LEGAL DEPARTMENT
NATIONAL PRISON
PROJECT

May 15, 2012

Christopher B. Epps
Commissioner
Mississippi Department of Corrections
723 N. President Street
Jackson, MS 39202

Dear Commissioner Epps:

We are contacting you with a proposal to address the urgent problems at the East Mississippi Correctional Facility. For the past eighteen months we have been sending MDOC reports and updates about conditions of confinement at EMCF and in February, as you know, we presented a summary of our concerns to the Civil Rights Division of the Department of Justice. It is our understanding that Dr. Austin confirmed the validity of these concerns on his most recent visit to EMCF with Emmitt Sparkman. We attach a very brief summary of the evidence showing the depth of the problems at EMCF.

We propose the following: At our own expense, the ACLU and the Southern Poverty Law Center will retain medical, mental health, and correctional experts with extensive clinical and managerial experience to conduct a comprehensive assessment of current conditions at EMCF. Our experts will present their findings and recommendations to you. MDOC will be able to use the experts' findings and recommendations to inform its contract negotiations with the new vendor at EMCF, and to make sure that there is a meaningful system in place for comprehensive oversight of the vendor's performance.

At the same time, we will work with you to develop a draft consent decree covering medical and mental health care, use of force, protection from prisoner-on-prisoner assault, nutrition, and environmental conditions. If we cannot reach an agreement on the terms of the consent decree within the next twelve weeks we will proceed to litigation.

Your decision to part ways with GEO has given us hope that there is a way to avoid prolonged contentious litigation. In the long term, we believe GEO's departure is a positive step for corrections in Mississippi. But we don't believe that GEO's departure will resolve any of the underlying problems at EMCF unless MDOC is able to adequately monitor clinical care and conditions of confinement. In the short term, we are concerned that right now the prisoners are more

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vulnerable than ever to abuse and medical neglect. Even when its contract was on the line, GEO violated the law with impunity, and during this transitional time GEO has even less incentive than ever to comply with its contract and the law. Thus, we feel an urgent need to move quickly.

Our strong preference is to avoid litigation and to work with you to fix conditions at EMCF. We want to offer MDOC our help to come up with a plan to finally address the underlying systemic issues causing the crisis at EMCF. We're confident that working together we can transform EMCF into a facility fulfilling its special mission of safely housing prisoners while providing necessary care to the seriously mentally ill.

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Given the urgency of this matter, we respectfully request a response to our proposal within two weeks.

Sincerely,

Margaret Winter
Gabriel Eber
ACLU National Prison Project

Sheila Bedi
Jody Owens
Southern Poverty Law Center

Elizabeth Alexander
Law Offices of Elizabeth Alexander

cc: Leonard Vincent

Enclosure

Summary of Ongoing Problems at the East Mississippi Correctional Facility

As part of the 2010 settlement of *Presley v. Epps*, the ACLU was granted the right to monitor conditions at the facilities to which *Presley* class members had been transferred both before and during the process of closing Unit 32. The ACLU and *Presley* experts Dr. Terry Kupers and Madeleine LaMarre conducted a comprehensive assessment of EMCF in January 2011 and submitted reports to MDOC. The ACLU continued to monitor conditions at EMCF throughout the spring and summer of 2011. In the early fall of 2011, the facility entered a series of lockdowns that continue to this day. These lockdowns precipitated a wave of violence, suicides, and further deterioration of medical care and other conditions. During this period and continuing to the present, the Southern Poverty Law Center visited EMCF on a regular basis and documented the numerous, critical problems that arose during the lockdowns. The summary below is based on the *Presley* experts' findings and the ACLU's and SPLC's monitoring.

Solitary Confinement

- While EMCF is intended to be MDOC's designated facility for prisoners with serious mental health needs, it may be one of the only psychiatric prisons in the country that devotes a considerable proportion of beds exclusively to long-term segregation. The solitary confinement units at EMCF are used to house large numbers of seriously mentally ill prisoners.

- Under the terms of the *Presley* consent decrees, prisoners with serious mental illnesses were to be excluded from solitary confinement in Unit 32 and, if appropriate, transferred to EMCF to receive mental health care not available at MSP. However, upon arrival at EMCF, a substantial proportion of former Unit 32 prisoners were immediately placed in solitary confinement.

- Prisoners held in solitary confinement at EMCF are housed in what Dr. Kupers described as "extreme isolation" behind solid doors for a minimum of 23 hours a day and often more, since scheduled daily recreation and other out-of-cell activities frequently do not occur.

- Prisoners in solitary confinement are not monitored by security staff for hours at a time. Prisoners are terrified that they will experience a medical emergency and no one will respond. Even when our experts inspected the facility, they discovered units unattended by staff.

- As a result of the lack of an adequate mental health program, and the stress produced by other conditions in the prison, there is an epidemic of suicide attempts, completed suicides, and other self-injurious behavior.

