

## **Report of Investigation**

# **January 11, 2021 Cell Extractions at the Edna Mahan Correctional Facility for Women**

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## **I. INTRODUCTION**

On January 25, 2021, NJ Advance Media reported that approximately 30 correctional officers and supervisors at the Edna Mahan Correctional Facility for Women (“EMCF”) had been put on administrative leave, and a criminal investigation was underway, after officers at the facility had been accused of severely beating several inmates earlier that month. Subsequent media accounts stated that the brutality had taken place during the process of corrections officers forcibly removing multiple inmates from their cells shortly before midnight on January 11, through a process referred to as “cell extraction.” EMCF inmates alleged that during that process, officers used excessive force, resulting in serious physical injuries to multiple inmates. Additionally, one inmate made an allegation of sexual assault by an officer during the cell extractions.

These allegations were particularly striking as they came in the middle of an ongoing investigation by the United States Department of Justice (“DOJ”) into sexual abuse of inmates by EMCF officers. In April 2020, DOJ had issued a 29-page notice stating that DOJ had reasonable cause to believe that the New Jersey Department of Corrections (“NJDOC”) “fails to keep prisoners at Edna Mahan safe from sexual abuse by staff.”

On January 27, 2021, New Jersey Governor Phil Murphy announced that Lowenstein Sandler LLP (“Lowenstein”) would undertake an investigation into the events of January 11 “to determine how this happened and make recommendations to prevent anything like it from ever happening again.”

This report sets forth the results of Lowenstein’s investigation. Part II of the report details the methodology used to conduct the investigation. Parts III, IV, and V provide

background information, set forth applicable legal standards, and summarize relevant NJDOC policies and procedures. Together, they provide historical and legal context for our findings and recommendations. Part VI of the report sets forth our detailed findings and analysis regarding the cell extractions and the response by State officials. Part VII contains our conclusions and recommendations to address the issues identified in the course of our investigation.

## **II. METHODOLOGY**

Lowenstein's investigation team was led by former New Jersey State Comptroller and federal prosecutor Matthew Boxer, Esq. The other principal members of the investigation team were Rachel Moseson Dikovics, Esq., Jamie Gottlieb Furia, Esq., Rasmeet K. Chahil, Esq. and Amanda K. Cipriano, Esq., who managed many of the investigative steps.

Lowenstein attorneys independently developed the investigative work plan. NJDOC fully and without exception cooperated with the investigation in making its officials available for interviews and promptly supplying Lowenstein with all requested information, documents and other materials.

Lowenstein reviewed more than 21,000 documents, emails and other correspondence requested from NJDOC and the Office of the Corrections Ombudsperson, an office housed outside of NJDOC that is charged with protecting against improper treatment of inmates in NJDOC's custody. The reviewed materials included, for example, incident reports, records of disciplinary action related to the cell extractions, disciplinary histories of officers and inmates, records of inmate complaints, NJDOC internal

management procedures, attendance records, NJDOC organizational data, and email correspondence of numerous NJDOC administrators and staff. We also reviewed documents, correspondence and other materials obtained from witnesses interviewed, online sources, and other third-party sources, some of which was unsolicited, including correspondence received from EMCF inmates.

The methodology for this report also included statutory research, review of applicable legal standards and best practices, and review of legislative testimony and related documents. In addition, Lowenstein reviewed all available video footage relating to the January 11 cell extractions, totaling more than 20 hours of recordings. The contents of those recordings are described in this report.

In the course of the investigation, Lowenstein conducted 24 interviews and interviewed some of those individuals on multiple occasions. For example, we interviewed NJDOC Commissioner Marcus Hicks, NJDOC Chief of Staff Victoria Kuhn, NJDOC's Special Investigations Division Chief Duane Grade, Corrections Ombudsperson Dan DiBenedetti, Governor Phil Murphy and several senior officials in the Governor's Office, current EMCF Administrator Patricia McGill, EMCF Assistant Superintendent Robin Keller, and other present and former NJDOC officials. Additionally, we interviewed EMCF inmates, the President of the Policemen's Benevolent Association Local Number 105, criminal justice consultants, and a human rights advocate on behalf of prisoners. Interviews were conducted in person, by videoconference or by phone, as circumstances such as Covid-19 restrictions would permit.

In the course of our work, we were careful to avoid interference with the substantial, ongoing criminal investigations being led by the Office of the New Jersey Attorney General, Office of Public Integrity & Accountability. Specific non-interference requests by law enforcement affected the timing of our investigation and significantly limited the individuals we were permitted to interview. Nonetheless, we were able to obtain necessary information regarding those individuals and their version of events from, for example, narratives from officer disciplinary proceedings and inmate disciplinary proceedings, their emails, written statements provided to other authorities, other written narratives and reports, video evidence and other sources. The evidence we obtained provides an appropriate basis for the findings of this report.

Lowenstein attorneys also visited EMCF to inspect the unit within South Hall on the maximum security compound where the January 11 cell extractions were conducted. During our visit, we questioned EMCF administrators and custody staff, examined unoccupied inmate cells and met privately with EMCF inmates.

### **III. BACKGROUND**

#### **A. The Facility**

EMCF is New Jersey's only correctional facility with an all-female inmate population. The facility opened more than 100 years ago, in 1913, as the "State Reformatory for Women." It is located in a rural setting in Hunterdon County. Approximately 372 prisoners are currently incarcerated at EMCF, including 94 prisoners in the minimum security complex and 278 in the maximum security complex.

EMCF has a total staff of 462, including 361 custody staff and 101 civilian staff. Of those, 166 custody staff are female (46 percent) and 51 civilian staff are female (50 percent). Among the civilian staff are various administrators and mid-level supervisors. EMCF is run by an “Administrator,” which is the term used in New Jersey correctional facilities for the person more commonly known as a “warden.” EMCF’s current Administrator is Patricia McGill.

EMCF’s minimum security compound is entirely separate from the maximum security area, and in some respects resembles a college campus more than a typical prison. It includes five operating buildings. Minimum security prisoners have relative freedom of movement within their housing units and, to some extent, within the compound. In contrast, the maximum security compound is fully fenced and includes eight operating housing units, including the South Hall compound, which contains seven individual sub-units.

Within the South Hall compound is the Restorative Housing Unit (“RHU”), a close custody unit separate and apart from the general prisoner population, where prisoners are placed because of disciplinary infractions. See N.J.A.C. 10A:5-9.5. The RHU is intended to “provide a structured, controlled environment where inmate behavior shall be closely monitored and documented by a team of custody and civilian staff.” N.J.A.C. 10A:5-9.2. EMCF’s RHU was established through NJDOC policy in August 2020, following the July 2019 passage of the Isolated Confinement Restriction Act, N.J.S.A. 30:4-82.5–82.11. The RHU’s physical location existed before that time, having been referred to, for example, as Administrative Segregation.

As NJDOC Commissioner Marcus Hicks described in his investigative interview, RHU is a housing unit for individuals adjudicated guilty of “medium” disciplinary infractions. Prisoner activity within the unit is more restricted than in the general facility population, but unit conditions are less restrictive than in what NJDOC policies refer to as the “Adjustment Unit.” NJDOC policy states that inmates in RHU “shall not have their activity, movement, and social interaction severely restricted.”

RHU inmates are entitled to similar privileges as general population inmates, including recreational time, commissary access, “JPAY” access (an email and grievance system used by New Jersey correctional facilities) and phone calls. See N.J.A.C. 10A:5-9.2. EMCF’s RHU includes 20 maximum security cells, most of which have the capacity to house two inmates.

Aside from custody and civilian staff, also working at EMCF are members of NJDOC’s Special Investigations Division (“SID”). SID is tasked with conducting administrative investigations at NJDOC facilities, and in circumstances where criminal conduct is at issue, working with law enforcement to investigate. See N.J.A.C. 10A:1-2.2. All NJDOC SID investigators are former custody staff. In addition to the standard 14-week training course completed by New Jersey correctional officers at the NJDOC Training Academy, SID investigators undertake an additional 21-week specialized training course.

SID’s management is based in Trenton at NJDOC’s Central Office, and is headed by Chief Duane Grade, who reports directly to Commissioner Hicks. Three Deputy Chiefs report to Grade. Each correctional facility’s SID investigators report to an on-site principal

investigator who, in turn, reports to an SID Deputy Chief. EMCF's SID team includes three investigators and a principal investigator.

**B. A Troubled History**

In recent years, numerous EMCF custody and civilian staff members have been the subject of allegations of officer-on-inmate sexual assaults. By law, prisoners cannot consent to sexual activity with custody or civilian staff of correctional facilities. N.J.S.A. 2C:14-2(c)(2). Between 2016 and 2018, seven EMCF employees – correctional officers Brian Ambroise, Ronald Coleman, Anhwar Dixon, Jason Mays, Joel Mercado and Thomas Seguine, and civilian staff member Joel Herscap – were charged with crimes relating to sexual abuse of EMCF prisoners, including sexual assault, conspiracy to commit sexual assault, criminal sexual contact and official misconduct. All but Ambroise, who was found not guilty at trial, and Coleman, who has not yet been tried, have pled guilty or have been found guilty at trial, and have been sentenced. Mays was sentenced to sixteen years in prison; Dixon was sentenced to five years in prison; and Herscap, Mercado and Seguine each were sentenced to three years in prison. In 2019, another EMCF correctional officer, Ciera Roddy, was charged with crimes including official misconduct and criminal sexual contact, and Lieutenant Jose Martinez was charged with witness tampering. Roddy pled guilty and was sentenced to 90 days in jail. Martinez has not yet been tried.

In response to the above, on April 26, 2018, DOJ initiated an investigation of EMCF pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 et seq., to determine whether conditions at EMCF violated prisoners' constitutional rights and whether EMCF was able to protect prisoners from sexual abuse. In July 2018, DOJ

attorneys and experts conducted a four-day on-site review of EMCF. In April 2020, DOJ released a report of its findings. It concluded that there was:

reasonable cause to believe, based on the totality of the conditions, practices, and incidents discovered that: (1) conditions at [EMCF] violate the Eighth Amendment of the United States Constitution due to the sexual abuse of prisoners by the facility's staff; and (2) these violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights protected by the Eighth Amendment.

As noted by Commissioner Hicks in recent testimony before the New Jersey Senate Budget Committee, the State has reached a tentative agreement with DOJ on the terms of a settlement, which NJDOC anticipates will include oversight of EMCF by a federal monitor. That agreement is pending final approval from DOJ.

The above conduct also has resulted in civil lawsuits, including against NJDOC itself. In April 2021, NJDOC settled a class action lawsuit brought by more than 20 current and former EMCF inmates, which alleged sexual abuse by correctional officers at the facility dating back to 2014. The settlement's publicly disclosed terms include a \$20.8 million payment by NJDOC.

### **C. Remedial Efforts**

In the time since the arrests described above, NJDOC has undertaken various efforts at EMCF in attempts to improve the culture and conditions at the facility.

#### **1. External Advice**

In 2017, NJDOC began to use external experts to guide and assist its efforts to improve policies, procedures and conditions at EMCF. For example, it engaged a team of consultants from the National Institute of Corrections ("NIC"), which is an agency within

the Federal Bureau of Prisons, to conduct an assessment of EMCF and provide advice. The team of four NIC consultants was led by a criminal justice expert who specializes in sexual safety. NIC consultants made a series of recommendations to NJDOC, including that NJDOC should institute gender-responsive training, which NIC consultants later provided to EMCF supervisors.

## **2. Camera Expansion and Upgrade**

Since 2016, NJDOC has been attempting to overhaul EMCF's camera surveillance system. Prior to these efforts, there were 45 federally funded cameras at the facility. Between 2016 and 2019, 183 additional cameras were installed to reduce "blind spots" believed to have contributed to instances of sexual abuse. These 183 cameras were temporary measures, installed to provide adequate surveillance while the camera system was fully redesigned.

An outside engineering firm was hired to redesign EMCF's camera system, and the firm held its final design meeting with NJDOC in March 2019. The expansion and upgrade project is being rolled out in phases. According to NJDOC, once it is complete, there will be a total of 634 cameras at the facility. As of January 11, 2021, 99 cameras had been installed, and from January 11 to April 30, 2021, 153 additional cameras were installed, bringing the total upgraded cameras at the facility to 252. The project is estimated to be finished by September 2021; according to Commissioner Hicks, its completion was delayed because of Covid-19. The delays in camera implementation and their impact are discussed later in this report.

