

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SIDNEY CLIETT, JR., et al.,
Plaintiffs

v.

THE CITY OF PHILADELPHIA,
et al.,
Defendants

:
:
:
:
:
:

CIVIL ACTION NO. 85-1846

SETTLEMENT AGREEMENT

Plaintiffs and Defendants, by their counsel, hereby agree to settle this matter based on the terms set forth below.

1. The City of Philadelphia shall pay to the members of the plaintiff class the sum of \$500,000.00. This amount will be distributed to the various members of the plaintiff class as follows: (a) persons who were merely stopped, frisked, searched, and/or questioned, without being taken into custody or charged with any offense, will each receive \$100.00; (b) persons taken into custody and charged with summary offenses will each receive \$882.31; (c) persons taken into custody and charged with misdemeanors will each receive \$1,250.00. These amounts, which result in a total of \$500,000.00, shall be solely devoted to the recoveries of members of the class.

2. Plaintiffs and defendants agree that the members of the class are the 1,444 people listed in Exhibit "A".

3. The Consent Decree entered into and approved by the Court on April 10, 1985, which prohibits police sweeps or dragnets

involving the stop, search, frisk, questioning, and/or arrest of persons based on their presence in a particular location or designated area, shall stand and remain in force without modification, except that defendants may, at any time after two (2) years from the date of the Final Order approving this Decree, apply to the Court for modification or dissolution based upon a showing of substantial compliance with the terms of this Decree which shall include reasonable assurance that such sweeps or dragnets shall not recur.

The Police Department shall, within thirty (30) days of the approval of the Decree, issue a policy directive embodying this prohibition.

4. All open or pending criminal charges, bench warrants and ARDs connected with "Operation Cold Turkey" as listed in Exhibit "A-1" will be dropped, withdrawn, or dismissed by the District Attorney within forty-five (45) days from the date of this Order, and any records of arrest shall be expunged.

With respect to misdemeanor and summary convictions and guilty pleas connected with "Operation Cold Turkey" and listed in Exhibit "A-1", the District Attorney, based on an individual review of the cases to determine whether there is an independent ground to support a conviction or guilty plea, shall, in the interest of justice, not oppose the filing of Petitions by the Public Defender under the "Post-Conviction Hearing Act", 42 Pa. C.S.A. §9541 et seq., on behalf of affected class members, except for the cases listed in Exhibit "A-3", where there is such independent ground. The Petitions will request that such convictions

and/or guilty pleas be set aside, that the individual be discharged, and the record expunged. The record before the Philadelphia Court of Common Pleas in each proceeding shall clearly indicate that the basis for the relief requested in the individual Petitions is this settlement and the review of the circumstances surrounding each incident. This process shall be completed within forty-five (45) days of the entry of this Order.

If the procedure for expungement of convictions and guilty pleas should for any reason prove unsuccessful or incapable of implementation, the parties shall seek to accomplish the same result through an appropriate alternative procedure.

5. The monetary settlement will be entirely administered by the City of Philadelphia, with all costs and expenses related thereto to be borne by the City. Payments will be made to members of the plaintiff class with checks forwarded by Certified Mail, Return Receipt Requested. The Notice of Settlement will inform members of the class that this is the means by which checks will be mailed. Any payments (checks) not cashed or collected within forty-five (45) days of mailing shall be forfeited, and the City shall retain such sums.

The City will establish a system for verifying checks, amounts and payees, and dealing with other impediments which may arise in connection with the cashing of checks by class members.

a. The City will enclose a Notice with each check which shall provide as follows:

"To Whom It May Concern:

The attached check has been issued by the City of Philadelphia in accordance with a Court approved settlement.

If there are any questions concerning this check, or if verifications of payee or amount is required, you may contact (name & telephone no.) at the City of Philadelphia."

b. In addition, the City will include a cover letter with each check as follows:

This is your settlement regarding "Operation Cold Turkey" to which you are entitled as a member of the class in this litigation.

You should cash this check immediately.

If you have any questions, call (name & telephone no.) at the City.

c. In those instances where checks are returned as undeliverable, the City will send an additional post card notice to the same address advising the claimant that a settlement check is being held by the City for a period of thirty (30) days from the postmarked date.

6. In addition to the fund for members of the plaintiff class, the City shall also pay: costs in the amount of \$2,366.59; counsel fees in the amount of \$24,181.00 to the American Civil Liberties Foundation, and counsel fees in the amount of \$11,340.50 to David Kairys. The total of costs and counsel fees is therefore \$37,896.09. This amount will be paid as full settlement of all claims for counsel fees and costs, including routine services and costs in connection with finalization and approval of this settlement agreement.

7. The procedure for implementing this settlement shall be as follows:

a. This agreement shall be forwarded to the Court for its review and, if appropriate, initial approval immediately after it is executed.

b. The Court will schedule and conduct a hearing at which members of the class shall have the opportunity to object to the terms of the settlement.

c. Notice shall be provided to each member of the class by First Class Mail using the form of Notice attached hereto as Appendix "B".

d. The Court will determine whether to approve the terms of the settlement after the hearing, and if the Court does so, the City shall make the payments set out heretofore within forty-five (45) days--(provided that the deadline for forwarding the payments is after July 1, 1986).

e. In the event that objections to the settlement are received by the Court and an appeal taken, the City may suspend payment until disposition of any appeal unless the trial court determines such appeal to be non-compelling. If The City chooses to suspend payment pending appeal, Plaintiffs may, at their option, void the Agreement and proceed to trial.

8. This Agreement is inoperative and void if it is not approved by the Court.

9. For and in consideration of this Consent Order as set forth in the preceding paragraphs, the named plaintiffs and the class they represent, including all persons stopped, frisked, searched, and/or questioned without being taken into custody or charged with any offense; all persons taken into custody and charged with summary offenses in connection with "Operation Cold Turkey"; and all persons taken into custody and charged with misdemeanors in connection with "Operation Cold Turkey", agree

and consent to the entry of this Order as a Final Order with respect to all of the issues in this litigation, and do hereby remise, release and forever discharge the defendants, their agents, servants, or employees from any and all liability, actions and causes of actions, claims and demands whatsoever in law or in equity which have arisen from this action, or which could have arisen from this action, including but not limited to claims for equitable relief, damages, attorneys fees and costs resulting from "Operation Cold Turkey".

FOR THE PLAINTIFFS:

David Kairys
DAVID KAIRYS, ESQUIRE

Stefan Presser
STEFAN PRESSER, ESQUIRE
American Civil Liberties
Union

FOR THE DEFENDANTS:

Ralph J. Teti
RALPH J. TETI
Divisional Deputy City Solicitor

Handsel B. Minyard
HANDSEL B. MINYARD
City Solicitor

DATE: 11/13/86

APPROVED BY THE COURT:

DONALD W. VAN ARTSDALEN, D.J.

DATE: _____