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United States District Court,
S.D. California.

UNITED STATES of America, Plaintiff
v.
COUNTY OF SAN DIEGO, et. al. Defendants

91-0764-R(M). | July 22, 1991.

**Attorneys and Law Firms**

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**Opinion**

**ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION**

RHOADES, District Judge.

***1** I have carefully read all the papers and relevant cases in this matter and I am ready to make my decision.

**A.** ***Policy underlying CRIPA***
The Civil Rights of Institutionalized persons Act ("CRIPA") was passed by Congress in order to provide the Department of Justice ("DOJ") with the authority to initiate litigation against state officials when it believes that the constitutional rights of that state's institutionalized persons are consistently being violated. The DOJ was given such authority because of the inability of private litigants to marshall the resources to mount an adequate attack against system-wide abuse in violation of the rights and protections guaranteed by the Constitution of the United States. Because of the significance of the constitutional rights of prisoners and the serious ramifications for a "civilized country" where there may exist a systemic deprivation of those rights, Congress has mandated that the DOJ take up the duty of challenging state institutions where such violations may be taking place. Congress has specifically recognized that the states and particularly state attorneys general themselves are neither willing nor able to become the advocates for the institutionalized. See Senate & House Reports, reprinted in 1980 U.S. Code Cong. & Admin. News at 787 -842; See also, Dinerstein, The Absence of Justice, 63 Nebraska Law Rev. at 680; Cornwell, CRIPA: The Failure of Federal Intervention For Mentally Retarded People, 97 Yale Law Journal at 845.

Further, while considering the Act, Congress specifically concluded that previous DOJ action against state institutions has been very successful in facilitating progress in the implementation of prisoner's constitutional rights. I quote from the Senate Report directly: "the success of the Attorney General's litigation program on behalf of institutionalized, both on paper and in action, is eloquent testimony to the potential of the United States to serve as a catalyst in activating state officials to fulfill constitutional and federal statutory duties to their institutionalized populations." (emphasis added) See U.S. Code & Admin. News at 796.

I reiterate the specific word "catalyst." I do so because it is also clear that Congress, in authorizing the DOJ to engage in litigation, ultimately prefers that the state take steps to remedy constitutional violations without proceeding through legal action. See Cornwell, 97 Yale Law Journal at 847. At the same time, Congress believes that DOJ initiated litigation is a necessary tool (i.e. the "catalyst") in drawing the state's attention to the seriousness of system wide violations of the federal Constitution that could be taking place within the state's institutions. Id.

**B.** ***Investigation by the DOJ before bringing suit***
From a reading of the statute and legislative history, it becomes clear that Congress contemplated that DOJ should conduct investigations into a state's institutions in at least two different stages. The first stage of investigation and the stage that we are considering in this case is preliminary in nature.[1] It takes place when the DOJ suspects that system wide constitutional violations are occurring, but has not yet reached a determination that system wide abuse exists as a matter of established fact. The Act spells this out in 42 U.S.C. section 1997b(a)(2) where it provides that before the DOJ commences a litigation, it must first conduct an investigation into the alleged problems at the particular institution. See also, *US v. County of L.A.,* 635 F.Supp. 588, 592 (C.D. Cal. 1986) (CRIPA recognizes "need for a DOJ investigation prior to commencing a CRIPA action".)

***2** In addition, when discussing the Attorney General's

responsibility and the certification procedures which must be complied with *before* initiating litigation, the Act specifically calls on the Attorney General to notify the state of the "alleged conditions" and "alleged pattern or practice of deprivation" making specific reference to "the supporting facts giving rise to the alleged conditions and the alleged patterns or practice" of deprivation, and at the same time suggesting "minimum measures" which he believes may remedy the problems. 42 U.S.C. § 1997b(a)(1). Implicit in this requirement for notification of 1) the problems, 2) facts supporting that there are problems, and 3) proposed remedies is the intention by Congress, that before commencement of litigation takes place, the DOJ must do a thorough investigation of the state's institutions.

Support for the position that prior to commencing a full scale litigation, Congress granted the DOJ the authority to go into the specific institution where constitutional deprivation are alleged to be taking place to conduct a thorough investigation is found in more than one place in the legislative history:

> *Before initiating litigation* with respect to a particular institution, the Attorney General must, of course, *thoroughly investigate such an institution.* Such an investigation can be most costly, time consuming, and disruptive of the operation of such institutions. See Senate Report on the Act, reprinted in 1980 US Code Cong. & Admin. News at 811. See also House Conference Report, reprinted at 836.

**C.** ***Injunction to prevent obstruction of DOJ investigation***

The one case[2] before me dealing with the question of the congressionally authorized scope of a DOJ investigation prior to commencing a suit on the merits of the constitutional violations is *US v. County of L.A.,* 635 F.Supp. 588 (C.D. Cal. 1986). As with our situation, that case dealt with the first stage at which the DOJ must conduct preliminary investigation into the "possibility" that system wide abuse is present in a state's institution. There, again as with our case, the DOJ sought a preliminary and permanent injunction preventing the juvenile court from applying state law to prevent the DOJ from gaining full access to the L.A. juvenile hall, juveniles held therein and their records.

Judge Takasugi held that the CRIPA preempted the confidentiality statute that the state attempted to apply to limit and control access to the juveniles and their records. He found that the congressional intent and purpose of the CRIPA to investigate and correct institutional civil rights violations would be frustrated and obstructed by application of state confidentiality law to control access to the juvenile hall or its records. Id. at 592-93. I agree with and specifically adopt the preemption analysis employed by Judge Takasugi.