### **3. Female Leadership and Staffing**

Beginning in September 2017, NJDOC appointed women to fill three critical roles at EMCF that previously were held by men: at that time, Sarah Davis was appointed Administrator; in June 2018, Renee Carr-Foster was appointed SID Principal Investigator; and in August 2018, Robin Keller was appointed as Compliance Coordinator to oversee the facility's compliance with the federal Prison Rape Elimination Act, 34 U.S.C. § 30301 ("PREA"). PREA is a 2003 federal law that resulted in a series of detailed federal regulations designed to deter the sexual assault of prisoners.

The number of female officers at EMCF also has increased in recent years. In 2015, EMCF employed 124 female custody staff. As of March 2021, the facility employed 166 female custody staff. The increase in female officers was accomplished, in part, through "gender-restricting" certain custody posts at EMCF, meaning that they must be occupied by female officers, or, in some cases, that a minimum number of female officers occupy a particular post at all times. For example, roles requiring officers to conduct frequent inmate strip searches are gender-restricted to female custody staff. In August 2018, EMCF notified custody staff that 17 additional minimum-security posts would be gender-restricted to female officers only. A total of 55 posts (split between three work shifts) are currently gender-restricted at EMCF.

### **4. Training Efforts**

NJDOC also enhanced the training it provides to custody staff as it relates to PREA and the prevention of sexual assault. In 2018, the NJDOC Office of Training created a new gender-responsive training module based on the NIC's supervisor training, and all EMCF

custody and civilian staff, as well as NJDOC officials and transportation staff who interact with EMCF inmates, received that training. Additionally, in May 2019, NJDOC's executive staff, along with a group of EMCF supervisors, attended a three-day NIC training on gender-informed practices, which focused specifically on working with female inmates.

NJDOC also expanded and updated its training on undue familiarity between officers and inmates. Additionally, NJDOC added a sexual assault prevention training, which was developed in consultation with the CLEAR Law Institute, to its standard officer training.

#### **D. New Legislation**

Attempted remedial steps at EMCF have included legislative efforts as well, which followed multiple rounds of legislative hearings that included testimony from inmate advocates and former EMCF inmates. For example, the Isolated Confinement Restriction Act, which limits the use of solitary and isolated confinement in New Jersey's correctional facilities, was signed into law in July 2019. The law provides that "[i]solated confinement should only be used when necessary, and should not be used against vulnerable populations." N.J.S.A. 30:4-82.6(b). It defines "isolated confinement" as "confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell . . . for approximately 20 hours or more per day . . . with severely restricted activity, movement, and social interaction." N.J.S.A. 30:4-82.7. The privileges and movements of inmates in EMCF's RHU are not "severely restricted," so RHU avoids qualification as an "isolated confinement" unit.

In January 2020, the Dignity for Incarcerated Primary Caretakers Act was signed into law. It had two primary purposes: increasing services for inmates who are parents, and significantly expanding the authority and responsibilities of the Office of the Corrections Ombudsperson (“OCO”). Those responsibilities now include conducting unscheduled tours and inspections of correctional facilities; independently investigating inmate complaints, including the authority to subpoena witnesses; conducting public hearings; and otherwise ensuring correctional facilities’ compliance with relevant laws, regulations and policies related to the treatment of inmates. N.J.S.A. 52:27EE-26–28.6. Despite these expanded powers, our investigation found that the OCO’s practices have not significantly changed since the law was passed. For example, although OCO has subpoena power, it has not yet been exercised, and unscheduled correctional facility inspections began only recently. This may be at least partially due to staffing issues; until recently, there were only two Assistant Ombudspersons who, together with Ombudsperson Dan DiBenedetti, were responsible for independent oversight of all correctional facilities in the state. In early March 2021, four additional Assistant Ombudspersons were hired. In our interview with DiBenedetti, who has announced he will retire this August, he told us that even with these additions, his office is understaffed relative to the scope of its responsibilities. DiBenedetti described that his office will sometimes receive 60 to 80 contacts in one day, and he stated that OCO was not finding it possible to keep up with that volume.

On January 21, 2020, three bills that pertain to correctional facility training requirements, officer misconduct reporting requirements, and policies related to strip

searches were signed into law. The first, codified at N.J.S.A. 30:1B-6.13-14, mandates 20 hours of in-service training for every correctional officer in each facility, in addition to already-required firearms qualification and use-of-force training. Of those 20 hours, at least four must be comprised of training on “(1) sexual assault, sexual abuse, and sexual harassment prevention as required pursuant to the provisions of [PREA]; (2) non-fraternization and undue familiarity; and (3) conditioning and manipulation awareness.”

The second statute, codified at N.J.S.A. 30:1B-39-45, requires employees of State correctional facilities to report inmate abuse and provides for the establishment of an abuse reporting program for corrections employees. It mandates that all correctional facility employees “shall” report “in a timely manner” any suspicion or belief “that an inmate is being or has been abused by any other employee.” N.J.S.A. 30:1B-40(a). The statute prevents disclosure of the identity of the reporter, unless disclosure is otherwise required by law, and also immunizes from civil or criminal liability and protects from retaliation any person who makes a report under the law and/or testifies in relation to the report. N.J.S.A. 30:1B-42. It provides for a fine of up to \$5,000 in addition to administrative disciplinary action against anyone who fails to make a required report. N.J.S.A. 30:1B-43.

Lastly, the third statute, codified at N.J.S.A. 30:1B-46, requires establishment of a policy “to limit cross gender searches and surveillance” in New Jersey correctional facilities. The law mandates that only specially trained, same-gender officers may perform inmate strip searches, outside of emergency or extraordinary circumstances. Correctional officers are also prohibited from viewing different-gender inmates who are nude or using the toilet except in emergency or extraordinary circumstances. This statute lines up with

PREA requirements, see 28 C.F.R. § 115.15, with which correctional facilities must also abide.

Despite the above efforts, on the night of January 11, 2021, a series of cell extractions were so mishandled as to result in the injury of multiple inmates and the ultimate suspension of 34 EMCF supervisors and staff. The next few sections of this report set forth the standards that apply to a forced cell extraction and line up those standards against what actually happened.

#### **IV. APPLICABLE LEGAL STANDARDS AND DIRECTIVES ON USE OF FORCE**

The parameters of permissible uses of force in correctional settings provide context for our analysis and findings in this investigation.

Title 10A of the New Jersey Administrative Code governs the functions of correctional facilities. It defines “non-deadly force” to include “physical force” and “mechanical force.” N.J.A.C. 10A:3-3.3(b). “Physical force” may include, for example, “wrestling a resisting individual to the ground, using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation.” N.J.A.C. 10A:3-3.3(b)(1). “Mechanical force” “means the use of some device or substance, other than a firearm, to overcome an individual’s resistance,” such as the use of pepper spray. N.J.A.C. 10A:3-3.3(b)(2).

“Cell extractions” are not defined in Title 10A, but generally entail the removal of an inmate from her cell by an extraction team, the members of which typically wear protective equipment and utilize body shields, and may employ chemical agents like pepper

spray. Cell extractions may be carried out without the use of force if an inmate is compliant, but a *forced* cell extraction inherently involves “use of force” and is subject to standards related to justification and reasonableness.

Title 10A provides that non-deadly force by custody staff may be justified by objectives such as to “prevent or quell a riot or disturbance,” to “enforce correctional facility regulations,” or “in situations where a custody staff member with the rank of Sergeant or above believes that the inmate’s failure to comply constitutes an immediate threat to correctional facility security or personal safety.” N.J.A.C. 10A:3-3.3(a)(5), (7); 10A:31-8.18(a)(5).

The regulations state that custody staff members are empowered to “use the amount of force reasonably necessary to accomplish the law enforcement objective,” subject to the following: (1) custody staff must use “the minimum force possible that is objectively reasonable under the totality of the circumstances”; (2) “as soon as the individual submits, the custody staff member shall reduce the degree of force used”; and (3) there are no circumstances in which use of force is “justified as a means of punishment or discipline.” N.J.A.C. 10A:31-8.17(d), (e), (g). Custody staff is “encouraged to interrupt the flow of events to help ensure that a fellow custody staff member does not resort to employing an inappropriate or excessive use of force.” N.J.A.C. 10A:3-3.1(b); 10A:31-8.17(c). Custody staff involved in a use-of-force incident are required to write a report of the incident and must “be prepared to justify the use of physical force.” N.J.A.C. 10A:31-8.17(f), (h).

Constitutional proscriptions overlay any use of force by a public correctional officer. Force used must be “objectively reasonable” under the Fourth Amendment to the

Constitution, Graham v. Connor, 490 U.S. 386, 396–97 (1989), and must not constitute cruel and unusual punishment under the Eighth Amendment. See, e.g., Brooks v. Kyler, 204 F.3d 102, 106 (3d Cir. 2000). The United States Supreme Court has set forth factors to determine whether a correctional officer’s use of force was “excessive and unjustified.”

Id. Those factors include:

(1) “the need for the application of force”; (2) “the relationship between the need and the amount of force that was used”; (3) “the extent of injury inflicted”; (4) “the extent of the threat to the safety of staff and inmates, as reasonably perceived by responsible officials on the basis of the facts known to them”; and (5) “any efforts made to temper the severity of a forceful response.”

Id. (quoting Whitley v. Albers, 475 U.S. 312, 321 (1986)). The Supreme Court has explained that “[w]here a prison security measure is undertaken to resolve a disturbance,” courts must examine “whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.” Whitley, 475 U.S. at 320–21 (internal quotation marks and citation omitted).

In December 2020, New Jersey Attorney General Gurbir Grewal issued a directive (the “Directive”) to all New Jersey law enforcement agencies regarding their use-of-force policies, based on several “core principles.” Three of those principles are especially relevant to our inquiry: (1) the duty to de-escalate and use force as a “last resort”; (2) the “duty to use only objectively reasonable, necessary, and proportional force”; and (3) the “duty to intervene and report.” Whether NJDOC correctional facilities are technically subject to law enforcement directives from the Attorney General is a subject of some debate, but in any event the NJDOC officials we interviewed informed us that the Directive

has been adopted by NJDOC as a “best practice.” An explanation of the NJDOC and EMCF policies and procedures that attempt to effectuate the above standards follows in Part V.

**V. NJDOC POLICIES AND TYPICAL PRACTICE IN CONDUCTING CELL EXTRACTIONS**

NJDOC policies recognize that “[t]here will be occasions when it will be necessary to force an inmate to move from one cell and/or area to another cell and/or area.” However, conducting multiple cell extractions at the same time, as occurred here, is rare. Now-retired EMCF Administrator Sarah Davis told us that she could not recall an instance at EMCF when more than one cell extraction was conducted at one time, let alone across an entire unit as occurred here.

According to NJDOC records, there were 21 events at EMCF between May 2018 and April 2021 that NJDOC considers cell extractions. Seventeen of those involved the use of force and four did not. In all NJDOC facilities, there were a total 275 cell extractions during that period.

There is an NJDOC policy that specifically governs cell extraction procedures, titled “Use of Force and Security Equipment: Forced Cell Extraction.” The policy states that custody staff members may only use force that is “objectively reasonable and necessary” and that “the utmost restraint should be exercised and the use of force [should] never [be] considered routine.”

Along those lines, former EMCF Administrator Davis told us that a cell extraction should occur only after de-escalation attempts fail. From her perspective, cell extractions

are an “absolute last resort.” She explained that she preferred to talk to the inmate so the situation “would abate itself.” Davis stated that she would also try to find a staff member who had a positive rapport with the inmate to intercede. Davis said that most cell extractions were related to inmate mental health issues. She said that when there is a cell extraction, the officers “suit up” in protective gear and once an inmate sees the team at her door, the inmate often has a change of heart and complies with the order at issue.

