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FILED

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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY DEPUTY CLERK

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

11 JOHN B. CRUZ, JOSEPH Q. KRUKOWSKI,)
12 RUBEN D. CRUZ, DOUG MURPHY, JOHN)
13 COLE, TIM PENDERGAS, MANUEL BERTAO,)
and all others similarly situated,)

14 Plaintiffs,)

15 vs.)

16 COUNTY OF FRESNO, STEVE MAGARIAN,)
17 as SHERIFF,)

18 Defendants.)

NO. F-93-5070 REC JFM

POINTS AND AUTHORITIES
IN OPPOSITION TO
TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY
INJUNCTION

Date: March 18, 1993
Time: 9:00 a.m.
Courtroom: No. 8

20
21 I. THERE MUST BE A JUDICIAL POLICY OF RESTRAINT
AND DEFERENCE TO JAIL ADMINISTRATORS.

22 Judicial power may be exercised only on the basis of a
23 constitutional violation (Swann v. Charlotte-Mecklenburg Board
24 of Education (1971) 402 U.S. 1, 16, [91 S.Ct. 1267, 1276], and
25 must be no broader than necessary (Toussaint v. McCarthy (9th
26 Cir. 1986) 801 F.2d 1080, 1086). The commission of a federal
27 judge is not a "general assignment to go about doing good."
28 Jett v. Castaneda (9th Cir. 1978) 578 F.2d 842, 845.

1 Recently, the Supreme Court has stated the applicable
2 standard to be applied for sentenced inmates who claim that jail
3 conditions amount to cruel and unusual punishment under the
4 Eighth Amendment to the U.S. Constitution. Plaintiffs must
5 prove first that the inmate has suffered a condition which has
6 resulted in a constitutionally cognizable level of pain.
7 Second, plaintiffs must show that the state of mind of jail
8 administrators giving rise to the condition is one exhibiting
9 deliberate indifference to the inmate's basic human needs.
10 Wilson v. Sieter (1991) ___ U.S. ___, [111 S.Ct. 2321, 2323-27].

11 The conditions of confinement for unsentenced inmates are
12 evaluated under the due process clause of the Fourteenth
13 Amendment. Redman v. County of San Diego (9th Cir. 1991) 942
14 F.2d 1435, 1439-43; Bell v. Wolfish (1979) 441 U.S. 520, 535-39,
15 [99 S.Ct. 1861, 1871-74]. However, for reasons similar to those
16 noted by the Supreme Court in Wilson v. Sieter, supra,
17 unsentenced inmates must also prove that jail conditions amount
18 to punishment, and that the punishment results from the
19 deliberate or reckless indifference to their rights. Redman v.
20 County of San Diego, supra, 942 F.2d at 1443.

21 Absent a showing by plaintiffs of such "punishment" and
22 "deliberate indifference", no constitution violation occurs and
23 this Court should exercise restraint. As recently reiterated by
24 the Supreme Court in Hudson v. McMillan (1992) ___ U.S. ___,
25 [112 S.Ct. 995, 999], "[p]rison administrators . . . should be
26 accorded wide ranging deference in the adoption and execution of
27 policies and practices that in their judgment are needed to
28 preserve internal order and discipline and to maintain

1 institutional security [citation omitted]".

2 **II. "OVERCROWDING" IS NOT PER SE UNCONSTITUTIONAL.**

3 Housing more inmates in units than the design capacity,
4 i.e., overcrowding, is not in and of itself unconstitutional.
5 Dohner v. McCarthy (C.D. Cal. 1985) 635 F.Supp. 408, 428.
6 Allegations of overcrowding, without more, do not state a claim
7 under the Eighth Amendment upon which relief can be granted.
8 Akao v. Shimoda (9th Cir. 1987) 832 F.2d 119, 120; also Rhodes
9 v. Chapman (1981) 452 U.S. 337, 101 S.Ct. 2392.

10 Defendants in this action have admitted that inmate
11 population exceeds State Board of Corrections design capacity
12 and the actual number of beds available. However, Board of
13 Corrections standards do not establish the constitutional
14 minima. See Rhodes v. Chapman, supra, 101 S.Ct. at 2400 fn. 13.
15 Rather, it is for the Court to decide whether the level of
16 inmate population constitutes "punishment" resulting from
17 defendants' "deliberate indifference".

