

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, et al.,

Plaintiffs,

75 Civ. 3073
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.
-----X

ERNESTO MALDONADO, et al.,

Plaintiffs,

76 Civ. 2954
(MEL)

- against -

WILLIAM CIUROS, JR., et al.,

Defendants.
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ORDER
JUDGMENT

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

Plaintiffs,

79 Civ. 4913
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.
-----X

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

Plaintiffs,

79 Civ. 4914
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.
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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.
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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

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.

On April 11, 1991 the Office of Compliance Consultants recommended to the Court that defendants be required to house overload inmates within a specific time frame, rather than to use their "best efforts" to house them within twelve hours. Plaintiffs and defendants thereafter provided the Court with written submissions, plaintiffs recommending adoption of a 12-

hour standard, defendants proposing that the Court continue to enforce a "best efforts" standard. On June 14, 1991 the Court requested that OCC again examine the overload issue, and recommend a specific number of hours within which the defendants should be obligated to house inmates transferred from one facility to another. On July 10, OCC recommended that the Court establish a firm standard to re-house transferred inmates within 12 hours. On July 11, defendants wrote to the Court recommending that an 18-hour standard be required, and plaintiffs again urged that a firm, 12-hour time limit be ordered. The Court heard argument on the issue on July 12, with plaintiffs endorsing the OCC proposal, and defendants arguing that no order fixing a firm time limit should be entered at that time.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Beginning August 1, 1991 and through January 31, 1992 defendants are prohibited from confining any member of the plaintiff class who is being transferred from one facility to another in any non-housing area (such as a receiving room, gymnasium or day-room), or combination of such areas, for any period in excess of 14 hours. From and after February 1, 1992 defendants are prohibited from confining any such transferred inmate in non-housing areas or combinations of such areas for any period in excess of 12 hours. In computing these periods, the time within which defendants must house a transferred inmate shall be deemed to begin when the inmate is placed in the receiving room, provided, however, that the transferred inmate is brought from his or her housing area to the receiving room without delay: defend-

ants shall not hold inmates, who are in the process of being removed to a receiving room in a sending facility, in any other areas of that facility (such as libraries, gymnasiums, or other program or other areas of the facility) while they are being moved to the receiving room.

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2. Defendants shall pay into the registry of the Court sufficient funds to pay compensatory fines to any member of the plaintiff class who, between August 1, 1991 and January 31, 1992, is confined to a non-housing area, or combination of such areas, while being transferred from one Department of Correction facility to another, for any period in excess of 14 hours. Beginning February 1, 1992 defendants shall pay into the registry of the Court sufficient funds to pay compensatory fines to any member of the plaintiff class who is confined to a non-housing area or combination of such areas for more than 12 hours while being transferred from one Department of Correction facility to another. For the first twelve (12) hours after the expiration of the relevant time period (14 hours for the period August 1, 1991 through January 31, 1992, and 12 hours thereafter), or any part thereof, each class member shall be paid \$150, and for each additional twelve (12) hour period or any portion thereof, an additional \$100; except that no fines shall be assessed for violations of the time limits occurring (1) during the first 30 days that this order is in effect or (2) in any case in which the defendants demonstrate that a particular inmate's confinement in a non-housing area for more than 12 hours resulted from unforeseen, non-routine circumstances beyond defendants' control.

3. 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 shall 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

July 3/, 1991


U.S.D.J.
for Morris Lasker OSD/