Consistent with that approach, NJDOC policy states that as long as “there is no immediate danger to the inmate’s safety, or serious damage to state property by the inmate, a reasonable amount of time will be allowed for the inmate to comply.” The policy states that “compliance” at this stage “means the inmate removes all clothing (strips) and places his or her hands through the food port (if applicable) so that he or she can be handcuffed.” (We were told in multiple investigative interviews, however, that at EMCF, inmates are generally strip searched after being moved to another cell, as opposed to in their own cell before moving. In any event, whenever the inmate is strip searched, she is permitted to re-dress before leaving the cell.) Davis stated that after arriving at an inmate’s cell, the officers should use “constructive force” to verbally coax the inmate by telling her that if she does not come out of the cell, the officer will deploy pepper spray. Davis further stated that when “constructive force” does not work, deployment of pepper spray is the next step, followed by further force if necessary.

#### **A. Authorizing Cell Extractions**

One issue that arose with respect to the cell extractions that took place on January 11 is whether proper authorization protocols were followed. NJDOC policy itself is not

entirely clear as to the required approval of a cell extraction, particularly as to whether NJDOC Central Office must be notified or provide approval.

While one senior NJDOC official we interviewed suggested that Central Office has to approve all EMCF cell extractions, and there has been legislative testimony to that effect, NJDOC policy states that a “senior custody supervisor in conjunction with the facility Major and Administrator” has the authority to make a decision on the use of force in the case of a cell extraction. Similarly, though not identically, State regulations indicate that any sergeant or higher-ranking official may authorize non-deadly force, which would seem to encompass a forcible cell extraction. N.J.A.C. 10A:3–3.3. No mention is made of NJDOC Central Office in either the policy or the regulations. Along these lines, former Administrator Davis stated to us that she did not typically seek approval from Central Office to conduct cell extractions, because cell extractions are generally “urgent situation[s].” The current Administrator at the facility, Patricia McGill, stated to us that she personally prefers to “get clearance” if possible, but that seeking permission from Central Office prior to conducting cell extractions is not required in emergencies.

Senior NJDOC officials uniformly reported to us that conducting a cell extraction on “third shift,” which is the overnight shift between 10:00 p.m. and 6:00 a.m., is highly disfavored. For example, EMCF Assistant Superintendent Robin Keller stated that she was taught not to do cell extractions on the third shift unless “absolutely emergent,” such as if an inmate has a weapon or is self-injurious. She explained this is because there is only a “skeleton staff” at the facility on the overnight shift and if anything goes wrong, there is not enough staff to respond. A former high-ranking NJDOC official we interviewed put it

more bluntly, stating that a cell extraction taking place at this time of night “is for one reason: there are fewer people around and fewer eyes.” That official said to empty an entire restrictive housing area in the middle of the night is “extremely unusual” and “outside of normal practice.”

Commissioner Hicks stated to us that last year, NJDOC Central Office verbally communicated a directive to all facility administrators that cell extractions should not be conducted on third shift, and if an administrator felt a cell extraction was necessary on third shift, they would need approval from Central Office. According to Commissioner Hicks, as part of his reform efforts at EMCF, he had streamlined the NJDOC reporting line as it pertains to that facility. Specifically, he instructed the EMCF Administrator to report directly to NJDOC Deputy Commissioner Michelle Ricci, as opposed to someone at the director level. As a result, according to Commissioner Hicks, for a third-shift extraction to take place at EMCF, Deputy Commissioner Ricci would personally need to provide approval.

This third-shift approval directive was not provided in writing or via email, and its parameters are not entirely clear. Commissioner Hicks stated to us that his understanding is that the approval or denial should happen verbally, through dialogue between the facility and Deputy Commissioner Ricci.

Commissioner Hicks stated that when extraction approval is sought and provided, the Deputy Commissioner usually will notify him, but cell extractions can take place without him knowing. He stated that if a cell extraction happens with no issue or injury,

he probably would learn about it through reading reports or during staff meetings. If there were an issue or injury, he said he would be notified more immediately.

NJDOC regulations do mention potentially applicable *post*-extraction notification requirements. Specifically, in the case of a disturbance involving “a considerable number of inmate(s),” or a “serious injury to an inmate,” SID is to be notified and make an immediate preliminary inquiry, and if the event is determined to have disrupted or have the potential to disrupt the “secure or orderly operation of the correctional facility,” the Administrator or their designee is to contact the NJDOC Assistant Commissioner of Operations by telephone and explain what happened and who was involved. N.J.A.C. 10A:21-5.1–5.2. However, SID Chief Grade reported to us that, in practice, SID generally is not notified after a cell extraction takes place.

#### **B. Procedure for Conducting Cell Extractions**

NJDOC policy sets forth in detail how a cell extraction, once authorized, is to be conducted. Significantly, the policy states that once an extraction has been approved, “all custody activity regarding the move shall cease pending arrival of a custody supervisor with a video camera.” Even if the inmate changes her mind and agrees to comply with the move at this time, the move may not be made until it can be video recorded. The person recording the cell extraction must be a supervisor at the level of sergeant or above. Once the assigned supervisor handling the video recording arrives, he or she must turn the camera on and verbally announce the date, location, inmate involved and nature of the incident to be recorded. After receiving the supervisor’s briefing, the extraction team members are to announce their names on camera. The camera must be used to record the entire incident.

The video recording should not stop “until the inmate(s) involved have been placed in mechanical restraints, examined by the medical department and secured in a cell and/or, if ordered, placed in a restraint chair.”

The extraction team is to consist of five officers, each of whom is assigned a specific member-number and responsibilities. Each officer assigned to the team must wear protective equipment, including a helmet with a face shield, riot jacket with groin protector, and protective gloves. Team member assignments and duties include:

1. “**Team Member #1** is responsible for pinning the inmate against the furthest wall or floor if the inmate falls or lies down, using the shield as protection from bodily fluids and/or weapons.”
2. “**Team Member #2** is responsible for assisting Team Member #1 with pulling the inmate to the floor, if necessary, and securing the inmate’s arm on the right side (regardless of which direction the inmate is facing).”
3. “**Team Member #3** is responsible for securing the inmate’s arm on the left side . . . and applying the handcuffs.” Once the handcuffs have been secured, Team Member #3 must loudly announce “Hands Secured.”
4. “**Team Member #4** is responsible for securing the inmate’s leg on the right side . . . and assisting with rolling the inmate over if necessary for the application of mechanical restraints.”
5. “**Team Member #5** is responsible for securing the inmate leg on the left side” and is to place “the leg irons on the inmate with the assistance of Team Member #4 and, after completing the application of the leg irons, announce loudly ‘Legs Secured.’”

The policy specifies the role of each of the five team members for each subsequent step in the extraction process as well. Each extraction is to be handled individually, and each inmate is to be afforded an opportunity to change her position regarding compliance with the order to move at each step of the process.

Immediately following any instance of physical force being used, “each staff member who participated in or witnessed the event” must submit a written report to the shift commander. The report must contain, among other things: a description of the events leading up to the use of force; the reason for employing force; and a description of the injuries sustained, if any, and medical treatment provided.

### **C. Related Physical Searches**

Cell extractions include a physical search of the inmate. As per NJDOC policy, such searches “shall be conducted in a professional and dignified manner.” Except in “exigent circumstances,” female staff shall conduct searches of female inmates.

Consistent with the comments above regarding conducting multiple cell extractions, interviewees reported to us that a search of an entire housing unit at one time, as occurred on January 11, is rare. Commissioner Hicks stated that searching an entire housing unit at one time does not happen “unless we have evidence or intelligence that the entire unit has contraband or something negative is going to happen. Typically, even if you’re going to do an extraction, it’s one cell. Search is one cell. To do an entire housing unit is rare.” NJDOC policy does provide for “mass search” events, which, as Commissioner Hicks noted, may be predicated on “specific information” received from a third party or based on correctional officers’ observations, experience or knowledge.

Searches conducted in conjunction with a cell extraction may result in the seizure of contraband, which NJDOC policy defines, in part, as “[a]ny article, which may be harmful or presents a threat to the security and orderly operation of the correctional

facility.” The policy states that “[w]henever an item, article or material is determined to be contraband, it shall be immediately seized.”

## **VI. FINDINGS AND ANALYSIS**

This section of the report provides our investigative findings and analysis related to the January 11 cell extractions. Our overview of the facts proceeds chronologically and focuses on three main subjects: conditions and oversight at EMCF in the months leading to January 11; the cell extraction incident; and the response to the incident.

### **A. The Months Leading to the Cell Extractions**

In the latter part of 2020, there were changes at EMCF that ultimately contributed to the January 11 incident.

#### **1. Facility Oversight**

In late 2020, leadership at EMCF was in a state of transition. Earlier that year, the on-site SID Principal Investigator had retired. Then, on August 26, 2020, Sarah Davis, the facility Administrator, filed for retirement with the State’s Division of Pensions & Benefits, to begin in early 2021. NJDOC informed us that they received notification of that filing in October 2020. NJDOC records indicate that the last day Davis actually was present at EMCF was October 29, 2020. After that date, she used accumulated leave time until her retirement became effective on February 1, 2021.

In our interview with Commissioner Hicks, he characterized Davis’s exit from EMCF as “abrupt.” He said that while NJDOC leadership knew she intended to retire, they did not know exactly when her leave would begin, and he said that when she did ultimately give notice, it was less than two weeks before she physically departed the facility. Davis

sees it differently, telling us that she provided notice in the beginning of October, which Davis said was a typical amount of notice for a supervisor to provide. She stated that it was “not a secret” that she planned to retire in early 2021.

In any event, NJDOC appears to have been caught flat-footed in response to the departure of the lead official, and someone brought in as a key reformer several years prior, at its most troubled facility. NJDOC publicly posted the available Administrator position at EMCF on October 16, 2020. That position ultimately was filled by current Administrator Patricia McGill, whose first day at EMCF was January 16, 2021.

Our investigation revealed that between Davis’s last day at EMCF on October 29 and McGill’s appointment after the January 11 cell extractions, there was no Acting Administrator at EMCF. Multiple people we interviewed, including Commissioner Hicks, told us that their understanding was that Erica Stem was the Acting Administrator at the facility beginning in late November 2020. However, others, including Stem herself and the NJDOC Chief of Staff, told us that Stem was transferred to EMCF as an Associate Administrator and remained in that title, not Acting Administrator. State personnel records reflecting Stem’s assignment to EMCF confirm that she was transferred as an Associate Administrator and do not suggest that her title changed upon her transfer. In our investigative interview, Stem told us that she was not given any specific reason for her reassignment to EMCF, and confirmed that no one ever told her she would serve as Acting Administrator, and that she did not, in fact, serve in that capacity.

Associate Administrators report to the facility Administrator. NJDOC records show that Stem joined EMCF management as an Associate Administrator effective on either

November 24 or 25, 2020. Until that point, EMCF had one Associate Administrator, Sean St. Paul. Commissioner Hicks told us that St. Paul would have reported to Stem upon her arrival at EMCF, but our investigation determined that St. Paul and Stem operated with equivalent authority following Stem's reassignment.

Stem and St. Paul worked together to run EMCF from late November 2020 until McGill's appointment on January 16. However, Stem was on leave and away from the facility from January 4 through January 12, 2021. Thus, on the night of January 11, St. Paul had oversight of EMCF. Both Stem and Davis stated to us that no one at the facility was reporting to them while they were on leave; any issues would have been reported to St. Paul.

## **2. RHU Conditions and Occurrences**

The leadership transitions described above came at a challenging time at EMCF, especially in the RHU. At that time, the RHU housed a number of inmates described by EMCF supervisors as particularly "difficult to manage." Additionally, we were informed that because of the Covid-19 pandemic, other units within the South Hall compound that previously were allocated for disciplinary housing had been converted to isolation and quarantine wings, so RHU was limited to a single long hallway of cells. That made it difficult or impossible to separate inmates who do not get along well with each other, increasing tensions in the unit.

During this time, incidents of "splashing" increased in the RHU. "Splashing" is a term used to refer to an inmate squirting a correctional officer with liquid, often urine or feces. Facility supervisors we interviewed indicated that splashing is not considered an

emergency from an operational perspective (*i.e.*, it is not something that requires an immediate security response), but it constitutes a health emergency for the officer who is splashed, particularly in the context of the Covid-19 pandemic, and that it “needs to be reported.” Splashing is a form of assault. Splashing incidents are reported to SID, then referred to county prosecutors. However, they are rarely if ever criminally prosecuted, according to NJDOC officials and others we interviewed. Instead, inmates may receive administrative disciplinary charges, which frequently result in their RHU sanctions being extended, such that they remain for a longer period in the location in which their misconduct took place.

