charter requirements); *Dutchess County Legislature v. Steinhause*, 56 A.D.3d 469 (2d Dep't 2008) (granting mandamus petition to compel County Executive to cease refusing the legislature's appointee to a position in violation of county charter).

Moreover, the Court has power to compel a government official to take non-discretionary action where, as here, "there is an inordinate delay in acting." *Bonanno v. Town Bd. of Town of Babylon*, 148 A.D.2d 532 (2d Dep't 1989) (compelling a town board to act on an application for a plumber's license that had been pending for more

than six months). Here, the County Executive has failed to appoint, or re-appoint, members to the Board of Visitors for at least eleven years, since 2001.

II. The Court Should Order the County to Act Promptly to Address the Human Rights Emergency at the Jail.

The County's failure to abide by the mandate to create a Board of Visitors means that the Board has never been able to exercise the ample authority provided to it under the Charter to "investigate ... inmate complaints"; "access the correctional center and all books, records and data pertaining to the correctional center; obtain information from correctional center personnel"; "report ... and make recommendations to the Sheriff" ; and "advise the Sheriff in developing programs for improving correctional center services and improving conditions of inmate care, treatment, safety, rehabilitation, recreation, training and education." NASSAU COUNTY CHARTER, ARTICLE XX, § 2004(F).

The absence of an independent agency with this broad authority has no doubt contributed to the dire situation at NCCC. As the Verified Petition details, seven inmates have died while in the custody of the NCCC since January 1, 2012, five of them as a result of suicide. Verified Petition ¶ 9.

Darryl Woody, 44 years old, committed suicide on January 3, 2011, while at the NUMC Prison Ward. The New York State Commission of Correction, an independent state entity that investigates deaths in custodial facilities, reported that his death "may have been prevented but for the grossly inadequate psychiatric care provided him in the jail and hospital, and the lack of appropriate supervision by the NUMC." The Commission of Correction further reported that Mr. Woody had a history of mental instability and had previously attempted suicide once before entering jail and once in December 2011 while on suicide watch in the jail. The Commission's report

recommended investigations into the jail’s booking, supervision and staffing procedures, as well as investigations for “gross negligence and gross incompetence” of the two doctors who treated Mr. Woody. *Id.* ¶ 10.

Eamon McGinn, 32 years old, committed suicide on January 3, 2010, while incarcerated in the jail. The New York State Commission of Correction reported that his was “a preventable death with inadequate provision of mental and medical health care.” According to local media, Mr. McGinn’s family is suing the county and the hospital for failing to assess risk factors of suicide properly for Mr. McGinn. *Id.* ¶ 11.

Gasparino Godino, 31 years old, hung himself with a bedsheet on Oct. 5, 2010 while incarcerated at NCCC. The New York State Commission of Correction reported that he was a known suicide risk because of his history of drug use and his depression. *Id.* ¶ 12. Herve Jeanot, 29 years old, committed suicide in the NCCC on Oct. 27, 2010 following conviction for first degree murder at his third retrial. In its report on his death, the New York State Commision of Correction noted that the NCCC “does not have any procedure in place for rescreening inmates who have been convicted at trial or have received significant sentences of incarceration” for suicide risk. *Id.* ¶ 13.

Most recently, on February 24, 2012, Bartholomew Ryan was found hanging in his cell at NCCC, the victim of an apparent suicide. According to media reports, Mr. Ryan was a 32 year-old veteran of the Iraq war. He had been arrested following a traffic stop for driving under the influence of drugs and excessive speed. He had been in Nassau County’s custody for under twenty-four hours before his apparent suicide. Mr. Ryan’s mother has filed a Notice of Claim informing Nassau County and the jail that she intends to file a lawsuit for the wrongful death of her son. The Notice of Claim alleges, among

other things, that the jail failed to monitor, supervise and care for Ryan properly, despite knowing that he suffered from drug addiction and post-traumatic stress disorder. *Id.* ¶ 14.

Collectively, these deaths make Nassau County responsible for one-third of all suicides in county facilities statewide and almost ten percent of suicides in all New York correctional facilities (including the state prison system) in 2010, even though NCCC holds less than two percent of all state and county inmates. *Id.* ¶ 15.

These deaths are not isolated phenomena. Over the past year and a half, Petitioner NYCLU has received more than 200 complaints from inmates at the NCCC about the conditions of confinement and the failure to provide needed medical and mental health services. *Id.* ¶ 20. These complaints detail NCCC's failure to provide appropriate medical treatment include the denial of needed medications; the failure to treat individuals with special needs; the refusal to examine patients who say they are ill or injured; the failure to provide needed surgeries; the failure to provide timely care for urgent medical conditions; the failure to provide regular mental health visits; and the failure to provide follow-up care after an inmate is on suicide watch. *Id.* ¶ 21.

Prior to June 2011, medical and mental health care was provided to inmates at the jail by NUMC. In June of 2011, NCCC awarded an exclusive contract to a private contractor, Armor Correctional Health Services ("Armor"), to provide medical and mental health services. Since the change in healthcare providers at the jail, the volume of complaints received by the Nassau Chapter office of the NYCLU has increased dramatically. *Id.* ¶¶ 22-23. Inmates have complained that doctors are no longer available 7 days a week, such that no treatment occurs if someone is ill or injured on the weekends; that Armor personnel create insurmountable barriers to inmates' access to qualified

doctors, by denying sick call requests and using non-qualified medical personnel to screen people; that Armor has taken away wheelchairs, canes and crutches from disabled inmates, leaving them to maneuver around the facility without any assistance; that NCCC is no longer supplying inmates with grievance forms for medical and mental health issues; and that if an inmate writes a grievance on a sheet of paper or manages to get hold of a grievance form, it often goes unanswered. *Id.* ¶ 24.

These deaths and complaints lend urgency to Petitioner's request that the Court exercise its power to compel Nassau County to comply with its non-discretionary duty to create the Charter-mandated Board of Visitors.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court compel Nassau County to create within the Division of Corrections a Nassau County Correctional Center Board of Visitors, and compel the County Executive to appoint qualified members to that Board, as provided in Section 2004 of the Nassau County Charter, in a timely manner.

Respectfully submitted,


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