

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BENJAMIN v. MALCOLM, 75 Civ. 3073

AMBROSE v. MALCOLM, 76 Civ. 190

MALDONADO v. CIUROS, 76 Civ. 2854

FORTS v. MALCOLM, 76 Civ. 101

ROSENTHAL v. MALCOLM, 79 Civ. 4854

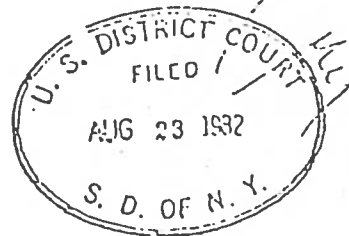
DETAINEES OF THE BROOKLYN HOUSE  
OF DETENTION FOR MEN v. MALCOLM

79 Civ. 4913 ✓

DETAINEES OF THE QUEENS HOUSE  
OF DETENTION FOR MEN v. MALCOLM

79 Civ. 4914 ✓

STIPULATION AND PROPOSED  
ORDER  
(MEL)



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Plaintiffs having brought these civil rights actions challenging as unconstitutional certain conditions and practices in New York City jails; the parties having previously signed detailed consent agreements in settlement of numerous issues in each of these cases; Partial Final Judgments by Consent ("Consent Judgments") having been entered in each of these cases by the United States District Courts for the Southern and Eastern Districts of New York; and the Consent Judgments being properly before this Court for enforcement;

Plaintiffs having moved on July 2, 1981 for an order adjudging defendants to be in civil contempt and for other relief to remedy violations of those portions of the body cavity search provisions of the Consent Judgments which prohibit anal cavity inspections without reasonable cause (e.g., Benjamin v. Malcolm,

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Partial Final Judgment, entered March 30, 1979, ¶ K); defendants having filed on October 2, 1981 an affidavit in response denying that it is defendants' policy to subject plaintiffs to body cavity searches in violation of the Consent Judgments; the Court having received a letter of complaint from plaintiffs, dated April 30, 1982, alleging that defendants' strip-frisk policies continue to violate the body cavity search provisions, and plaintiffs having requested by letter dated June 15, 1982 that the Court order defendants to revise their policy so that it would conform to the terms of the Consent Judgments; defendants having admitted that their policy was and is in violation of these provisions and having cross-moved, on June 28, 1982, to be relieved of the reasonable cause requirement of the body cavity search provisions; and the Court having received memoranda from the parties and having heard oral argument on August 6, 1982;

The parties AGREE, subject to the approval of this Court, that it is in the best interest of plaintiffs and defendants that the following stipulations in settlement of the parties' motions be entered as orders in these cases:

1. Defendants' motion to modify the body cavity search provisions, and plaintiffs' motion for contempt on this issue, are hereby withdrawn.
2. The body cavity search provisions of the Consent Judgments shall be modified by consent to provide as follows:

BODY CAVITY SEARCHES

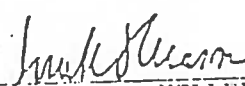
Defendants shall not examine, visually or otherwise, the genitals or anal cavity of any detainee, except that defendants may require a visual inspection of the genitals or anal cavity of a detainee upon initial admission of the detainee to the institution

or when a correction officer of the rank of captain or above has knowledge of specific, articulable facts which reasonably leads to a conclusion that the detainee is concealing contraband in his [her] genital or anal area. The existence of such a reasonable conclusion must be supported by sworn statements of the underlying basis for the search, with a written record of the reasons, results, and circumstances of each such search. A copy of such written record shall be given to the detainee, and a copy shall be maintained and preserved by defendants for one year. Any such examination shall be conducted in the most dignified and least obtrusive manner possible and in private by corrections personnel, who shall be of the same gender as the detainee. Except for those corrections personnel whose presence is essential for security reasons, no one else shall be present at such examinations.


3. Defendants shall conform their policies and practices to the terms of the body cavity search provisions of the Consent Judgments as modified herein, and shall immediately rescind those parts of directive # 4500R which permit or mandate visual inspections of a detainee's anal cavity without cause, in violation of the body cavity search provisions. Within one week thereafter, defendants shall issue a revised directive which conforms to the terms of the body cavity search provisions, a copy of which shall be submitted to counsel for plaintiffs and to the Court. At a minimum, defendants shall delete from the definition of the term "strip-frisk" the requirement that detainees bend forward, as well as the requirement that officers conduct visual inspections of the anal cavity as part of the routine strip-frisk procedure. Defendants shall also delete from the Procedural


Guidelines for Body Cavity Searches section of the directive all language authorizing body cavity inspections without cause "for any inmate who is returning to a Facility after having left the confines of the Facility for purposes outside the control of the Department."

4. Defendants shall provide written notice of the terms of this agreement to all Department of Correction employees within one week of its approval by the Court, and shall provide counsel for plaintiffs with a copy of such notice. Defendants shall also keep conspicuously posted in each visit search room and each receiving room a large sign, in English and Spanish, informing detainees of their rights with respect to visual body cavity examinations, for a minimum of three months from the date of entry of this order.

 8/18/82  
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By:  on b/s/p of  
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in Charge of Appeals Division

So Certified: 8/19/82  
  
LEONARD K. RUPPNER