SID Chief Grade told us that “assaulting officers with liquids” is a common problem in correctional facilities across the state, though some administrators and inmates we interviewed indicated that splashing is relatively new at EMCF. They said that RHU inmates have learned various splashing techniques from inmates recently transferred to EMCF from other facilities, where splashing of officers is more common. EMCF administrators we interviewed said that splashing was occurring three to four times per week in the months leading up to the January 11 cell extractions.

The RHU cells have doors that are a few inches thick, and each door has a window and a food “port” or opening. The doorways are narrow, but there is a gap where the door meets the wall that is a few centimeters wide. As one method of splashing, inmates allegedly began affixing part of a hollowed-out pen to an empty shampoo bottle filled with fluids, then, using that converted bottle, squirted liquids at officers through the gap between the cell door and the wall. In our interview with Administrator McGill, she said that during

staff tours of RHU, inmates would throw “feces, urine, water, milk – you name it” at staff, and that because of the layout of the RHU hallway, staff might be splashed from multiple angles at the same time. EMCF supervisors reported to us that in the days preceding January 11, there was a coordinated effort by RHU inmates to splash officers.

All of this contributed to substantial frustration on the part of EMCF officers, who were upset that, in addition to the fact that inmates were not being criminally charged for splashing, the disciplinary charges they received were downgraded in some cases. We were told that officers felt that inmates were not being held accountable for their actions and that their supervisors were not protecting them. As the officers’ union president put it to us, “things reached a boiling point.” Compounding all of that was the stress caused by the Covid-19 pandemic. EMCF officials we interviewed stated that custody staff was frustrated and exhausted, and felt unsupported, and that there was heightened emotion among staff as a result. One supervisor summarized things by saying that the RHU was “in a dire state” by early January.

NJDOC Central Office officials apparently were not made aware of any increase in splashing incidents at EMCF. For example, Commissioner Hicks told us that he does not recall receiving any reports of inmates splashing liquids at weekly briefings during that time.

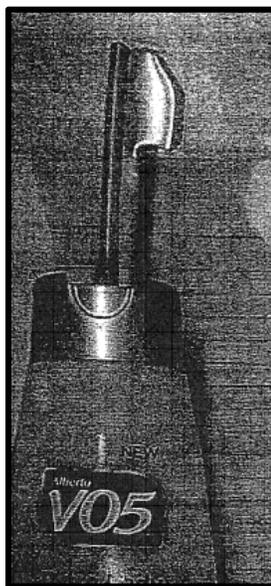
## **B. Cell Extraction Incident**

Beginning on the night of January 11 and extending into the early morning hours of January 12, 2021, a series of cell extractions were conducted in the RHU. Below, we detail facts about the extractions chronologically, breaking the incident into three phrases: the

decision to conduct cell extractions; the extent to which authorization was sought; and the extractions themselves.

### **1. Decision to Conduct Cell Extractions**

NJDOC records reflect that on January 11 at approximately 4:40 p.m., a correctional officer conducted a search of Inmate 4's<sup>1</sup> RHU cell while she was not inside it; at that time she was in the "RHU module," where RHU inmates can access JPAY tablets and have recreational time. A "contraband seizure" form indicates that a conditioner bottle with an "inmate pen" attached to it was seized from the cell. The form attached a photograph of the converted conditioner bottle:



Three splashing incidents occurred shortly after the search of Inmate 4's cell. First, at approximately 5:39 p.m., during service of evening "mess" (dinner) in the RHU, Inmate 4 sprayed a correctional officer with an unidentified liquid through the gap between her cell door and the wall. The officer sprayed was the same one who had just conducted the

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<sup>1</sup> Because of the sensitive nature of the facts at issue, we have used numbers as opposed to names of inmate/victims.

search of Inmate 4's cell. According to the officer's report, the liquid struck her in her right eye, went down the right side of her face, onto her shoulder, and down her back. She stopped the mess movement on the wing, notified the area sergeant and went to receive medical attention. The sergeant's incident log report states that Inmate 4 "still retains the item used" to assault the officer.

NJDOC disciplinary records show that this was not the first time that Inmate 4 had been accused of splashing officers. She had been disciplined for "throwing bodily fluids" at least twice before, in November and December 2020.

Documents indicate that the evening mess in the RHU resumed at 7:37 p.m. During this second attempt to serve the meal, Inmate 1 "began spraying an unknown liquid out the side of her cell door attempting to hit" the officer serving mess and two other correctional officers who accompanied her. Mess service was again halted at that time.

At approximately 8:30 p.m., the officers attempted to place a "rolling shield" in front of Inmate 1's cell to screen themselves from further splashing. Nonetheless, according to the officers, Inmate 4 splashed an officer on the arm while he was in the process of placing the shield. A second correctional officer reported that at the same time, Inmate 1 splashed him with an "unknown clear liquid" while he was attempting to place the shield. A third officer claims to have been hit on his face, including his eyes, with an unknown substance. The officer who allegedly was hit in the eyes received outside medical attention; the other two officers declined medical attention. Video footage we reviewed from a fixed camera in the RHU confirmed that at approximately 8:30 p.m., liquids were

expelled from at least two cells while four correctional officers attempted to place rolling shields on the unit.

During these events, on-site officers were providing updates to facility supervisors. Associate Administrator St. Paul subsequently drafted an email summarizing that dialogue. His narrative largely tracks those of other supervisory reports that were filed. It states that a facility major contacted him and informed him that “approximately five officers were assaulted.” The narrative states that St. Paul and another supervising officer decided they needed to “take a ride to EMCF.” Upon their arrival, they were briefed and informed that suited extraction teams were prepared “to remove each inmate from their respective cell, to search, remove contraband[] and return each inmate to their cell.” NJDOC documentation states that the Associate Administrator along with two majors at the facility approved the cell extractions.

Thus, as an incident log report states, at approximately 9:40 p.m.:

multiple extraction and escort teams were assembled to search all of RHU due to multiple staff assaults that occurred throughout the day by way of splashing custody staff members with potentially dangerous unknown liquids. The objective was to secure every inmate from RHU, conduct a thorough search of each cell to discard all contraband and any items capable of projecting liquid through the cell food port or through the side of the cell doors.

The third shift at EMCF began shortly thereafter, at 10:00 p.m.

**2. Contact with NJDOC Central Office**

That same night, Associate Administrator St. Paul made contact with NJDOC Central Office to report that an inmate disturbance had taken place on the RHU. [REDACTED]

[REDACTED]  
REDACTED

[REDACTED]  
REDACTED

REDACTED

Deputy Commissioner Ricci did not make contact with Commissioner Hicks that night about her dialogue with St. Paul. The timing of Commissioner Hicks becoming aware of the cell extractions and the content of what he was told are discussed later in this report. EMCF's SID unit was not notified that the cell extractions were to take place, nor was the OCO notified. Ombudsman DiBenedetti stated to us that in the past "the DOC has notified me occasionally of searches and I have staff and/or myself report to the facility to observe the event and complete a report a containing our observations." That notification did not happen in this case.

### **3. The Cell Extractions**

The January 11 cell extractions in the RHU (the "Cell Extractions") began at approximately 10:30 p.m., 30 minutes into EMCF's third staffing shift. According to NJDOC records, 22 inmates in total were taken out of their cells. Seventeen inmates left their cells without incident, four inmates required a forced extraction, and one inmate initially complied but later became non-compliant. Records further indicate that no contraband was discovered during the course of the extractions and related searches.

Lowenstein reviewed the videos that officers recorded of the Cell Extractions, as well as recordings from the cameras mounted on the walls in the RHU. The videos show that the Cell Extractions were conducted by groups of five officers, each of which was led

by a sergeant (“Extraction Teams”). The officers wore riot gear and carried shields and canisters of pepper spray. Both male and female officers were involved in the Cell Extractions.

According to NJDOC records, there were two Extraction Teams. Two sergeants were assigned to videotape the extractions, with one sergeant being assigned to each team. Additional officers escorted the inmates once they were removed from their cells.

The Cell Extractions required a significant amount of overtime by custody staff. According to NJDOC records, 37 officers put in overtime due to the Cell Extractions during the third shift.

During each of the Cell Extractions, the five officers on the Extraction Team lined up in the hallway outside the inmate’s cell while the sergeant asked the inmate to put her hands out through the food port to be handcuffed. Some inmates complied, while others did not. The five officers then rushed into the cell, handcuffed the inmate (if not already cuffed), put leg irons on her, and brought the inmate out of the cell. The lead sergeant typically entered the cell, as did the video recorder, meaning that there were a total of seven custody staff in each cell during the extractions. After being removed from the cell, each inmate was escorted to the Medical Office for assessment, to a shower if she had been pepper sprayed, and then to another cell to be strip searched.

In many of the videos, it is difficult to see exactly what is happening at every moment because the recording officer is standing behind other officers, frequently recording the officers’ backs instead of recording the inmate and what is happening to her. While the officers are supposed to be identified by name before cell extractions are

conducted, this did not occur on the videos described below. Additionally, certain events were not recorded at all.

Below is a summary of each of the forced Cell Extractions based on the video recordings. The videos are exceedingly violent and are alarming in a way that is difficult to put into words. One senior NJDOC official we interviewed described the video footage as “one of the most disturbing series of videos I have ever seen.”

**i. Extraction 1**

The video of Inmate 1’s cell extraction begins with a sergeant ordering her to put her hands through the food port to be handcuffed. She complies with the order. Her cellmate, Inmate 5, was removed from the cell (described in further detail below), and then the camera returned to the cell, where officers tell Inmate 1 to “stop resisting,” but she is not visible as officers are blocking the view into the cell. Inmate 1 is pushed out of the cell by the Extraction Team, with one officer pulling her by her sweatshirt.

Inmate 1 is held against a wall in the hallway for several minutes. She protests, “I’m somebody!” The Extraction Team then takes her into the Medical Office for an assessment. She says she does not want any medicine. The sergeant deems Inmate 1 to be refusing a medical assessment, though she says she is not. The Extraction Team takes her out of that office and the sergeant says to take her to the “strip cell.”

Inmate 1 is then taken into an empty cell with tiled walls identified in reports as the South Hall North Wing shower area or the South Hall North Wing strip room. There are seven officers behind her, and they ask her to strip, which she refuses to do. The male officers leave, and three female officers enter the cell. Inmate 1 says at one point, “It’s in

my pussy and y'all ain't getting it." The officers begin forcefully cutting her clothes off. The officers pull at the clothes and use a hooked blade to attempt to cut through them. Her sweatshirt is torn, but her clothes are not removed. During some of this period, the camera is pointed up or towards the wall. Inmate 1 begins spitting at the officers. The camera is then pointed towards the wall while there is some commotion so it is unclear what happens, but Inmate 1 is then on the ground with officers surrounding her, including male officers. She repeatedly says "get off of me" and at one point says "get off my titty."

Inmate 1 is then carried out of the strip cell while the officers say they are going to put her in another cell and strip her. She is put into a cell, but it is not possible to see her on the video as there are four or five officers crowding around her, including male officers, who remain in the cell during the forced strip search. Inmate 1 says that the officers are mad they got "splashed." She says that she is going to make the officers' lives as difficult as possible and that she is about to bite one of them. A male officer again tells her to "stop resisting." One of the officers hands a sharp object to another. Some type of struggle seems to take place, but cannot be seen on the video as there are officers blocking the camera view. Inmate 1 asks, "Why is it a man ripping my clothes off? Why is you grabbing my titties?" Some of her clothes are then thrown out of the cell. She yells, "PREA!" The officers leave the cell and Inmate 1 is naked, apparently left in the cell alone, and the video ends.

According to Inmate 1's subsequent written statement, she complied with the order to be handcuffed, and the officers then entered her cell and "kicked, punched, slammed, and grabbed [her] hair." She stated that the officers bent her arm back, cracking it out of

place. She wrote that she was taken to the shower where the officers “began to rip [her] clothes off” with a “sharp knife like object,” which was not working. She stated that the officers then took her to cell number five, where both male and female officers assaulted her. She wrote that her shirt was ripped off, and that one officer choked her, grabbed her breast, and “put his hands in [her] vagina,” scratching it and causing it to bleed.

The reports filed by the sergeant who supervised the Extraction Team and the sergeant who videotaped the extraction state that Inmate 1 refused orders to strip, became aggressive and started spitting at the officers. The reports incorrectly state that female staff entered the area to forcibly remove Inmate 1’s clothing, while she continued to be non-compliant.

