

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



JAMES BENJAMIN, et al.,

Plaintiffs,

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

ERNESTO MALDONADO, et al.,

Plaintiffs,

- against -

WILLIAM CIUROS, JR., et al.,

Defendants.

-----X

DETAINEES OF THE BROOKLYN HOUSE
OF DETENTION FOR MEN, et al.,

Plaintiffs,

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

DETAINEES OF THE QUEENS HOUSE
OF DETENTION FOR MEN, et al.,

Plaintiffs,

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

75 Civ. 3073
(MEL)

76 Civ. 2954
(MEL)

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79 Civ. 4913
(MEL)

79 Civ. 4914
(MEL)

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IOLA FORTS, et al.,

Plaintiffs,

76 Civ. 101
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

GUY ZEPH AMBROSE, et al.,

Plaintiffs,

76 Civ. 190
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

The Court issued an Order on April 13, 1981 prohibiting the defendants from housing any member of the plaintiff class, or having them sleep, in non-housing areas (such as dayrooms, gymnasiums and receiving rooms) in the subject jails. Plaintiffs moved in April, 1989 for an Order adjudging defendants in contempt of the April, 1981 Order because members of the plaintiff class were being housed in receiving rooms. The Court issued an Order on May 3, 1989 which inter alia (1) prohibited defendants from confining plaintiffs in non-housing areas for more than twenty-four (24) hours after their admission to Department of Correction custody and (2) required that inmates who are transferred from one Department of Correction facility to another ("overloads") be placed in appropriate housing without delay

after their having been removed from their original housing location, with defendants using their best efforts to accomplish such transfer within twelve (12) hours.

Plaintiffs moved by order to show cause on November 2, 1990 for an Order adjudging defendants in contempt of the 1989 Order alleging inter alia that significant numbers of plaintiffs newly admitted to the Department of Correction were being confined in receiving rooms and gymnasiums for periods in excess of twenty-four (24) hours and that "overload" inmates were similarly being confined in receiving rooms and/or gymnasiums, while in transit to new housing locations, for periods in excess of twelve (12) hours. Plaintiffs sought as a remedy for defendants' contempt the imposition of coercive fines to be used as a bail fund, the imposition of compensatory fines payable to each inmate confined to a non-housing area in excess of the periods set out in the May, 1989 Order, and the appointment of a special master to monitor compliance with the May, 1989 Order and to report violations of the Order to the Court. Defendants submitted papers in opposition to plaintiffs' motion for contempt, but did not dispute that hundreds of plaintiffs were being held in non-housing areas, on receiving room floors and in gymnasiums, in violation of the 1989 Order. The Court heard argument by counsel on November 8, 1990 on plaintiffs' motion and issued an Order on November 9, 1990 prohibiting defendants from confining for any length of time members of the plaintiff class in any court pens, receiving room pens, gymnasiums, dayrooms or any other areas which lack an operable toilet and sink and requiring defendants to maintain a

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list of all members of the plaintiff class who are confined in a non-housing area in violation of the May, 1989 Order, including the total length of time they remain in non-housing areas before they are actually housed. The Court conducted a hearing on November 15, 1990 at which Commissioner Sielaff testified and issued a written opinion on November 30, 1990 finding inter alia that the Department of Correction willfully disregarded the May, 1989 Order and did not diligently attempt to comply with its terms, and that it would be appropriate that inmates confined in violation of the Order be compensated because defendants' violation of the Order subjects members of the plaintiff class to real and substantial harm.

The Court issued an Order on December 21, 1990 requiring defendants to pay compensatory fines to new admission inmates aggrieved by the violation of the 1989 Order requiring that they be housed within 24 hours of admission and on February 20, 1991 directed the Office of Compliance Consultants to review defendants' compliance with the requirement that they house overloads without delay, and to issue recommendations as to whether they should be required to house overloads within a definite period of time.

The Office of Compliance Consultants reported on April 11, 1991, on May 23, 1991, and on May 31, 1991 that inmates in at least two jails on Rikers Island were removed from their housing areas and confined in the receiving room, in some cases for substantial periods of time, in order to free up bed space for new admission inmates.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendants are prohibited from removing for any length of time any member of the plaintiff class who has already been assigned to a bed from his/her housing area to a facility receiving room or other non-housing area, and then back to a housing area in the same institution, ^{solely} ~~solely~~ for the purpose of creating bed space for new admission or overload inmates. NRE

2. Defendants shall pay into the registry of the Court sufficient funds to pay compensatory fines to any member of the plaintiff class who, after June 5, 1991 is removed from a housing area, placed in a facility receiving room or other non-housing area, and then returned to a housing area when such transfer has been effected to create new bed space for a new admission or overload inmate: for the first twelve (12) hours, or any part thereof, each such class member shall be paid \$150, and for each additional twelve (12) hour period or any portion thereof, and additional \$100.

3. Defendants shall report to the Court within two weeks from the date this Order is entered the results of their investigation into who at the Otis Bantum Correctional Center or in the Department of Correction central office had knowledge of, or was otherwise responsible for ordering, the confinement of members of the plaintiff class in the OBCC receiving room, as reported by the Office of Compliance Consultants in its letter to the Court of May 23, 1991.

4. The Office of Compliance Consultants shall continue to monitor defendants' compliance with the terms of the May, 1989

and December, 1990 Orders, and with the terms of this Order, and inter alia identify weekly any members of the plaintiff class to whom compensatory fines are owed, and perform all necessary tasks to ensure that these members of the plaintiff class shall be paid the fines to which they are entitled.

Dated: New York, New York
June // , 1991



U.S.D.J.

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