

HONORABLE FRANKLIN D. BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HUMANISTS OF WASHINGTON, et al.,

Plaintiffs,

v.

JOSEPH LEHMAN, et al.,

Defendants.

NO. C97-5499FDB

RELEASE AND
SETTLEMENT AGREEMENT

Plaintiffs, Humanists of Washington, the National Prison Project of the American Civil Liberties Union Foundation, Inc. ("NPP-ACLUF"), Rollin Wright, Billy Blankenship, Keith Closson, Mark Cook, William Robert Harris, Jerry Hawkins, Michael Peterson, Randy Tollefsen, and Paul Wright, by and through their attorneys MICHAEL W. GENDLER and JOSEPH E. BRINGMAN, and Defendants, by and through their attorneys, CHRISTINE O. GREGOIRE, Attorney General, KASEY C. KNEIP and HEATHER KLEIN, Assistant Attorneys General, and MICHAEL T. MITCHELL, Senior Assistant Attorney General, based upon consideration and mutual promises herein, and in mutual decision to resolve the above-captioned matter without further litigation, hereby agree as follows:

1. In consideration of the following provisions of the release and settlement agreement, plaintiffs Humanists of Washington, the National Prison Project of the American Civil Liberties Union Foundation, Inc., Rollin Wright, Billy Blankenship, Keith Closson, Mark Cook, William Robert Harris, Jerry Hawkins, Michael Peterson, Randy Tollefsen, and Paul Wright, their heirs,

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1 assigns or other successors in interest, do hereby release and forever discharge the State of
2 Washington, its officers, agents, employees, agencies, and departments for any and all existing and
3 future claims, damages and causes of action of any nature whatsoever arising out of these certain
4 incidents, occurrences, casualties or events which are described in the First Amended and
5 Supplemented Complaint for Declaratory and Injunctive Relief and are the source of this claim and
6 lawsuit captioned above, provided, however that this release does not extend to existing or future
7 claims, damages and/or causes of action that relate in any way to plaintiffs' Fifth Claim for Relief.

8 2. Plaintiffs and defendants have agreed to resolve this lawsuit without further
9 litigation in the following manner:

10 a. Inmate plaintiffs agree to dismiss with prejudice their First Claim for Relief
11 challenging the defendants' bulk mail policy as stated in Plaintiffs' First Amended and
12 Supplemented Complaint for Declaratory and Injunctive Relief on the basis that amended DOC
13 Policy 450.100, Mail for Offenders, effective January 10, 1999, provides for statewide effect of the
14 settlement reached in Miniken v. Walter, EDC Cause No. CS96-407-JLQ (1997 WL 778753 (E.D.
15 Wash.)) on October 20, 1998.

16 b. Publisher plaintiffs agree to dismiss with prejudice their Second Claim for Relief
17 challenging the defendants' bulk mail policy as stated in Plaintiffs' First Amended and
18 Supplemented Complaint for Declaratory and Injunctive Relief on the basis that amended DOC
19 Policy 450.100, Mail for Offenders, effective January 10, 1999, provides for statewide effect of the
20 settlement reached in Miniken v. Walter on October 20, 1998.

21 c. Plaintiffs agree to dismiss with prejudice their Third Claim for Relief as stated in
22 Plaintiffs' First Amended and Supplemented Complaint for Declaratory and Injunctive Relief under
23 the following provisions:

24 Defendants agree to amend DOC Policy 450.100, Mail for Offenders, consistent with the
25 decision in Crofton v. Roe, 170 F.3d 957 (9th Cir. 1999) to substantially provide:

- 1 1) Inmates may receive gift subscriptions and/or publications from any party other
2 than from another inmate or the friends or family of another unrelated inmate;
- 3 2) Inmates are responsible for notifying the publisher of any change of address;
- 4 3) While an inmate may be the beneficiary of a gift subscription and/or publication,
5 the inmate may be temporarily deprived of actual receipt or possession of the publication while in
6 the IMU, segregation, or subject to other restrictions regarding property consistent with the
7 specific temporary property restrictions placed on the inmate;
- 8 4) If an inmate is subject to a property restriction, any gift subscription and/or
9 publication will be held for at least ninety (90) days before the inmate is required to notify staff to
10 send out, donate, or destroy the subscription.
- 11 d. Plaintiffs agree to dismiss with prejudice their Fourth Claim for Relief as stated in
12 Plaintiffs' First Amended and Supplemented Complaint for Declaratory and Injunctive Relief as it
13 relates to the publication known as "Maoist Internationalist Movement" (MIM) Notes under the
14 following provisions:
- 15 1) Defendants agree to review the MIM Notes publication on an issue-by-issue basis
16 and agree not to reject the publication solely on the basis that each issue describes MIM's
17 organizational purpose as "struggl[ing to] end oppression by build[ing] public opinion to seize
18 power through armed struggle." Defendants further agree to review each issue of MIM Notes by
19 evaluating the content of each issue in conjunction with the masthead advocating "struggle to end
20 oppression by build[ing] public opinion to seize power through armed struggle."
- 21 2) If the content of an issue of MIM Notes is deemed to be a threat to legitimate
22 penological objectives, defendants reserve the right to reject the issue.
- 23 c. Plaintiff Paul Wright agrees to dismiss without prejudice the Fifth Claim for Relief,
24 Sexually Explicit Materials, as stated in Plaintiffs' First Amended and Supplemented Complaint for
25 Declaratory and Injunctive Relief.
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1 f. Plaintiff William Robert Harris agrees to dismiss with prejudice the Sixth Claim
2 For Relief as stated in Plaintiffs' First Amended and Supplemented Complaint for Declaratory and
3 Injunctive Relief as defendants have agreed to expunge the infraction issued against plaintiff Harris
4 under Washington Administrative Code (WAC) 137-28-260(728). In addition:

5 1) Defendants further agree to amend WAC 137-28-220 and WAC 137-28-260(728) to
6 provide that a "728 infraction" may be charged as a serious infraction or a general infraction.
7 Factors to be considered by the hearings officer and the infracting officer in determining whether a
8 "728 infraction" shall be treated as a general infraction may include the seriousness of the sexually
9 explicit material involved, whether the inmate has been convicted of a sexually motivated crime,
10 the treatment needs of the inmate, prior history of similar behavior, and the source of the material.
11 Such factors will be considered on an appeal as well as by the reviewer of the infraction. The
12 hearings officer and/or reviewing officer has the discretion to reduce the serious infraction to a
13 general infraction should mitigating circumstances as described in the factors above exist.
14 Pursuant to WAC 137-28-260, a "728 infraction" classified as a general infraction may not be
15 increased to a serious infraction by the person hearing the appeal.

16 2) Defendants further agree to amend WAC 137-28-260 to provide that an inmate will
17 not be found guilty of a "728 infraction" if the inmate possesses sexually explicit materials
18 depicting only actual penetration and such sexually explicit material was screened and approved by
19 the mailroom staff prior to delivery to the inmate. Plaintiffs acknowledge that the sexually explicit
20 material shall still be removed from the inmate's possession and cell.

21 g. Plaintiffs agree to dismiss with prejudice their Seventh Claim for Relief as stated in
22 Plaintiffs' First Amended and Supplemented Complaint for Declaratory and Injunctive Relief based
23 on the following provisions:

24 1) Defendants agree that the person who issued the original rejection decision of a mail
25 item will not decide the subsequent appeal of the rejected mail item.

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2) Defendants further agree that a Department of Corrections employee who is directly supervised by the person who made the initial rejection decision shall not hear the appeal. "Direct supervision" is defined as the direct and immediate supervisor and shall not include those employees who are in the same chain of command or line of supervision but are not the direct supervisor.

3) For mail items rejected as "sexually explicit", defendants agree to provide descriptive language in the mail rejection notice. Specifically, defendants agree to amend form DOC 05-525 to provide a listing of descriptive categories, such as whether or not the item is: a) a picture; b) cartoon; c) written depiction; d) advertisement; or e) other. Plaintiffs agree to dismiss with prejudice the remainder of the claim addressing mail appeals that are non-sexually explicit in nature.