The reports describe that Inmate 1 was later found lying unresponsive on the floor, about an hour after the extraction, so a team of suited officers entered the cell and placed her in a wheelchair. When she regained consciousness, she allegedly became belligerent and non-responsive, and began spitting at the officers. According to the reports, Inmate 1 refused a medical assessment and was taken to the infirmary. There is no evidence of these events on video.

Reports filed by the two sergeants state that Inmate 1 sustained no injuries during the Cell Extraction. However, a medical report from January 12 notes she had superficial scratches and visible purple bruising on her hand. Notes from the nurse at EMCF state it was later determined that she broke her arm and that she received a cast.

## **ii. Extraction 2**

The video of Inmate 2's cell extraction begins with a sergeant ordering her to put her hands through the food port to be handcuffed. She says, "I'm not going" and that she needs to use the restroom. The sergeant sprays pepper spray through the food port and immediately (contrary to NJDOC policy) opens the cell door. The Extraction Team rushes into the cell. Inmate 2 is pushed against the wall and the officers repeatedly tell her to "stop resisting." An officer pulls her back by her braids while another officer punches her numerous times on her face, chest and back. It is difficult to see what is happening due to numerous officers being inside the cell, but the sound of punches landing is audible and goes on uninterrupted for about a minute. Inmate 2 has her arms up, attempting to cover her face, while she is pressed against a wall with her back to the officers. She says, "Stop punching me in my face." Charges subsequently filed by the New Jersey Attorney General allege that one officer alone punched Inmate 2 in the head and neck 28 times.

Ultimately, the officers push Inmate 2 out of the cell and she has a visibly bloody mouth and squinting eyes. Her shirt is open. The officers hold Inmate 2 against a door. An officer tells her to listen to orders and stop resisting; she says she is listening to orders and is not resisting. She asks to be covered up. The officers walk her through the hallway and as they walk, an officer yells at her, "You're going to listen to my orders, do you understand? If you don't listen to my orders, you will get sprayed again. Do you understand?" She does not respond. As she is brought into the Medical Office, she says, "Y'all got my chest out, in front of the audience." Her shirt is still open.

Inmate 2 tells the nurse that the officers punched her in her face and chest and that she has a concussion. The officers tell her they are going to strip search her. Inmate 2 asks if the nurse can wipe her face as it is burning. The nurse says she is not sure if she has any bandages. The officers take her to a shower and tell her to put her face in the water. She says that she does not want to get in the shower. An officer then says “strip cell” and points to a cell. The officers walk her down the hallway, but then take her back to the shower to strip. Inmate 2 faces the camera and says, “Y’all see my lip on this camera? I’m about to kill one of these officers.”

The officers lock Inmate 2 in the shower for her to strip (the door is grated but has a curtain in front of it). She says, “Y’all want to beat the life out of me.” A male officer tells her to strip and put her pants through the porthole. She says, “Please back up, I don’t have no clothes on. This is PREA.” She gives her pants and underwear to a female officer through the porthole, but male officers remain present. The female officer tells her to turn around, squat and cough. After some back and forth, Inmate 2 says she is not doing that. An officer tells her she will be sprayed again if she does not comply. The female officer attempts to talk to Inmate 2 again, but she still does not comply with the order. A male officer says, “At this time [Inmate 2] is not complying,” and pepper sprays her through the grated door. She turns on the shower, presumably to wash off the pepper spray. The officer tells her to put her hands through the porthole to be handcuffed. Inmate 2 continues to shower while he repeats his orders. Inmate 2 says that she will strip and turns around and coughs. She asks for clothes, and the officers give her clothes through the porthole. They

then cuff her through the porthole and walk her down the hallway to the cafeteria where they lock her in a holding cell.

The sergeant's special custody report states that Inmate 2 refused his orders to be placed in handcuffs and that he then deployed pepper spray. The report then incorrectly states, "[Inmate 2] continued to refuse all orders to be handcuffed. [The sergeant] then ordered his team to enter the cell." The video footage, however, shows that Inmate 2 was not given an opportunity to comply with the handcuff order after the pepper spray was used; the Extraction Team immediately rushed into the cell.

Another officer's report states that after entering Inmate 2's cell, "she was throwing punches towards [his] torso area" and that he "used physical force to gain compliance." The video recording does not show the inmate punching the officer.

The use-of-force reports from the on-site sergeants both state that Inmate 2 sustained no injuries during the Cell Extraction. The on-site medical report from that night, however, states that she had a bleeding lower lip, which is visible on the video footage. The next day, she was assessed by a nurse at EMCF, who noted that she had a swollen red/purple lower lip with a small cut inside, bruises on her eye, arm, and shoulder, and a cut on her right hand. Inmate 2 was taken to a hospital that day and was found to have suffered a concussion and a cervical sprain.

### **iii. Extraction 3**

Contrary to NJDOC policy, Inmate 3's cell extraction was not recorded at all. There is video footage following her extraction, which shows her with a black eye and bloody face. The officers walk her through the hallways to the Medical Office and she says, "They

punchin' me all in my eye for no reason. . . . I ain't even do nothing. Stop hurting me. Why are they punching me in my eye." She tells the nurse she has a bad headache and cannot see. She starts crying and says she did not do anything wrong and is hurt. The officers take her out of the office and she repeatedly says, "Stop hurting me," while crying. There is blood on her face, which seems to be coming from her eye. The officers walk her down a hallway, outside and to another building where they bring her into a cell. Her black eye and blood on her face are visible. Twice she says to the officers that they should be more focused on the inmates who are actually squirting them, as opposed to her. A nurse comes in to see her and says she is going to come back with a blood pressure monitor, but does not return. The officers take Inmate 3 to a cell for a strip search and take off her handcuffs. The officers all leave the cell, and she removes her clothes and gives them to two female officers through the porthole (no male officers appear to be in the hallway). She does not appear to be resisting at any time.

One sergeant's report says that he filmed Inmate 3 and that she "became self-injurious." The Attorney General's criminal charges state that this report was false. Similarly, another officer's report seems, falsely, to try to explain her injuries by saying that she was "banging her head on the cell door." The criminal charges state that video shows Inmate 3 did appear to throw an unknown white liquid out of her cell into the hallway, but further that during her cell extraction she immediately complied with an order to be handcuffed before officers entered her cell. The related affidavits say that, according to other inmates, Inmate 3 "begged officers not to harm her" and that she was "crying in

pain” as corrections officers struck her multiple times with their fists, despite her being handcuffed and not resisting.

The medical reports from the night of the Cell Extractions state that Inmate 3’s right eye was completely swollen shut and that her mouth was bloody. On January 12, she was taken to a hospital and was found to have suffered an orbital wall fracture.

#### **iv. Extraction 4**

The video recording of Inmate 4’s cell extraction shows a sergeant ordering her to “cuff up” through the food port. She does not comply with the order. The sergeant repeats his order. After 30 seconds, the sergeant sprays pepper spray through the food port. He again asks her to “cuff up” and tells her to “stop grabbing that, we’re coming in.” The Extraction Team then rushes into the cell. Inmate 4 is not visible as the officers are in the way of the camera and the lights in the cell appear to be off. The officers repeatedly tell her to “stop resisting” and she seems to be on the floor. One of the officers says to “pull her pants up.” As the Extraction Team then takes her out of her cell, her pants are falling down her legs. The officers take her to the Medical Office, and she says she has no injuries or bruises. She is put into a cell to strip, and the male officers leave while three female officers remain outside and monitor the strip search, which takes place without incident.

The sergeant’s ensuing report states that Inmate 4 refused to report to the food port to be handcuffed, so he deployed pepper spray. His report also claims that he “observed her reaching under her bed for a possible weapon” prior to the Extraction Team entering the cell. We were not able to substantiate that claim through the video evidence.

## **v. Extraction 5**

The video of Inmate 5's cell extraction shows her complying with the sergeant's order to put her hands through the food port to be handcuffed. The Extraction Team then rushes into her cell. She is not visible on the video at this point, but seems to be on her bed with the officers crowded around her. The officers yell at her to "stop resisting," and she says she is not resisting. A struggle can be heard for about a minute. The Extraction Team then drags her out of the cell, with officers holding her legs and another officer holding her arms. The officers push her down the hallway. She is then laying on the floor with officers surrounding her. The officers tell her to "stop resisting," and she says she is not resisting. She is then walked down the hallway.

There is no further video of Inmate 5. The camera then turns to Inmate 1 who is extracted from the same cell, as detailed above.

### **C. Previous Conduct of Participating Custody Staff**

NJDOC records reveal that some of the officers participating in the Cell Extractions engaged in previous conduct predictive of the misconduct described above.

For example, disciplinary records indicate that one of the lieutenants suspended following the Cell Extractions has been disciplined twice previously for failing to properly record a cell extraction or escort. In 2013, the lieutenant received an official reprimand after he "operated the camera in the still photo mode, rather than the video mode[,] [t]hereby rendering the taping useless." Then, in 2016, he was suspended after he was shown on "surveillance video holding [his] assigned video camera down to [his] side while [he] leaned against a doorway watching the altercation."

Similarly, NJDOC records indicate that another one of the officers involved in the Cell Extractions had been disciplined previously for failing to conduct a cell search in a professional manner. The file indicates he received a letter of counseling as a result.

Two supervisors involved in the Cell Extractions were alleged to have engaged in violent conduct while off-duty during their employment with NJDOC. Senior NJDOC officials we interviewed were largely unaware of these allegations.

According to NJDOC administrative records, one senior EMCF officer involved in the Cell Extractions was arrested in 2017 for criminal mischief after he allegedly punched a door during a domestic violence incident with the mother of his child, who also was an EMCF correctional officer at the time. He was placed on a “no armed post” list, until the criminal mischief charge was dismissed in 2018 and he underwent an evaluation that deemed him fit to possess a weapon. He later became romantically involved with another EMCF employee, allegedly leading to a “love triangle” that resulted in one of the women having her car “keyed” by an unidentified person.

Records show that another senior EMCF official self-reported being involved in two separate incidents in which he discharged his off-duty firearm while driving. In the second incident, which was reported in 2003, he allegedly shot at another driver. The EMCF official stated that the other driver had a gun pointed at him and refused to lower it, but witnesses said the other driver was unarmed and that the official shot at him as he drove away. This same EMCF official was one of the individuals who last year formally reviewed and signed off on one of EMCF’s use-of-force policies.

#### **D. The Response to the Cell Extraction Incident**

EMCF staff responded to the January 11 splashing incidents by filing disciplinary charges against Inmate 4 for splashing officers with an unknown liquid and Inmates 1 and 3 for spraying unknown liquids and attempting to hit officers. As noted above, the physical evidence against Inmate 4 included a bottle of hair conditioner “with an inmate pen hollowed out attached to bottle.” The charge against Inmate 3 was later changed to “being unsanitary.” Additionally, Inmates 2, 4 and 5 received disciplinary charges for refusing to obey orders from the officers during the Cell Extractions.

Through the NJDOC adjudication process, all five inmates initially received sanctions based on the above charges. Sanctions against Inmates 3 and 5 were upheld on appeal, with the explanation for Inmate 5 stating, “Reports indicate you were non-compliant throughout the search . . . . Start focusing on your actions since you will be held accountable.” Sanctions against Inmates 1 and 2 were modified on appeal based on “leniency.” Most of Inmate 4’s sanctions were suspended on appeal, but a 30-day loss of phone privileges and 30-day loss of JPAY and email were upheld.

When Commissioner Hicks became aware of these charges, he directed that they be suspended. All proceedings regarding them are currently on hold, and the discipline has not been carried out. The process through which NJDOC Central Office learned of the Cell Extractions is set forth below.

NJDOC senior officials were first notified of the Cell Extractions via an email from the NJDOC Central Operations Desk (“COD”). At each NJDOC facility on each shift, there is a shift commander responsible for reporting to COD any qualifying incident that

occurs during that shift. COD sends periodic emails to a large list of recipients, including NJDOC officials and facility supervisors, which contain reports of major incidents across NJDOC facilities.

