

6/3/76

LSK. J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES BENJAMIN, et al.,

Plaintiffs,

-against-

BENJAMIN J. MALCOLM,

Defendants.

75 Civ. 3073
(M.E.L.)

ORDER

GUY ZEPH AMBROSE, et al.,

Plaintiffs,

-against-

BENJAMIN J. MALCOLM, et al.,

Defendants.

76 Civ. 190
(M.E.L.)

The plaintiffs, having moved this Court in the above encaptioned matters for preliminary relief pursuant to Rule 65, Federal Rules of Civil Procedure, on the issue of double cell housing at the New York City House of Detention for Men (HDM) and the Bronx House of Detention for Men (Bx HDM), and the Court, having entered, on the 18th day of November, 1975, an order in the matter of Benjamin v. Malcolm, limiting the involuntary double celling of pre-trial detainees at The New York City House of Detention for Men (HDM) to no more than thirty days and having also entered, on the 27th day of January, 1976, an order in the matter of Ambrose v. Malcolm, limiting the involuntary double celling of pre-trial detainees at the Bronx House of Detention for Men (Ex HDM) to no more than thirty days, and the plaintiffs, having moved that the Court modify the aforementioned orders of November 18, 1975 and January 27, 1976, and upon consideration of the affidavits submitted in support of and in opposition to the motion to modify such orders, and upon oral argument and the Court has by this order modified and upon due deliberation, it is hereby ordered that

may be, after consulting the findings of fact and conclusions of law,

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ORDERED, that beginning June 1, 1976 defendants, their agents, servants and employees are enjoined from confining ~~more than one~~ ^{any} detainee in a cell with another person at either the New York City House of Detention for Men (HDM) or the Bronx House of Detention for Men (Bx HDM) unless on the voluntary written consent of both persons, and it is further

ORDERED, that involuntary confinement with another detainee at the New York City House of Detention for Men (HDM) and the Bronx House of Detention for Men (Bx HDM) shall be permitted in the following other instances:

a. In the case of a person in need of mental observation, certified in writing by a staff psychiatrist, for a period not to exceed thirty days;

b. In the case of emergencies certified by the Commissioner of Correction, for a period not to exceed ten days; and it is further

ORDERED, that defendants, their agents, servants and employees are enjoined from imposing any burdens upon detainees who choose to occupy a single cell under this order such as retaliatory transfers or relinquishment of any previously enjoyed right or privilege; and it is further

ORDERED, that defendants, their agents, servants and employees are enjoined from transferring any plaintiff entitled to single cell occupancy under the terms of this order to double cell status in another New York City detention institution; and it is further

ORDERED, that if compliance with this order requires

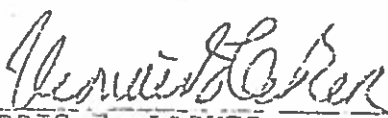
a reduction in detainee population of either institution, the Commissioner of Correction and the respective Wardens are directed to release on their own recognizance the persons held in default of the lowest amount of bail and among persons held in the same amount of bail the ones who have been confined for the longest time; provided that any New York court of competent jurisdiction, may specify a different method of selecting the persons to be released; and it is further

ORDERED, that defendants shall maintain a written record of all instances wherein more than one person is confined to a cell; the record shall disclose the name and cell location of the person so confined, the date of confinement, the reason for confinement and the date when such confinement ceased; and the record shall be made available monthly for inspection and copying by plaintiffs' attorneys; and it is further

ORDERED, that this court retains jurisdiction to ensure defendants' compliance with this order, provided that plaintiffs' attorneys shall bring any matter to the attention of the defendants before instituting formal enforcement proceedings.

Dated: New York, New York

JUNE 3rd, 1976


MORRIS E. LASKER
United States District Judge