**D.** ***Ruling in the case at bar***

1. After a thorough reading of the legislative history of the CRIPA, consideration of preemption doctrine, and comparing the facts of *US v. County of L.A.* to the facts of this case, I adopt the same reasoning employed by Judge Takasugi and find that the County's attempt to utilize various state confidentiality law or any other state procedures to limit access of the DOJ to the county jails frustrates and obstructs the purpose of the CRIPA and are therefore preempted.

***3** 2. As far as the factual details going to how the DOJ and the County attempted to work out the logistics of the investigation - I am not reviewing them and I find them to be irrelevant to this decision.

3. There is no question that Congress wants the Attorney General to conduct a thorough investigation before initiating "the lawsuit" against state officials which would charge them with constitutional violations.

The DOJ's congressional mandate requires that it do an investigation so that if it finds there are problems, it can bring those problems to the attention of the county officials and work together to remedy them without the need for a lawsuit. (I am not going to draw conclusions as to whether there are violations taking place. And according to their letter of December 13th 1990, the DOJ has not yet reached any conclusions that there are any violations.) But in order for the DOJ to be able to decide that there are no widespread problems or to resolve the problems without a lawsuit, it needs access to the facts. Further, it is also in the best interest of the county to help the DOJ find the facts *before* rather than *after* a complaint which charges the state with constitutional violations gets filed. By letting the DOJ go into the facilities and see all pertinent documents at the outset, they may find that there are no violations or if there are violations they could be remedied by the state without the need for further actions.

4. For the foregoing reasons, and based on the inherent equitable powers of this court I GRANT the DOJ's motion for a preliminary injunction and I ORDER that the County allow the DOJ to have unrestricted access to the following items:

1) Officer disciplinary reports - the alleged confidentiality and privileges provided by state law to the extent that they might apply, (which I am not even convinced they do), are as I already concluded, preempted by the CRIPA and these should be given to the DOJ as they have provided assurances that they will maintain confidentiality. I find that it is also proper that the officers names and any other

identifying information may be redacted from the disciplinary reports before they are provided to the DOJ.

2) Quality assurance reports - I note from the County's opposition that they are now willing to provide them.

3) Medical records, death reports, and inmate status reports - Again, I find state law privileges and confidentiality assertions to be preempted by the Act. I will not get involved in the details of whether or not there should be redaction of names on these documents or there should be some other means employed to address inmate confidentiality. Congress has provided the authorization to the DOJ and I simply want the DOJ to be given access to them if they have not been thus far.

4) Personal "private" interviews with inmates - the County acknowledges that interviews should be allowed but would like to monitor or observe them because of its concerns that the DOJ may not be able to develop a fair and factual record.

***4** As to the County's concerns about fair interviews and fact finding, they should be left to the staff of the DOJ. In passing the Act Congress specifically recognized that the lack of fairness by state authorities mandated intervention by the federal government.

Indeed, the legislative history specifically mentions that a serious concern of Congress was the difficulty that inmates might have speaking up about their conditions for fear of retaliation by the state authorities. (See Senate Report, reprinted in US Code Cong. & Admin. News at 802.) It is common sense that the interviewees may be hesitant to relay information when interviewed before county officials if they may be subjected to retaliation after the DOJ personnel leave the scene. Therefore, I ORDER that the DOJ be allowed to conduct their interviewing process in private and not subject to state supervision.

Finally, I find that it is appropriate to grant preliminary injunctive relief[3] because I find that the United States is more than likely to succeed on the merits for the reasons I have already stated. At the same time, the threat of great irreparable harm if the DOJ investigation continues to be obstructed is great.

The language of the statute itself specifically calls on the DOJ to institute "a civil action .... for such equitable relief as may be appropriate to insure the minimum corrective measures necessary to insure the full enjoyment" of a prisoners's constitutional rights. 42 USC § 1997a. The statute continues by saying that equitable relief may only be available to the extent that prisoners are being deprived of their rights. As I said before, I make no finding and thus far it appears the DOJ has made no conclusion, that constitutional rights are in fact being violated. However, the DOJ cannot accomplish its congressional mandate to find out whether rights are being deprived without first investigating a given state's facilities. At the same time, Congress unequivocally intends that the DOJ conduct a thorough investigation before commencing a lawsuit against state officials alleging specific unconstitutional conduct. Because of this congressional intent and because of the great public interest that this country has in the quality of treatment that it provides to the institutionalized persons entrusted to its care, preliminary injunctive relief is clearly warranted.

IT IS SO ORDERED.

1 A second stage of investigation would take place after the DOJ initiates litigation to correct the abuse which it has not been able to convince the states to do themselves through alternative means. This type of investigation would be the usual discovery that must be permitted in trying to narrow the issues of a lawsuit. See House Conference Report, reprinted at 836 ("After the commencement of the suit, further investigation and discovery may indicate additional corrective measures are appropriate").

2 The County cites to *US v. State of Hawaii,* 564 F.Supp. 189 (D. Hawaii 1983) for support to deny access to information to the DOJ. However, this case is clearly distinguishable from ours because it involved a decision on a motion to dismiss the complaint after the DOJ had already initiated litigation specifically alleging that constitutional violations were taking place without following the specific statutory certification to provide the state with facts supporting the allegations and proposed remedies.

Secondly, although the court found that Congress did not give federal investigators the power to enter a state prison without the consent of the state, it did so in dicta and without support from the statute or legislative history.

3 For the plaintiff to prevail on a motion for preliminary injunction "... there essentially are only two factors to be considered: the likelihood of the plaintiff's success on the merits; and, the relative balance of potential hardships to the plaintiffs, defendants, and the public." See, e.g. *State of Alaska v. Native Village of Venetie,* 856 F. 2d 1384, 1389 (9th Cir. 1988).