On January 12, 2021, at 4:17 a.m., COD sent such an email, stating that at 11:30 p.m. on January 11, St. Paul and two others on site gave the order to have all RHU inmates removed from their cells and strip searched, and for cell searches to be conducted as well. The email stated that all but four inmates complied and that no injuries were reported. Listed recipients of the email included Hicks, Ricci and Grade.

Later that morning, Inmate 2 called the OCO to lodge a complaint regarding the Cell Extractions. The OCO's notes of that call indicate that Inmate 2 alleged she was punched in the face and suffered a concussion and an injured lip. Ombudsman DiBenedetti emailed SID and EMCF staff regarding Inmate 2's allegations. SID Chief Grade then forwarded that email to the EMCF SID Principal Investigator for investigation, noting that the COD report had stated that there were no injuries during the Cell Extractions. Grade asked the investigator to ensure that Inmate 2 had been medically evaluated.

Around noon on January 12, Inmate 2's aunt called NJDOC Central Office staff regarding the Cell Extractions, stating that Inmate 2 had been part of an "assault" at EMCF. She said that one of the other inmates had been rushed to the hospital "with her eye knocked out of the socket." Ricci emailed that information to Grade, copying Hicks, asking that it be investigated. Ricci noted that she was not previously aware of any inmate going to the hospital.

At 5:45 p.m. on January 12, Ricci emailed Hicks directly, copying Grade, noting that

REDACTED

Ricci said,

“This is a real concern.” Hicks stated during his interview with us that he first became aware of the Cell Extractions on January 12 when Ricci emailed him.

In response to the above-mentioned email from Grade, the EMCF Principal Investigator asked one of her investigators to review the video footage from the handheld cameras used during the Cell Extractions. Upon reviewing a portion of the footage, the investigator told her, “I think we have a problem,” which the Principal Investigator relayed to Grade. That led to the entirety of the video footage being secured for further review.

On January 13, the EMCF SID unit obtained and reviewed the video coverage. They then spoke to Grade about it, who advised them to inform law enforcement, which they did.

At 11:44 a.m. that day, the NJDOC Managing Physician emailed Ricci about Inmate 3. He noted his “concern” about the use of pepper spray on a patient with a history of asthma. He also noted that the initial nurse documented redness in Inmate 3’s eyes following the use of pepper spray, but the next shift nurse noted a completely closed eye with bruising. Ricci responded, copying Hicks and Grade, asking for additional details.

At 2:50 p.m., Ricci emailed the incident reports to Hicks. She again noted that

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nor were the injuries in the

COD report. She requested that St. Paul be temporarily reassigned pending an investigation and that Patricia McGill be moved to EMCF as Acting Administrator. Hicks responded and approved the recommendations. He stated in his interview with us that after learning there were injuries, the first thing he wanted to know was whether the inmates had been medically assessed and received appropriate medical treatment. He said his second priority was to find out what was on camera and how quickly the footage could be produced.

On January 14, there were multiple outreaches to the OCO by, or on behalf of, inmates involved in the Cell Extractions. First, Inmate 1's sister contacted the OCO alleging that one of the officers had ripped off her sister's clothes, groped her and placed his fingers in her vaginal area. The OCO provided that information to Grade and to the EMCF PREA compliance unit. The PREA Compliance Coordinator responded that she had initiated PREA protocols, which included moving Inmate 1 to a protective custody unit until SID could interview her. Second, Inmate 3 called OCO. She alleged that she had been physically assaulted and punched in the face. DiBenedetti emailed that information to Grade and others in SID, copying Ricci. Grade responded that the matter was under investigation by SID. Third, Inmate 4 called OCO and made similar allegations. DiBenedetti personally spoke with Inmate 4 when she called, and he advised her that SID would be speaking with her. DiBenedetti then emailed Central Office SID and EMCF SID to refer Inmate 4's allegations.

Also on January 14, EMCF SID delivered the video footage of the Cell Extractions to Central Office SID. Grade viewed the footage later that day.

The next morning, January 15, Grade reviewed the video footage with Hicks, Ricci and other Central Office staff. (Hicks and his staff had obtained the video footage on January 14, but because of technical difficulties, Hicks initially was not able to review the footage.) When Hicks saw the videos, he decided to suspend the individuals involved, pending further investigation. During his interview with us, Hicks said he was disgusted and angered by the videos.

On Saturday afternoon, January 16, Hicks emailed senior officials at the Governor's Office informing them that the EMCF Associate Administrator had authorized four cell extractions on January 11. He stated that at least two inmates suffered injuries, specifically, "1 inmate suffered a broken arm and another suffered facial injuries." Hicks further stated that he placed 29 staff on leave pending an SID investigation for violation of policies and potential use of excessive force, and that the Hunterdon County Prosecutor's Office had been contacted to review the incident for potential criminal prosecution. Hicks stated that the Cell Extractions had not been authorized by anyone in NJDOC except the Associate Administrator.

During his interview, Hicks told us that this method of communication is typical for his dialogue with the Governor's Office. He does not reach out directly to the Governor; if an emergent issue arises, he will reach out to the Governor's chief of staff or chief counsel by email or phone.

Seven minutes after Hicks' email, the Governor's chief counsel responded, asking if the Attorney General's office had been notified. Hicks confirmed that they had,

specifically, a referral had been made to criminal authorities at the Office of Public Integrity and Accountability.

In his interview with us, the Governor said that upon being briefed, he was disgusted, deeply concerned and upset. He said that in response, separate from having guilty parties brought to justice through the criminal process, he directed this outside investigation to take place to determine what had happened and how it happened, and to ensure it never happens again.

## **VII. CONCLUSIONS AND RECOMMENDATIONS**

### **A. Conclusions**

In addition to the findings noted above, the following are conclusions regarding the events of the Cell Extractions.

#### **1. Custody Staff Failed to Establish a Proper Basis for Conducting Forced Cell Extractions on Third Shift**

As noted above, third-shift cell extractions are reserved for emergency situations, because there generally are not enough staff members during third shift to respond appropriately if a situation becomes volatile. As a result, both the current and former EMCF Administrators told us that had they been asked to authorize these third-shift Cell Extractions, they would not have done so.

Administrator McGill said that from what she knew about the incident, there was “no pressing need” to remove contraband from inmates’ cells. Former Administrator Davis likewise said she would not have considered splashing to be an emergency justifying cell extractions, particularly on third shift. She noted that she has witnessed riots during third

shift that were not determined to require cell extractions. Davis conveyed a sense of guilt about the Cell Extractions and her absence from the facility, stating, “God knows this . . . would not have happened” had she been present. Another EMCF supervisor similarly said that she would have waited until first shift to conduct cell searches in response to splashing incidents, because inmates are often out of their cells for recreational time during first shift, obviating the need for forced extractions.

The lapse in time, including a shift change, between the last splashing incident around 8:30 p.m. and the first cell extraction at approximately 10:30 p.m., indicates the absence of a true emergency justifying a third-shift cell extraction. In the absence of a true emergency, the motives underlying the conduct here become more apparent. As opposed to an attempt to quell a legitimate emergency, the Cell Extractions were a misguided effort by frustrated employees to restore order and mete out discipline in response to splashing and other events.

## **2. Custody Staff Failed to Properly Record the Cell Extractions**

As explained above, NJDOC policy states that once a cell extraction is approved, it cannot proceed until “a custody supervisor with a video camera” arrives. The policy provides specific tasks that must be completed on camera prior to the cell extraction, none of which were present on the recordings described above. First, the supervisor recording the cell extraction is to announce the date and time that the recording is beginning, his or her name and title, the location of the recording, the reason for it, the name of the correctional facility, and the name and identification number of the inmate(s) involved. The video recordings did not include this required statement. Next, the custody supervisor

overseeing the extractions must provide an on-camera briefing, including the names and responsibilities of all team members, and provide instructions for and describe the purpose of the extractions. The team members themselves must announce their name, team number and specific responsibility on camera. This announcement did not occur on video recordings described above, and Commissioner Hicks noted the same in our interview of him.

Once the pre-extraction briefings are complete, the entire incident must be recorded, and the recording must not stop until after the inmate has been examined by medical staff. Nonetheless, video recordings of the Cell Extractions were frequently filmed in such a way that it was impossible to see what was happening to the inmate. Instead, the camera was frequently positioned behind members of the Extraction Team, filming their backs instead of filming the inmate involved, or filming a wall. For instance, the recording of Inmate 2's cell extraction does not depict Inmate 2 while an officer audibly punches her for about a minute straight.

In addition, our investigation found that some Cell Extractions, or portions thereof, were not recorded at all. For example, Inmate 3's cell extraction, which resulted in her suffering a skull fracture, was not recorded. The video footage of Inmate 3 shows her already injured, with a visible, swollen black eye and bloody face, as she is transported to the Medical Office. There is no video footage supporting officers' claims in incident reports that Inmate 3's injuries were a result of her becoming "self-injurious" or "banging her head on the door." Likewise, there is no video supporting officers' claims in incident reports that Inmate 1 was discovered "unresponsive" in her cell and "became belligerent"

toward officers when she regained consciousness. Nor is there video footage that explains Inmate 1's broken arm that was placed in a cast.

Commissioner Hicks told us that in his opinion, the inadequate filming was intentional. He said "there were instances where the camera was pointed at the floor, or it wasn't even on . . . . I don't think that was coincidental. And it was completely inconsistent with what our policies are." We were similarly told by a former NJDOC official that improperly filming cell extractions and telling non-resistant inmates to "stop resisting" are tactics sometimes used to avoid detection of excessive force or to justify an inappropriate use of force.

### **3. Custody Staff Used Excessive Force During Multiple Cell Extractions**

NJDOC policies and State regulations related to the use of force emphasize that any use of force by correctional officers must be "objectively reasonable" and that custody staff must exercise "the utmost restraint" when using force. Additionally, the policy governing forced cell moves states that inmates must be provided "a reasonable amount of time to comply" with orders before force is used, so long as there is "no immediate danger to the inmate's safety, or [of] serious damage to state property by the inmate."

Custody staff failed to follow protocols related to use of force and used excessive force during the Cell Extractions. First, pepper spray was used inappropriately during the Cell Extractions. The use of pepper spray qualifies as a use of force pursuant to NJDOC cell extraction policy. The policy states that once pepper spray is deployed against a noncompliant inmate, the extraction team should wait "approximately two (2) minutes"

and then give the inmate another opportunity to comply with the instruction before beginning the extraction. In contrast, video recordings of Inmate 2 and Inmate 4 show custody staff deploying pepper spray and then immediately entering the inmate's cell, rather than providing an opportunity to comply. Commissioner Hicks confirmed that officers should have given the pepper spray time to take effect such that the inmate could "voluntarily surrender and comply."

Second, we found that in at least three of the Cell Extractions, custody staff employed a level of force that could not be considered "objectively reasonable." Video recordings showed an officer holding Inmate 2 by her hair while another officer repeatedly punches her on the face, chest and back. She never appears to be resisting, but rather appears to be attempting to cover her face to avoid being punched. Inmate 2 received external medical attention and was ultimately diagnosed with a cervical sprain and a concussion. Further, before Inmate 1 was strip searched, custody staff are visible on video ripping her clothes in what appears to be an unnecessarily violent manner. Moreover, there is no video footage showing how Inmate 3 sustained a skull fracture, nor how Inmate 1 sustained a broken arm. While we will leave assigning culpability among specific individuals present that night to criminal prosecutors, overall conclusions regarding the conduct that took place are fairly self-evident.

All of this taking place during an ongoing federal probe at EMCF, and after a critical DOJ report, renders the conduct all the more jarring. Phrases used by NJDOC officials describing their reactions included "blows my mind," "shocking," "beyond frustrating" and "devastating."

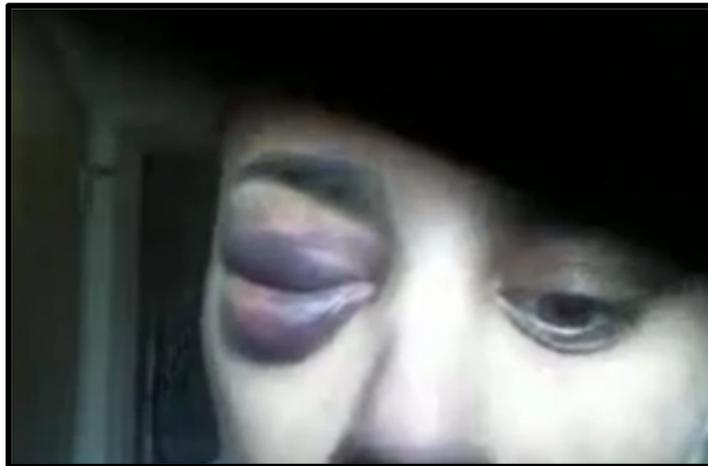
#### **4. Custody Staff Filed False Reports**

NJDOC policy requires immediate reporting of use of force by “each staff member who participated in or witnessed the event,” by way of a special custody report. The “ranking custody staff member on the scene” must also complete and submit a “use of force” report. The reports must include, among other facts, a description of the type of force used, the reasons for employing the force and a description of any injuries sustained.