Mental Health Care

- EMCF systematically "undiagnosed" large numbers of seriously mentally ill prisoners transferred from Unit 32 - that is, overrode previous diagnoses on the basis of cursory interviews that lasted, in many cases, only a few minutes. These prisoners were then taken off the psychiatric medications that had been working for them and were denied placement in a unit designated for seriously mentally ill prisoners. Prisoners arriving from Unit 32 were categorically ineligible to receive inpatient or intermediate-level mental health treatment.

- Mental health staffing is inadequate given the size of the facility and its purpose. During the *Presley* experts' visit to EMCF, MDOC employed only one psychiatrist for the entire facility. The American Psychiatric Association's guidelines recommend a ratio of one psychiatrist per 150 prisoners on psychotropic medications. We have been told that, in recent times, psychiatric staffing at EMCF has fallen below 1.0 FTE.

- Unit 3, which is supposed to provide EMCF's most intensive mental health care, offers very little mental health treatment. Few prisoners assigned to the unit are receiving group therapy or meaningful individual therapy on an ongoing regular basis. Mainly, prisoners are idle and have nothing to do. Dr. Kupers observed that Unit 3 prisoners displayed "the kind of blank stares that result from over-medication with tranquilizing anti-psychotic medication such as Haldol."

- There have been frequent suicides at EMCF. For example, Tyrone Hunt committed suicide in Unit 6 on New Year's Day this year. Mr. Hunt was diagnosed with bipolar disorder but was sent to segregation. Given the severity of his mental illness, segregation was contraindicated. Following his suicide, a nurse told an investigator that Mr. Hunt had been a rape victim and that is why he killed himself. There are multiple reports that custody rounds were not made as required on the day of the suicide.

- Similarly, Daniel Cottrell committed suicide on October 14, 2011 in Unit 5. On the day of his death, he set a fire outside of his cell and asked to be moved; he was afraid because he had heard that there was a hit out on him, and he had been threatened with knives. Investigation strongly suggests that another prisoner told the custody staff delivering meal trays that Mr. Cottrell was hanging himself. The video documents that the officer looked into Mr. Cottrell's cell and then failed to deliver a food tray to him. It was left to a visiting warden, approximately ten minutes later, to walk by the cell and discover the hanging. Relevant to the interaction of problems at EMCF, Mr. Cottrell wrote a sick call request on the day of his death indicating his intent to commit suicide. Although sick call slips are by policy to be reviewed once every day, the slip was not discovered until three days later. Further, a standard principle for preventing suicides in high-risk settings is to remove hardware that could be used for hanging. Nonetheless, cells in Units 5 and 6 still

contain bed railings and other such features.

- Self-harm, exacerbated by the cycle of lockdowns and lack of meaningful mental health care, is common. Prisoners swallow glass and lacerate themselves.

Problems with Medical Care

- Both before and during the recent wave of lockdowns, prisoners frequently have difficulty accessing basic medical care.

- The *Presley* medical expert, Madeleine LaMarre, audited health services requests (HSRs) during her monitoring visit to EMCF. She found the average delay between receipt of a sick call request and an appointment was over a week and approximately one-third of the sick call requests did not ever result in an appointment. Examples include:

    - A prisoner who complained of breathing problems after being exposed to smoke and mace. He was not seen until six days after requesting care. When finally seen, he was still short of breath and had an abnormally low level of oxygen in his blood.

    - A prisoner complaining of bleeding from his penis and neck, accompanied by pain and swelling, who was not assessed by health care staff for nine days;

    - A prisoner complaining of severe reflux who was not seen for 23 days;

    - A prisoner with painful breathing, weight loss, numbness and fatigue who was not seen for a week.

    - Another prisoner submitted a HSR reporting shortness of breath, losing consciousness, coughing spells, and migraine headaches. The only response to the request from health care staff was to inform him that the facility was out of cough syrup and more would be ordered.

- In many cases, nursing staff refused to schedule patients with the physician if they had been previously seen for a particular complaint, even if symptoms were worsening.

- In part, these barriers to accessing health care reflect severely deficient levels of health care staffing. Ms. LaMarre found that staffing levels for RNs were substantially too low, resulting in the routine use of LPNs for medical tasks for which they are not qualified. At the time of Ms. LaMarre's inspection, there was only one physician responsible for health care for the 1,500 prisoners. This was the same staffing level that the facility had maintained when the population was 800-900 in 2009.

- Ms. LaMarre found numerous cases in which the physician had not undertaken standard diagnostic steps, including critical laboratory tests, that were required in light of the patient's condition. These included a number of patients with documented significant weight loss. Other examples include:

    - A prisoner described by the physician as "emaciated" after a 35-pound weight loss who was experiencing abdominal pain. This prisoner received no treatment beyond a determination that he needed more calories in his diet, although his symptoms could have indicated a number of critical problems, such as colon cancer.

    - A case in which the physician failed to investigate the cause of rectal bleeding in a patient with a history of weight loss, ulcers, hepatitis C infection, and gastrointestinal reflux disease.

    - Another patient whose medical records included a laboratory report indicating that he had a thyroid disorder. This prisoner was not given a medical work up of any kind for heartburn and significant weight loss, with the result that his probable hyperthyroidism was never addressed.