4) Plaintiffs agree to dismiss with prejudice their Seventh Claim for Relief within their First Amended and Supplemented Complaint for Declaratory and Injunctive Relief as it relates to the denial of non-subscription bulk mail and the refusal of defendants to notify inmate plaintiffs and publisher plaintiffs of confiscated or discarded non-subscription bulk mail items.

h. Plaintiffs' Eighth Claim for Relief as stated in Plaintiffs' First Amended and Supplemented Complaint for Declaratory and Injunctive Relief challenging inmate-to-inmate mail restrictions, including the restrictions on third parties from sending legal materials to inmates, is settled on the following conditions:

1) Plaintiffs agree to dismiss with prejudice all claims challenging the defendants' restrictions on inmate-to-inmate correspondence.

2) Defendants agree to deliver "legal materials" mailed to Washington State inmates by non-inmate, third-party senders under the following terms:

a) "Legal materials" are defined as judicial opinions (published and unpublished), reports and recommendations, orders, complaints or answers, settlement agreements, class action notices, legal briefs and memoranda, and motions. The legal materials will be screened by



1 correctional staff upon receipt into the institution, which may include assistance from the law
2 library staff in identifying certain legal documents. The receipt of third party legal materials, as
3 defined above, only applies to those correctional institutions which have a law library (Washington
4 State Penitentiary, Washington Corrections Center, McNeil Island Corrections Center, Clallam
5 Bay Corrections Center, Washington State Reformatory, Twin Rivers Corrections Center, Airway
6 Heights Corrections Center, Washington Corrections Center for Women, and Stafford Creek
7 Corrections Center). Correctional staff, including law library staff, reserve the right to reject any
8 of the legal materials defined above if they are deemed to threaten legitimate penological
9 objectives. Defendants agree to deliver approved legal material without undue delay and provide
10 written notice of rejected mail items in accordance with DOC Policy 450.100.

11 b) Defendants agree that a process will be implemented whereby correctional staff will
12 stamp legal documents as "approved" upon delivery of the items to the inmate recipient.

13 c) Defendants also agree to permit inmates who receive the above-listed legal materials
14 to send such legal materials to the institutional law libraries throughout the State of Washington for
15 the purpose of filing those materials in law library brief banks available for inmates. The local
16 institutions receiving these materials reserve the right to screen and reject the legal materials to be
17 filed in their brief bank consistent with legitimate penological objectives. Defendants further agree
18 not to redact the caption or names within the legal materials filed in the brief banks of the local
19 institutional law libraries, provided that the materials do not present a threat to legitimate
20 penological objectives.

21 i. Defendants agree to deliver to plaintiffs Billy Blankenship and Randy Tollefsen, a
22 copy of Prison Legal News dated January 19, 1996. In exchange, plaintiffs agree to dismiss with
23 prejudice their Ninth Claim for Relief as stated in Plaintiffs' First Amended and Supplemented
24 Complaint for Declaratory and Injunctive Relief. Plaintiffs further agree to assist defendants in
25 providing those relevant copies of Prison Legal News, if necessary.

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1 j. Plaintiffs agree to dismiss with prejudice their Tenth Claim for Relief as stated in
2 Plaintiffs' First Amended and Supplemented Complaint for Declaratory and Injunctive Relief
3 whereby they challenge the property restrictions in the Intensive Management Unit (IMU) in
4 accordance with the following provisions:

5 1) Defendants agree to retain publications for inmates housed in the IMU at level I and
6 level II for at least ninety (90) days.

7 2) Defendants further agree per DOC policy 450.100 to provide notice to inmates that
8 subscription publications have been received and are being withheld. Defendants agree to clarify
9 DOC Policy 450.100, Mail for Offenders, to provide for such notice.

10 3) Plaintiffs agree to dismiss with prejudice their claim that Publisher plaintiffs are
11 entitled to written notice when a publication is withheld on the basis of property restrictions placed
12 on inmates at restrictive custody levels.

