

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

9/28/79 Stip

re: interim release issues
(Anticipating Release Sale)

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JAMES BENJAMIN, MIGUEL GALINDEZ, BRUCE HAYES, :
JOSE SALDANA and ROBERT ESCHERT, detainees of :
the New York City House of Detention for Men, :
individually and on behalf of all other per- :
sons similarly situated, :

Plaintiffs, : 75 Civ. 3073
(MEL)

-against- :

BENJAMIN J. MALCOLM, Commissioner of Correc- : STIPULATION
tion of the City of New York; ARTHUR RUBIN, : FOR ENTRY OF
Warden, New York City House of Detention : AN ORDER
for Men; GERARD BROWN, Deputy Warden, New :
York City House of Detention for Men; and :
ABRAHAM D. BEAME, Mayor of the City of New :
York, individually and in their official :
capacity, :

Defendants. :
-----X

Plaintiffs having brought this action on June 24, 1975,
challenging certain conditions of confinement and practices at
the New York City House of Detention for Men as violative of
their rights under the United States Constitution; and defendants
having denied that plaintiffs' rights under the Constitution
have been violated; and the Court having certified this case as
a class action on September 26, 1975, the class consisting of
all detainees who are or will be incarcerated at the New York
City House of Detention for Men; and a Partial Final Judgment By
Consent which resolved certain of the issues in this case having
been entered by the Court on March 30, 1979; and the plaintiffs
and defendants having agreed that it is in their best interests
that certain additional issues concerning conditions at the New
York City House of Detention for Men and its annex known as C-71
(hereinafter "HDM") be resolved without further litigation;

AB

IT IS HEREBY STIPULATED by and between the undersigned attorneys for the plaintiffs and the defendants herein, and subject to approval by the Court, that the following agreement will be incorporated in a Consent Order of the Court in this case:

Defendants agree that, in order to secure plaintiffs' rights to be housed under constitutional conditions, they shall take the following steps:

1. Having entered into negotiations with the State of New York for the transfer to the State of New York of all pre-trial detention facilities and related support institutions on Rikers Island by no later than December 31, 1984, and the parties to those negotiations having sought and obtained legislation authorizing an appropriation of up to 200 million dollars for the State's lease of Rikers Island, defendants shall:

- a. utilize their best efforts, under the personal supervision of the Criminal Justice Coordinator, to conclude an agreement pursuant to this legislation by December 1, 1979;
- b. report the first of each month, until the transfer agreement is finalized, to plaintiffs' attorneys and the Court, in writing, on the status of the transaction, and promptly notify the Court and plaintiffs' counsel upon its finalization.

2. Assuming a successful conclusion of such negotiations and pursuant to the legislation referred to, the defendants shall:

- a. by no later than December 31, 1984 acquire, build or renovate appropriate facilities on the mainland, for pre-trial detention, so that each inmate is housed

plaintiff class is housed in a facility which is readily accessible to the Court and in the borough in which he is the defendant in pending criminal proceedings;

b. within a reasonable time following completion or renovation of such facilities, cease the use of the Rikers Island institutions for pre-trial detention;

c. submit for the Court's approval a comprehensive and detailed plan for complying with this stipulation and any order incorporating its terms. The plan shall include, among other elements, the site, design and timetable for construction of appropriate, new facilities.

3. So long as HDM is used as a City pre-trial detention facility, regardless of whether the transfer of Rikers Island to the State is concluded, and in furtherance of the City's desire to discontinue the housing of pre-trial detainees at Rikers Island, defendants agree to implement at least the following interim, ameliorative measures within two weeks after the signing of this stipulation:

a. no inmate in need of special observation or suffering from a physical ailment or condition which might require prompt medical attention shall be housed on the third tier;

b. current information on all transportation routes to and from Rikers Island, including bus schedules and departure points, shall be made available to all visitors; this information shall be provided

through a telephone service; by posting in the visitor waiting rooms, visiting rooms and at bus departure points; in an institutional handbook or leaflet to be distributed to all detainees; and by providing copies of bus schedules to visitors, on request, at each institution and on the buses;

c. detainees shall be transported to court on time for their scheduled court appearances;

d. after a detainee returning from court arrives at the institution, defendants shall allow him to go promptly to any location where he could normally be at that time;

e. any adult male detainee on trial in Brooklyn, Queens or the Bronx, upon the written request of his attorney, shall be housed, within twenty-four hours of the request and continuing until the conclusion of his trial, in the borough in which he is on trial, provided, however, that nothing herein shall require defendants to so house the detainee more than one week prior to trial; any detainee on trial in Staten Island, upon the written request of his attorney, shall be so housed, for the period specified above, in Brooklyn; as soon as an appropriate detention facility in Manhattan which complies with the Judgment in Rhem v. Malcolm, 70 Civ. 3962 (S.D.N.Y.) is available, any detainee on trial in Manhattan, upon the written request of his attorney, shall be housed, for the period specified above, in Manhattan; provided, however, if a particular detainee's safety or institutional security would be seriously endangered by his incarceration in the facility in