    - A case in which an outside hospital determined that the patient had suffered a skull fracture. When the patient returned to health care three weeks later complaining of symptoms indicating that he could be suffering from a complication of the fracture such as an intracranial bleed, the physician failed to consider the recent history of skull fracture in assessing the patient's serious neurological symptoms.

- Ms. LaMarre also expressed serious concerns about dental care, noting examples such as a prisoner who needed cavities treated but who was still waiting six months after his first request.

- Prisoners also frequently suffer recurring interruptions of their prescribed medications. Medication delivery and record maintenance are fraught with possibilities for error. Ms. LaMarre observed a nurse with paper cups of unlabeled medications, which she noted was "an illegal and dangerous practice." During the lockdowns in recent months, prisoners report that nurses dump pills on the ground and push them through the space between the floor and cell door. Prisoners routinely report that they do not receive their medications at all for days at a time.

- Prisoners continue to experience problems in access to health care. One prisoner recently reported having to start a fire to get attention so that he would be given his insulin injection. Another diabetic prisoner lost consciousness in his cell and medical staff did

not respond for fifteen minutes. Even after this event, no changes were made in his treatment, such as providing him with snacks in his cell to prevent additional episodes of potentially life-threatening low blood sugar. Prisoners repeatedly experience seizures without being evaluated by health care staff.

Use of Force Issues

- Joseph Brown was a prisoner in Unit 5 with significant physical and mental health problems. He was catheterized for urinary incontinence and had to wear diapers and carry a urine bag. His cell was left contaminated with blood and feces. It was reported that custody staff ordered him to provide a urine sample; he was unable to do so and responded by banging on his cell door and smearing blood on the door window. He then tied something around his neck and threatened suicide. It was also reported that custody staff ordered him to come to the front of the cell and present his wrists for handcuffing, but he failed to comply. The officers then sprayed him with mace. Twenty minutes later, when officers entered the cell, Mr. Brown was dead. The use of mace followed by the delay in removing him from his cell created a serious risk of death that unfortunately materialized.

- Chemical agents are used frequently. Prisoners, including those with respiratory disorders and others who are particularly at risk from chemical agents, are not regularly examined or treated by medical staff following exposure, and are not allowed to decontaminate their bodies and cells.

- Restraints are also frequently used inappropriately on prisoners. For example, in January of this year, staff used leg restraints to pull a prisoner's ankles to his wrists. The prisoner involuntarily defecated on himself while so restrained.

- Another prisoner had his wrists routinely restrained behind his back, despite the fact that he has a displaced bone near his shoulder that makes this form of restraint particularly dangerous and painful.

- Other prisoners have allegedly been placed in "wristlocks" and then maced as punishment for placing their arms outside the tray slots in the cell doors when they complain about conditions.

- EMCF is severely understaffed. Under-supervised and poorly-trained custody staff lack the tools to run a high-security mental health facility and are at risk of relying on excessive force out of fear for their own safety. Repeated lockdowns at EMCF since last September add to the tension, resulting in an institutional atmosphere that is extremely stressful for both staff and prisoners.

Problems with Protecting Prisoners from Violence

- During the last year, a prisoner was charged with homicide in connection with his cellmate's death.

- Weapons are widely available; prisoners are frequently assaulted by other prisoners armed with knives, locks, and other weapons.

    - For example, two prisoners were stabbed in December 2011 shortly after they arrived at the facility.

    - In September of last year, a prisoner had to have his finger amputated after he was stabbed twenty times by multiple other prisoners.

    - In another December 2011 attack, several prisoners were allowed to come from other areas of the prison to stab another prisoner. It is reported that several custody staff observed the attack without attempting to intervene, part of a pattern of allowing prisoners to roam around the facility – an incredible breakdown in the core function of a high security prison.

- Prisoners repeatedly state that assaults occur as a result of staff deliberately allowing gang-affiliated prisoners into housing units where they do not belong.

- By the end of last October, violent incidents had become so rampant that the local Sheriff wanted the state to assign a full-time investigator to EMCF as the facility was sapping his resources.

Other Systemic Problems at EMCF

- Prisoners simply do not get enough to eat. Dr. Kupers and Ms. LaMarre pointed out in their reports that the failure to provide enough food resulted in multiple prisoners losing significant amounts of weight. The portions of food provided to prisoners are routinely inadequate. Even aside from calories, the food served lacks sufficient nutrients.

- EMCF does not maintain basic sanitation. Many cells, showers, and other parts of the facility are contaminated with bodily waste. When such contamination occurs, the area is not promptly cleaned and sanitized. Indeed, contamination appears to remain for prolonged periods; Dr. Kupers observed bodily wastes that had obviously been present for some time still awaiting clean-up.

- Basic maintenance on the physical plant is not performed so that the physical plant has aged far beyond what one would have expected given its recent construction. Prisoners are frequently left in cells without working plumbing, lighting or heat, and critical repairs are delayed or not made.

- Prisoners are also denied regular showers and exercise. When prisoners are taken for showers, they are frequently left unattended for hours, naked and cold, because custody staff are not present on the housing units for extended periods of time.