Our investigation revealed that custody staff filed false reports regarding several of the Cell Extractions. For example, incident reports describing Inmate 1’s cell extraction state: (i) female officers strip-searched Inmate 1; (ii) Inmate 1 was later found unresponsive in her cell, then regained consciousness and became belligerent; and (iii) Inmate 1 sustained no injuries during the extraction. However, (i) male officers are visible inside the cell while Inmate 1 is strip searched and appear to have participated in the search; (ii) there is no video evidence suggesting Inmate 1 was at any point unresponsive; and (iii) Inmate 1 sustained a broken arm, visible bruising and superficial scratches.

Incident reports describing Inmate 2’s cell extraction state that she: (i) refused orders to be handcuffed; (ii) was “throwing punches” toward custody staff; and (iii) sustained no injuries. In contrast, video recordings and medical reports we reviewed show that: (i) Inmate 2 was not given an opportunity to comply after pepper spray was deployed; (ii) Inmate 2 was neither resistant nor violent; and (iii) Inmate 2 sustained a swollen lip, bruises on her eye, arm, and shoulder, a cut on her right hand, a concussion, and a cervical sprain.

Reports describing another inmate state that she became “self-injurious” and was “banging her head on the cell door.” Thus, the reports would indicate that the injury depicted in this publicly reported photograph was self-inflicted:



There is no video evidence to support these claims.

These false reports caused inaccurate COD reports to be circulated to NJDOC officials, delaying their awareness of the fact that inmates had been seriously injured. For example, a COD report circulated at 4:17 a.m. on January 12 states that no injuries were reported following any of the Cell Extractions and it does not even list Inmate 3 as one of the inmates removed from her cell. Even a “corrective late report” circulated by COD more than twelve hours later, at 7:54 p.m. on January 12, states that no injuries were reported, and it still does not mention Inmate 3.

##### **5. Custody Staff Failed to Prevent Male Viewing of Inmate Strip Searches**

NJDOC policy provides that strip searches of inmates must be conducted by staff of the same gender outside of emergency circumstances. It also states that searches must be conducted “in a professional and respectful manner.” NJDOC officials we interviewed

said that because cell extractions typically include strip searches, it is “preferable” for extraction teams at EMCF to be made up primarily of female custody staff. Others we interviewed said that it was acceptable for males to be on extraction teams as long as they do not participate in or view the strip search.

While “emergency circumstances” are not defined in NJDOC policies related to strip searches, NJDOC officials and EMCF supervisors we interviewed generally felt that the Cell Extractions were not conducted in circumstances that were emergent. Nevertheless, video recordings of Inmate 1’s cell extraction show that male officers are inside the cell while she is strip searched, and suggest that at least one male officer actively engaged in the search, and potentially conducted a body cavity search. While the camera is blocked by other officers as Inmate 1’s clothes are removed, she is heard asking, “Why is it a man ripping my clothes off?” According to Inmate 1’s written statement, a male officer also digitally penetrated her in the course of the strip search and caused vaginal bleeding. Custody staff also failed to report this cross-gender strip search, contrary to NJDOC policy. As noted in the previous section, incident reports falsely stated that only female officers participated. In addition, this search certainly was not conducted in a “professional and respectful manner”; custody staff are seen on video tugging at her clothes, struggling to rip them off of her, and moving her between multiple cells in the process. Male officers also were present for Inmate 2’s strip search.

## **6. Unclear and Informal Authorization Protocols Likely Contributed to the Occurrence of the Cell Extractions**

NJDOC officials and EMCF supervisors we interviewed communicated differing and inconsistent understandings of whose authorization is required to conduct cell extractions, both in general and specifically on the facility's third shift. NJDOC officials told us that NJDOC Central Office issued a directive to all facility administrators last year that Central Office approval is required to conduct cell extractions on the third shift. We requested from NJDOC documentation reflecting that directive and were informed that it was not communicated in writing. NJDOC policies were not updated to reflect the intended change in authorization protocol.

The cell extraction authorization protocols that are set forth in written policy appear to be inconsistent. In a span of three pages, the existing policy states that: (i) “[t]he decision to force an inmate to move is made by senior custody supervisors in conjunction with the facility Major and Administrator”; (ii) a forced cell extraction cannot proceed “without the approval of the Administrator or On Call designee”; and (iii) a use of force may be authorized by any “custody staff member with the rank of sergeant or above.” The policy thus spells out three different protocols that all may apply to the same occurrence, which makes the required authorization unclear. Seemingly in contrast to the policy, in his April 8, 2021 testimony before New Jersey Assembly committees, Commissioner Hicks stated that “there has to be Central Office notification before a cell extraction takes place.”

Unsurprisingly, the EMCF Administrators we interviewed seemed to be less than fully clear on when, if ever, Central Office authorization is required to conduct cell

extractions. Sarah Davis said she did not typically seek approval from Deputy Commissioner Ricci to conduct cell extractions because the need to conduct an extraction generally results from an “urgent situation.” She said when she did speak to Ricci about a cell extraction, she would call Ricci saying, “this is what we’re planning to do,” as opposed to seeking permission. Patricia McGill described providing more deference to Central Office, and said that on the third shift specifically she would not authorize staff to open any inmate’s cell door “without authorization” from Central Office. She said that in true emergency (*e.g.*, life or death, attempted suicide) situations, however, Central Office authorization is not required.

Our investigation determined that the lack of a formal directive or policy stating that Central Office must approve a third-shift cell extraction contributed to what happened on January 11. While the available evidence indicates that Central Office generally had denied permission to conduct third-shift cell extractions when asked in the past, there is nothing in writing stating that such consultation had to take place. Nor are there any records formally memorializing whether St. Paul sought Deputy Commissioner Ricci’s approval here, or whether she granted it. Nor is there any evidence that Commissioner Hicks was informed of any aspect of this highly volatile situation as it was developing or before the Cell Extractions were carried out. Had NJDOC policy explicitly stated that memorialized Central Office approval was required to conduct third-shift cell extractions, we believe it would have been denied here, thereby avoiding all that followed.

## **7. Conducting Unit-Wide Cell Extractions Made for an Even More Disruptive and Volatile Situation**

NJDOC officials and facility supervisors we interviewed uniformly told us that it is highly unusual to conduct cell extractions across an entire housing unit. Administrator McGill told us that she has never seen a situation where multiple cell extractions were authorized and conducted simultaneously. Commissioner Hicks likewise stated that unit-wide searches generally do not occur unless NJDOC has “evidence or intelligence that the entire unit has contraband or something negative is going to happen.”

The Cell Extractions appear to qualify as a “mass search,” which NJDOC policy documents state “may be authorized due to specific information received from a third party believed to be reliable, or due to the personal observations of activities or conditions in light of the staff member’s experience or knowledge of inmates.” In this instance, however, none of the incident reports indicate that the entire unit was likely or even believed to possess contraband. Instead, the reports indicate that three inmates at most attempted to splash, or succeeded in splashing, correctional officers. Yet, 22 inmates were removed from their cells. Expert consultants we spoke with said the fact that officers removed all RHU inmates from their cells shows that “what the officers were trying to do [was] send a message that they’re in charge.”

## **8. Delays in Planned Remedial Measures Likely Contributed to Misconduct**

As detailed in Part III.C of this report, NJDOC and EMCF have worked to implement a range of remedial measures and other enhancements meant to improve

conditions at EMCF. However, our investigation found that delays in implementing some remedial measures contributed to the occurrence and violence of the Cell Extractions.

For example, NJDOC has been working to implement an Early Warning System (“EWS”) since 2018. The EWS is a comprehensive digital system that receives information from various divisions within NJDOC and alerts NJDOC Central Office when a correctional officer is flagged by the system because of disciplinary infractions, attendance concerns, litigation alerts or other issues. Central Office is to review each alert and determine what action, if any, to take, ranging from an investigation of the officer to provision of counseling. As to the lapse in time between initial efforts in 2018 and recent completion of the EWS in 2021, Commissioner Hicks said that the delay was partially due to the need to aggregate information from various internal databases, upgrade related systems, and develop EWS policies and procedures. He said that once Covid-19 became an issue, resources that otherwise would have been allocated to EWS implementation were diverted to pandemic-related needs. In external correspondence sent by Commissioner Hicks in May 2020, he stated that the EWS would be operational by June 30, 2020. Ultimately, however, it reportedly went live on April 1, 2021. Commissioner Hicks told us that there is no doubt that if EWS had been operational before January 2021, it would have flagged for further review some of the officers who were involved in the Cell Extractions.

Similarly, EMCF is currently participating in a body-worn camera (“BWC”) pilot program, and in May of this year the cameras began to be used at the facility, with 120 BWCs now in use there. According to draft NJDOC policies we reviewed, correctional

officers will utilize BWCs primarily “for the purpose of recording incidents, searches, and encounters” including cell extractions and any use-of-force incidents, among other occurrences. Half of the funding for the program was secured in 2018 through a grant from the federal Bureau of Justice Assistance. Commissioner Hicks said that the three-year lapse in time between receipt of the grant and the program’s implementation was due to an issue with the original vendor’s bandwidth connectivity, which became apparent only in December 2020. At that point, another vendor took over. No officers at EMCF were outfitted with body cameras as of January 11. One of the issues we identified above – custody staff’s failure to properly video record the Cell Extractions – likely would not have occurred if officers were wearing BWCs when the extractions were conducted. Indeed, we question whether, in that scenario, the Cell Extractions would have occurred at all.

## **B. Recommendations**

It is clear that significant changes are necessary to break the current cycle of misconduct at EMCF. The sexual abuses discussed in the April 2020 DOJ findings letter occurred secretly and in hiding. In contrast, the conduct associated with the Cell Extractions happened in the open, in the presence of numerous people and multiple video cameras, revealing the significance of the challenges that remain at the facility.

As Commissioner Hicks has testified, the State is negotiating a final settlement agreement with DOJ, which NJDOC expects will include numerous specific requirements for EMCF to fulfill, in addition to the naming of a federal monitor. Consistent with our charge, we leave those new requirements for discussion elsewhere and focus our recommendations on the events of the Cell Extractions.

## **1. Independent Oversight**

### **i. Require the Presence of at Least One External Person, such as Either SID or the Office of the Ombudsperson, to be Present for Cell Extractions When Possible**

The Ombudsperson stated in his interview with us that although his office is available to participate in “special assignments” such as cell extractions, EMCF has never called upon his office to participate and he and his staff have never sought to do so. He agreed with us that having someone from OCO or an entity such as SID present to observe a cell extraction “would absolutely have an impact” on officer adherence to protocol. We note that during the course of our investigation, NJDOC directed that, going forward, a SID investigator would be responsible for filming cell extractions at all NJDOC facilities. We agree with that change.

### **ii. Independence of SID**

More generally, a strong and independent SID is vital to the health of EMCF as a facility. Currently, all SID investigators are themselves former correctional officers, potentially having attended training at the Academy or even worked alongside the officers whose conduct they now investigate. That may impact the impartiality, or at least the appearance of impartiality, of those investigators.

While we recognize that SID has made efforts to remain independent and at arms’ length from correctional officers, recent events counsel in favor of revisiting the current approach. Consideration should be given to having at least some SID investigators who do not come from the ranks of correctional officers. As a former EMCF official stated to us, other law enforcement perspectives and backgrounds would be valuable to SID, or at

least further inmates' confidence in the impartiality of the process. We note that the current SID chief is retiring at the end of this year, which provides an opportunity for a fresh start and an examination of the unit. New ideas such as having, for example, an entity such as the State Police involved in the work of SID, at least in the near term, should be explored.