in the borough in which he is on trial, defendants shall not be foreclosed from housing him in another detention facility in the City of New York, but defendants shall provide the detainee's attorney and attorneys for the plaintiff class with a written statement of the specific facts underlying the determination; provided further, however, that nothing in this subparagraph of this stipulation shall require disclosure of information that would reveal the identity of persons supplying, on a confidential basis, information to the defendants or other law enforcement agencies. The written request by the attorney for borough housing shall either state the attorney's reasons for believing that the detainee's case will actually proceed to trial on the scheduled date, or will be co-signed by the assistant district attorney who will try the case as evidence of the likelihood that the case will not be routinely adjourned on the specified trial date;

f. defendants, within the current visiting schedule, shall expand the number and length of visits which detainees are permitted to receive if space in the visiting facility permits; provided, however, that nothing in this subparagraph shall be construed as addressing the adequacy of the schedule, amount or conditions of visiting, and that plaintiffs reserve the right to seek interim or final relief on these issues at any time;

g. regardless of whether visitors are required to pass through the bridge control building, defendants shall conduct expeditiously a minimum of administrative processing in registering and searching visitors and shall not conduct duplicative processing; thereafter, visitors shall be permitted to go promptly to their visits; whenever visits are scheduled to begin at a specific time, visitors shall not be required to arrive and register more than one-half hour prior to that time; provided, however, that nothing in this subparagraph shall require defendants to provide a visit at a particular visiting session to any visitor, if, when that visitor arrives, the spaces for that visiting are taken; and visitors arriving late for scheduled visits shall be permitted to visit if there is room in the facility.

h. promptly after a detainee's visitor(s) initially register(s), the detainee being visited shall be located and permitted to go to the visiting area. As soon as possible thereafter, but in any event prior to entering the visiting room, the detainee shall be informed of the identity of the prospective visitor(s).

i. defendants shall provide a means through which visitors may by telephone obtain current information about the visiting program, where a detainee is incarcerated, whether he will be available for a visit on a particular day and how to reach the institution;

j. further, an additional, fifth officer shall be assigned to each housing block between the morning lock-out and nighttime lock-in periods, by a date to be determined in accordance with the following procedures:

Within two weeks after the signing of this stipulation, the parties shall meet in an effort to agree upon the date by which this subparagraph shall be fully implemented. In the event that the parties are unable to agree upon a date for implementation, plaintiffs shall be free to request the Court to decide upon an implementation date and to permit the parties to be heard on that issue. Within two weeks of the granting of such permission, defendants shall submit to the Court a plan and date by which they expect to achieve full implementation; plaintiffs shall submit their reply, if any, two weeks thereafter. Provided, however, that whether by stipulation or by Court determination, defendants agree that time shall be of the essence in their performance of all tasks necessary to fully implement this subparagraph, and that such tasks shall be done upon an expedited basis, and in no event shall full compliance with this subparagraph be achieved later than six months from the signing of this stipulation.

4. In the event that an agreement for the transfer of the detention facilities on Rikers Island to the State is not concluded by December 1, 1979:

a. plaintiffs shall have the right to seek further relief as to the issues addressed in subparagraphs a-j above; and

b. the parties agree that the Court may proceed to the entry of a judgment which contains the appropriate remedies for the conditions described by the facts agreed upon below, in subparagraph c; further, with respect to the remedies ordered for the facts agreed upon in subparagraph c. (a)-(d) below, the parties shall stipulate to their incorporation in a judgment by consent in the cases of Maldonado v. Ciuros, 76 Civ. 2854 (LWP), and Forts v. Malcolm, 76 Civ. 101 (CHT), involving the Adolescent Remand and Detention Center and the New York City Correctional Institution for Women, respectively,

c. to that end the parties agree:

(1) that the record in Benjamin v. Malcolm established plaintiffs' factual claims that, at the time of trial,

(a) the inaccessibility of the institutions on Rikers Island, including the location of Rikers Island and the administrative processing which visitors encounter on Rikers Island, limited substantially detainees' opportunities to receive visits from relatives and friends;

(b) the inaccessibility of the institutions on Rikers Island, including the location of Rikers Island and the administrative

processing which attorneys encounter on Rikers Island, limited substantially detainees' opportunities to receive visits from attorneys so as to burden the attorney-client relationship;