18 The declaration of jail Lieutenant Doug Papagni describes
19 the defendants' proposed scheme for adding beds and releasing
20 selected inmates to insure that no inmate is required to sleep
21 on the floor. Generally, a bed is constitutionally required for
22 all inmates. See Stewart v. Gates (C.D. Cal. 1978) 450 F.Supp.
23 583, 588. Upon this Court permitting the defendants to proceed
24 with triple bunking the North Annex, and releasing inmates in
25 selected criteria, inmates will no longer be required to sleep
26 on the floor, and the downtown jail system should then be within
27 the constitutional minima. The population will continue to
28

1 exceed Board of Corrections rating. However, that is rendered
2 less burdensome on inmates given the average length of stay of
3 only 25.34 days.

4 III. INMATE EXERCISE IS ADEQUATE.

5 Access to exercise in some form must be provided to
6 inmates. Wilson v. Sieter, supra; Spain v. Procunier (9th Cir.
7 1979) 600 F.2d 189, 199-200; Toussaint v. McCarthy (N.D. Cal.
8 1984) 597 F.Supp. 1388, 1412.

9 Plaintiffs seek an order of this Court mandating outdoor
10 exercise for inmates. That issue was addressed in Spain v.
11 Procunier, supra, 600 F.2d 189, 199-200. The Court of Appeal
12 affirmed a District Court order that inmates be accorded the
13 right of outdoor exercise one hour per day, five days a week
14 unless inclement weather, unusual circumstances, or disciplinary
15 needs made that impossible.

16 However, that decision must be distinguished on its facts,
17 relating to a facility housing long-term sentenced inmates. The
18 order for outdoor exercise was specifically limited to inmates
19 who were confined to the facility for more than four years, and
20 who were in continuous segregation, spending virtually 24 hours
21 every day in their cells with only meager out-of-cell movements
22 and corridor exercise.

23 By contrast, the average length of stay in defendants'
24 downtown jail system is only 25.34 days. Only some of the
25 inmate population is classified to administrative segregation,
26 spending most of their time confined to a cell. Those inmates
27 enjoy the same exercise privileges as general population
28 inmates, i.e., three hours per week, four hours per week in the

1 General population inmates enjoy much more freedom outside their
2 cells in common day rooms, lessening the need for a separate
3 regimented exercise period.

4 In any event, most inmates do enjoy at least one and one-
5 half hours weekly outdoor exercise time on the roof of the Main
6 Jail. (They receive an additional one and one-half hours weekly
7 in the gymnasium). Those inmates confined in the North Annex
8 use a gymnasium having louvers on the wall which allow ample
9 admission of air from the outside. Inmates confined in the
10 South Annex are temporarily limited to the second floor
11 gymnasium during a remodeling project scheduled for completion
12 in January 1994. To compensate for the loss of rooftop exercise
13 in the South Annex during this period, inmates in that facility
14 are given four hours exercise time per week rather than the
15 usual three hours per week. (Papagni Declaration)

16 CONCLUSION

17 In order to obtain a temporary restraining order and/or
18 preliminary injunction, plaintiffs must show either (1) a
19 likelihood of success on the merits and the possibility of
20 irreparable injury, or (2) serious legal questions and the
21 balance of the hardships tipping in their favor. Johnson
22 Controls, Inc. v. Phoenix Control Systems (9th Cir. 1989) 886
23 F.2d 1173, 1174; Lopez v. Heckler (9th Cir. 1983) 713 F.2d 1432,
24 1435.

25 Here, under the "punishment" and "deliberate indifference"
26 standards for judging the constitutionality of jail conditions,
27 the plaintiffs should not be afforded court relief beyond that
28 stipulated to by defendants to relieve overcrowding. Defendants

1 request this Court to grant to plaintiffs only the stipulated
2 relief, i.e., an injunction permitting the triple bunking of the
3 North Annex and ordering the selected release of inmates to
4 insure that no inmate is forced to sleep on the floor.

5 Respectfully submitted,

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