13 k. Plaintiffs agree to dismiss with prejudice their Eleventh Claim for Relief as stated in
14 Plaintiffs' First Amended and Supplemented Complaint for Declaratory and Injunctive Relief
15 against defendants' prohibition on possession of postage stamps by Washington State inmates.
16 Defendants agree to enforce the DOC's decision to provide pre-franked envelopes to inmates at a
17 price equal to the cost to the DOC.

18 l. Plaintiffs agree to dismiss with prejudice their Twelfth Claim for Relief as stated in
19 Plaintiffs' First Amended and Supplemented Complaint for Declaratory and Injunctive Relief under
20 the following provisions:

21 1) Defendants agree to clarify DOC Policy 450.100, Mail for Offenders, Section IV,
22 Unauthorized Incoming Mail, A.28, Photocopies or Carbon Copies as follows: Defendants agree
23 to clarify the policy to reflect that an inmate may receive one copy of multiple documents which
24 are not the same document within an individual mailing. That mailed documents are in the form of
25 copies rather than originals shall not be a basis to reject the mailing. If an inmate receives multiple
26 copies of one document they may be allowed to receive one of the multiple copies of each such

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1 document, and the rest of the multiple copies shall be returned to the sender, donated, or destroyed
2 in accordance with DOC Policy 450.100, effective January 10, 1999.

3 2) Defendants further agree to amend DOC Policy 450.100, Mail for Offenders,
4 Section IV, Unauthorized Incoming Mail, A. 22 to provide for a limit of one magazine article per
5 envelope from persons other than the publisher.

6 3) Defendants further agree to amend DOC Policy 450.100, Mail for Offenders,
7 Section IV, Unauthorized Incoming Mail, A. 23 to provide for a limit of ten (10) newspaper
8 clippings per envelope, and these clippings may be received from persons other than the publisher.

9 3. Defendants further agree there may be relevant portions of DOC Policy 450.100,
10 Mail for Offenders that need to be amended to reflect the proposed changes outlined in this
11 settlement agreement. Defendants agree to provide plaintiffs, through their attorneys of record,
12 with reasonable notice of proposed changes to DOC Policy 450.100, Mail for Offenders resulting
13 from this lawsuit only for the purpose of review and comment.

14 4. It is understood and agreed by the parties that this settlement is in compromise of a
15 disputed claim, and that the consideration given is not to be construed as an admission of liability
16 on the part of any defendant, and that said defendants deny liability.

17 5. Defendants agree to informally review a fair and reasonable attorneys fees/costs
18 application submitted by plaintiffs consistent with applicable law and applicable attorney fees'
19 limitations mandated by Congress in the Prison Litigation Reform Act at 42 U.S.C. § 1997e. If
20 agreement on the amount of attorneys' fees and costs can be reached, defendants shall pay such
21 amount within 30 days of such agreement. If an agreement cannot be reached on attorney fees and
22 costs, plaintiffs shall have 60 days following execution of the formal Settlement Agreement in
23 which to submit a Bill of Costs and/or a motion for attorneys' fees to the Honorable Judge
24 Burgess. Defendants will then have the opportunity to object to the Bill of Costs and/or motion for
25 attorneys' fees with full briefing before the court. Neither plaintiffs nor defendants waive the right
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1 to appeal the District Court's decision as to the amount of attorneys fees and/or costs awarded in
2 this case by entering this agreement.

3 6. The parties will sign and present to the court for entry a "Stipulation and Agreed
4 Order of Dismissal With Prejudice" to dismiss all pending litigation on this matter among plaintiffs
5 and defendants, except the parties agree to dismiss plaintiffs' Fifth Claim for Relief without
6 prejudice.