### **iii. Strengthen the Ombudsperson's Involvement at EMCF**

Along similar lines, recent legislative amendments contemplated that the OCO, which is now empowered with subpoena authority and a litany of other tools, would become an aggressive and proactive actor in ensuring that inmate rights are respected. Nonetheless, our investigation revealed that in the time leading up to the Cell Extractions, OCO largely had become, in effect, an office that receives complaints and then simply refers them to another party to resolve them. As one inmate reported in her interview, the OCO "is invisible to us." The publicly announced upcoming retirement of the Ombudsperson presents an opportunity. We recommend that OCO be more aggressive and proactive in its involvement at EMCF specifically and focus more of its resources on that facility.

## **2. Authorization Protocols for Cell Extractions Must be Clarified and in Writing**

Independent oversight of cell extractions will help, but it is important that those overseers, and those whose conduct they are reviewing, have an awareness of the rules that need to be enforced. The policies and procedures for cell extractions must be in writing and clearly communicated to staff both during initial training and at regular intervals. Those procedures should include protocols for seeking authorization to conduct cell

extractions. The approvals themselves in each instance should be memorialized in some form, such as via e-mail. Greater personal accountability and related internal controls are vital to establishing an environment of best practices at EMCF.

### **3. Staff Recruitment, Retention and Training**

#### **i. Increase Number of Gender-Restricted Posts**

Getting the right people to carry out cell extractions and similar measures is also critical. In a February 2018 memorandum, the then-Administrator at EMCF stated there was a “crucial need for more Gender Restricted Posts,” meaning, more female staff at the facility. The Administrator requested 90 gender-restricted posts. Despite some legal hurdles, progress has been made since that time. Records indicate that currently, a total of 55 posts (split among three work shifts) are gender-restricted at EMCF and as of March 2021, EMCF employed 166 female officers, indicating that 46 percent of officers are female. Based on our discussions with subject matter experts, we believe that increasing that percentage to 60 or 70 percent could begin to tip the scales favorably on some of the cultural issues at the facility.

A greater number of female officers at EMCF would enable greater female oversight of and participation in cell extractions, which Commissioner Hicks agreed should be a goal. Protocols should be reviewed with an eye towards decreasing the involvement of male officers in events taking place in the cells of female inmates.

**ii. Explore Corrections Officer Recruitment and Retention Strategies**

Even with the above as a goal, our interviews revealed that NJDOC has had difficulty recruiting high-quality staff and female officers to EMCF, particularly because of its remote location and the starting salary. The starting salary for an entry-level NJDOC correctional officer is \$44,479.39. In addition to recruiting challenges, NJDOC reported seeing significant turnover of staff in their first five years due to the salary not being competitive, resulting in the loss of top-performing employees to other State agencies that offer higher salaries in more attractive geographic locations. For example, NJDOC's chief of staff noted to us that certain county jails offer their corrections officers significantly more money than what NJDOC can offer. In short, top law enforcement candidates often can find work that is both safer and higher-paying. In view of the recent \$20.8 million civil settlement relating to EMCF, it is evident that additional compensation designed to attract top candidates may ultimately be cost-effective for the State. Greater pay also could be a component of union negotiations relating to some of the other issues referenced in this report.

Other creative recruitment techniques should be considered as well. For example, NJDOC should consider whether all posts require correctional officers to be trained in the use of firearms and carrying a firearm on duty. Applying for a role that requires the individual to train in and carry a firearm may deter some applicants who would otherwise be qualified. A corrections consultant informed us that another state had some success recruiting more female officers when firearm requirements were revisited.

Moreover, we recommend that State policymakers consider whether to exempt EMCF from the New Jersey First Act, N.J.S.A. 52:14-7, which imposes New Jersey residency requirements on most State officers and employees. Allowing EMCF to expand its recruitment efforts to people who live in Pennsylvania, which is less than 20 miles from EMCF, would increase the pool of potential candidates. It is vital to the success of the facility that it attract competent, professional and psychologically strong correctional officers.

**iii. Ensure Comprehensive and Recurring Training on De-escalation and Communication Techniques, and Practical Training on Cell Extractions**

EMCF should revisit its curriculum for gender-responsive training with an eye towards more robust teaching on de-escalation and communication techniques. A consultant we interviewed noted that the current level of training that new staff receives appears to be inadequate in these areas. Using de-escalation efforts before resorting to the use of force is key to promoting safety and trust at EMCF.

EMCF also should develop a more robust practical training program for cell extractions. Several people we interviewed as part of our investigation noted that such practical, hands-on training would be helpful.

**iv. Environmental and Related Cultural Issues**

Ultimately, EMCF will be best positioned for success if it creates an environment of order, fairness and predictability. Along these lines, we found stark differences in perspectives between staff and inmates about the culture within the facility and their relationship with each other. Inmates reported that no one is looking out for them and their

rights are being abused. On the other hand, officers have reported that the inmates are effectively in control of the facility and that inmates do not respect their authority. Though anecdotal, an outside professional, with decades of corrections experience including as the commissioner of another state's department of corrections, reported to us her observations upon visiting EMCF's RHU. She was surprised to find inmates yelling at her using vulgar language as she walked through the unit. She remarked that it is unusual for female inmates in restrictive housing to feel comfortable interacting with third parties in that manner.

We recommend that as part of the ongoing work of the consultant currently engaged at EMCF, attention be directed at the perspectives and attitudes of the inmates and staff. The consultant should speak with stakeholders, observe the environment and make recommendations for improvement, focusing on bridging the gap between staff and inmates to facilitate a more effective relationship between the two groups. Progress must be made on vindicating the constitutional rights of EMCF inmates while concurrently ensuring order and enforcement of rules at the facility.

#### **4. Implementation of the Body-Worn Camera Program and Early Warning System**

For the reasons stated previously, NJDOC should complete and monitor implementation of its EWS and new BWC policy. NJDOC should use its EWS to more aggressively screen for potential problematic conduct by its correctional officers and consider appropriate (re)assignments for those officers, before significant misconduct takes place. It is consistent with common sense, moreover, that use of body cameras will promote proper conduct on the part of anyone being recorded, officer or inmate.

## **5. Physical Facility**

### **i. Consider Ceasing EMCF's Operations or Diversifying Where Female Inmates Can Be Incarcerated in New Jersey**

Lastly, in view of the lengthy negative history of misconduct at EMCF, whether that conduct can best be shifted to the past by closing the facility altogether should be considered. One of the experts we interviewed, who has decades of experience in corrections, questioned, in light of the momentum of negative issues at and attention to the facility, whether EMCF can be “saved” in a reasonable amount of time. In light of our findings, we recommend that NJDOC consider closing down EMCF and relocating its inmates to another facility.

With the facility being more than 100 years old, it is in any event in need of significant repair and improvement. In addition, as described above, NJDOC has encountered difficulty recruiting female staff to EMCF's location in western New Jersey. A different, more centrally located facility has the potential to address these issues.

On May 3, 2021, Commissioner Hicks testified before the New Jersey Assembly Budget Committee that during his administration, NJDOC has shut down two prisons and intends to close a third facility, which is located approximately six miles from EMCF. He testified that NJDOC saw a decrease of approximately 5,000 inmates across all of its facilities from 2020 to 2021, indicating that space considerations at NJDOC facilities may not be as critical as previously had been the case. In our interview with him, Hicks agreed that the feasibility of a shut-down of EMCF should be explored. While the expense and

effort associated with a closure, and transfer of inmates, would be significant, the State may find another valuable purpose for the many acres of land on which the facility sits.

At a minimum, we recommend that NJDOC diversify where female inmates may be incarcerated so there is more than one New Jersey correctional facility that can house female prisoners. NJDOC officials and EMCF supervisors we interviewed said the fact that EMCF is New Jersey's only women's prison makes it very difficult to effectively separate inmates from staff or other inmates with whom they have continuing issues. They noted that male inmates are frequently transferred between correctional facilities in New Jersey as a way to halt patterns of bad behavior and provide a "change of scenery," an opportunity that EMCF inmates are not afforded. Under this alternative, EMCF would continue to operate and exist, but with a reduced population. Its inmates could be transferred when deemed necessary or to better separate an inmate from an accused staff member, for example.

The availability of another location for female inmates also would further facilitate EMCF's compliance with PREA requirements. Currently, separating an inmate who has alleged sexual abuse from her alleged abuser may require temporarily placing her in segregated housing, which inmates may view as punitive. See 28 C.F.R. § 115.43. Access to another facility would help to address those issues.

## **ii. Improvements to and Modernization of Infrastructure**

If EMCF is going to continue to serve as a women's prison, significant repairs are warranted to ensure the safety and wellbeing of inmates and staff. Multiple interviewees mentioned infrastructure as an issue, and its impact is supported by academic literature.

For example, the “broken windows theory” posits that “disorder and crime are usually inextricably linked.” George L. Kelling & James Q. Wilson, *Broken Windows, The Police and Neighborhood Safety*, *The Atlantic* (Mar. 1982), <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>; see also Roger P. Alford, *A Broken Windows Theory of International Corruption*, 73 *Ohio St. L.J.* 1253, 1256–57 (2012); Louise A. Ellis, et al., *An Empirical Application of “Broken Windows” and Related Theories in Healthcare: Examining Disorder, Patient Safety, Staff Outcomes, and Collective Efficacy in Hospitals*, *BMC Health Servs. Rsch.* 20, 1123 (Dec. 4, 2020), <https://doi.org/10.1186/s12913-020-05974-0> (discussing the broken windows theory as it relates to the effect of disorder on staff and patients in hospital settings). “One unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing.” Kelling & Wilson, *Broken Windows*, <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>.

At EMCF, the disrepair of the physical facility can signal to inmates, as inmates indicated during our interviews, that because the State does not “care” enough to fix the facility, it does not care about the inmates or their behavior, good or bad. This also applies to staff members. Research has shown that in environments where individuals have a lack of control over certain stressors, the individual may “react with anger, blam[e] others, . . . or [engage in] aggressive retaliation.” Ruthanne DeWolfe & Alan S. DeWolfe, *Impact of Prison Conditions on the Mental Health of Inmates*, 4 *S. Ill. U. L.J.* 497, 508–09 (1979). “In order for a correctional building to function as a tool for rehabilitation, the design of a correctional facility should: [be] based on the premise that people are capable of change

and improvement, with the built environment conveying the message that incarcerated people are worth something.” Marayca López, *How to Build for Success: Prison Design and Infrastructure as a Tool for Rehabilitation*, Penal Reform Int’l (July 24, 2014), <https://www.penalreform.org/blog/build-success-prison-design-infrastructure-tool-rehabilitation/>. “Older jails, some built more than a century ago, can also pose significant health and safety risks to both staff and the incarcerated population through [their] designs.” Chris Mai, et al., *Broken Ground: Why America Keeps Building More Jails and What It Can Do Instead*, Vera Inst. of Just. (Nov. 2019), <https://www.vera.org/downloads/publications/broken-ground-jail-construction.pdf>. A functional facility needs to provide basic, minimum living conditions (*e.g.*, clean water, functioning toilets and sinks, natural light), while allowing for the proper regulation and control of inmate movement.

The problems associated with EMCF’s facility have been documented elsewhere, including in legislative testimony. These include electrical issues and other problems related to the facility’s outdated infrastructure. For example, on May 10, 2021, it was publicly reported that EMCF suffered a power outage beginning on May 8, and although power was restored to most of EMCF a few hours later, power was out for about 40 hours in the Stowe and Randall buildings, which temporarily left almost 200 inmates without electricity until they were moved to other housing areas. In late April, there had also been reports of mold in the facility’s Hillcrest housing unit, which was described as “black sludge found in sinks, drains, toilets and showers, leaking sewage, brown and black water” by reporting sources. Inmates in that unit were transferred to other housing units. While

it is beyond the scope of this investigation to examine such issues in detail, it was nearly a universal sentiment across our investigation that the poor condition of the physical facility has contributed to low morale among both inmates and staff and interfered with best practices in a correctional setting.

The abandoned buildings on the site have presented additional opportunities for abuse. Though those buildings now are locked and tagged in a manner that makes unauthorized entry unlikely, in the past they have been used by correctional officers as a place to engage in illegal sexual acts. In short, the structure and design of the facility itself, in addition to its condition, provides unique challenges for both facility staff and inmates. As a State, we can and must do better.