(c) as a result of the factors listed in subparagraphs (a) and (b), detainees on Rikers Island received substantially fewer visits from attorneys, relatives and friends than detainees confined in detention facilities on the mainland;

(d) as a result of the inaccessibility of Rikers Island from the courts, and the transportation system which defendants consequently established, detainees going to and from court experienced long, arduous trips, often reaching court late and returning to detention facilities after lengthy delays; these conditions adversely affected plaintiffs' physical and mental well-being and their capacity to participate alertly and capably in the defense of their cases; provided, however, that nothing herein shall be construed to be a concession by defendants that every individual detainee was adversely affected in the ways described in this subparagraph or any of the adverse effects of the inaccessibility of Rikers

Island described above were of such a nature as to have affected the constitutional validity of any particular conviction;

✓ (e) the New York City House of Detention for Men is a facility, the physical layout of which at the time of trial, including its overall size and the size and configuration of its cellblocks, made it unsuitable for the housing of pre-trial detainees;

(f) the housing blocks at HDM and the institution at large were overpopulated;

✓ such overpopulation resulted in an atmosphere of tension and hostility, a strain on all of the institution's facilities, and interference with supervision, protection and provision of services to members of the plaintiff class.

✓ (2) plaintiffs are entitled, as a matter of law, to the entry of a judgment remedying the conditions described in subparagraph (1) above;

✓ (3) that defendants reserve the right to litigate the issue of the appropriate remedy for the conditions described in subparagraph (1) above, prior to the entry of judgment, and to contest, on appeal, the specific terms of any final remedy ordered by the Court.

5. In the event that an agreement for the transfer of Rikers Island to the State is concluded by December 1, 1979, the parties agree that the Court may proceed to determine the appropriate relief for the period pending final transfer of all members of the plaintiff class from HDM, with respect to the following conditions: (a) overcrowding as described by the facts agreed upon in ¶4.c.(1)(f) above; (b) the use of the upper tier on the HDM housing blocks; (c) the inaccessibility of Rikers Island to visitors, attorneys and the courts as described by the facts agreed upon in subparagraph 4.c.(1)(a)-(d) above; and defendants shall not appeal any orders providing such relief.

6. Nothing in this stipulation shall be construed as addressing the amount, schedule and conditions of visiting to which plaintiffs are entitled in a final judgment. Further, this stipulation does not address, either on an interim or permanent basis, the issues of the adequacy of, or conditions and procedures in, the vehicles used for court transportation, or conditions and procedures in the receiving room and other areas used for court preparation and processing of detainees returned from court. In the event that these issues cannot be resolved by the parties, they remain for determination by the Court.

7. Nothing herein shall preclude plaintiffs from seeking relief on the issue of overcrowding at any time after two weeks after the signing of this stipulation.

IT IS FURTHER STIPULATED that in order to monitor compliance with the terms of the Consent Order incorporating the terms of this stipulation, defendants agree to the same procedures for monitoring compliance as are set forth at page 49 of the Stipulation for Entry of Partial Final Judgment incorporated in the Partial Final Judgment By Consent, dated March 30, 1979.

IT IS FURTHER STIPULATED that the Court shall retain jurisdiction over the provisions of the Consent Order incorporating the terms of this stipulation.

IT IS FURTHER STIPULATED that, in the event that a dispute arises as to whether any party is in compliance with the terms of the Consent Order incorporating the terms of this stipulation, the parties shall proceed in the same manner as set forth at pages 50 and 51 of the Stipulation for Entry of Partial Final Judgment incorporated in the Partial Final Judgment By Consent, dated March 30, 1979.

IT IS FURTHER STIPULATED that the term "defendants," as used in this stipulation, shall be understood to include defendants, their employees, agents or those acting in concert with them.

IT IS FURTHER STIPULATED that defendants shall take all necessary steps to conform all departmental rules, regulations, directives and other administrative orders to the terms of this stipulation.

IT IS FURTHER STIPULATED that, in the event a Consent Order incorporating the terms of this agreement is approved and entered by the Court, counsel for plaintiffs shall prepare a notice to the plaintiff class incorporating the terms of that Order, and deliver a sufficient number of copies of the notice to the wardens of HDM and its annex known as C-71 for posting. The wardens of HDM and C-71 shall cause a copy of this notice to be kept posted in each housing area and dayroom, the library, attorney and personal visiting areas, the receiving room, program areas and other common areas of HDM and C-71. In addition, each detainee, including each new detainee upon admission, shall be provided with either

a copy of the notice at defendants' expense or equivalent notice contained in an institutional handbook.

Dated: New York, New York
September 28, 1979

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It is so ordered
James S. Baker
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