7 7. Defendants agree to comply with the terms of this agreement during a 30-month
8 enforcement period. During this 30-month enforcement period, plaintiffs must attempt to resolve
9 any and all disputes concerning the defendants' continuing compliance with this agreement through
10 the following dispute resolution process. Plaintiffs shall inform counsel for the DOC, Criminal
11 Justice Division in writing of any alleged substantial non-compliance. Unless the problem is
12 resolved at that stage, plaintiffs or counsel for plaintiffs and counsel for the DOC will meet and
13 confer in good faith to try to resolve any differences. This agreement does not require plaintiffs to
14 exhaust DOC's administrative grievance process prior to attempting to resolve any and all disputes
15 through the alternative dispute resolution process described in this agreement. If the dispute
16 cannot be resolved by meeting and conferring, then the plaintiffs may pursue specific performance
17 in a federal or state court of competent jurisdiction located within the geographic boundaries of the
18 Western District of Washington on behalf of the plaintiffs to remedy any non-compliance with this
19 agreement.

20 8. The prevailing party in any action for specific performance of this agreement shall
21 be entitled to recover attorney fees and costs consistent with applicable law and the Prison
22 Litigation Reform Act. Each side will bear their own costs and attorney fees in pursuing a dispute
23 resolution process to resolve any alleged non-compliance with this agreement. Nothing in this
24 agreement precludes the use of any other type of alternative dispute resolution process that the
25 parties agree to employ.

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1 9. Defendants agree to comply with the terms of this agreement for 30-months,
2 beginning on the implementation date specified in paragraph 10 below, and to waive their right, if
3 any, to request or obtain termination of this agreement prior to the expiration of the 30-month
4 enforcement period pursuant to 18 U.S.C. § 3626(b)(2)(1997)(as amended on Nov. 26, 1997). At
5 the expiration of the 30-month enforcement period, defendants may petition the court for
6 termination in accordance with 18 U.S.C. § 3626(b)(1)(as amended on Nov. 26, 1997) in which
7 case 18 U.S.C. § 3626(c)(1997)(as amended on Nov. 26, 1997) shall apply. Plaintiffs may oppose
8 defendants' motion for termination pursuant to 18 U.S.C. § 3626 (b)(3)(as amended on Nov. 26,
9 1997). Plaintiffs' opposition under 18 U.S.C. § 3626(b)(3) to terminate shall be limited to
10 plaintiffs' claims where relief was obtained through provisions of this Release and Settlement
11 Agreement.

12 10. On or by three months from the date this agreement is signed, the defendants shall
13 implement this agreement, including the amendment to DOC Policy 450.100, proposed
14 amendments to WAC 137-28-220 and WAC 137-28-260, and all other injunctive relief obtained by
15 plaintiffs through this agreement.

16 11. This document is not a consent decree, but it is an agreement enforceable through
17 the contractual remedies specified herein. None of the provisions contained in this agreement
18 should be construed as creating or extinguishing any state or federal created constitutional
19 interests.

20 12. This agreement constitutes the final written expression of all the terms of settlement
21 and is a complete and exclusive statement of those terms. No other agreements, in writing or oral,
22 bind the parties.

23 13. The undersigned hereby declare the terms of this settlement agreement are
24 completely read, wholly understood and voluntarily accepted for the purpose of making a full and
25 final and binding compromise, adjustment and settlement of any and all claims, disputed or
26 otherwise.



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2 14. This agreement may be signed in counterpart originals and may be delivered by
3 facsimile with originals to follow.

4 DATED this 1st day of October, 1999.

5 For Plaintiffs:

6 Michael W. Gendler by JEP 10/1/99
MICHAEL W. GENDLER Date
7 WSBA No. 8429

8 Joseph E. Bringman 10/1/99
9 JOSEPH E. BRINGMAN Date
10 WSBA No. 15236

11 For Defendants:

Authorized to Sign by and for All Plaintiffs

12 Kasey Kneib 10/1/99
KASEY KNEIB Date
13 WSBA No. 27100
Assistant Attorney General

14 Heather Klein 10/1/99
15 HEATHER KLEIN Date
16 WSBA No. 27531
Assistant Attorney General

17
18 MICHAEL T. MITCHELL Date
19 WSBA No. 6088
Sr. Assistant Attorney General

20 Attorneys for Defendants

21
22
23 ELDON VAIL Date
24 Deputy Secretary
25 Department of Corrections
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