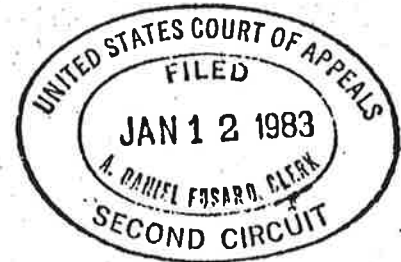


N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twelfth day of January one thousand nine hundred and eighty-three.

Present: HONORABLE WILLIAM H. TIMBERS,
HONORABLE JON O. NEWMAN,
HONORABLE LAWRENCE W. PIERCE,
Circuit Judges.



82-2227

ALPHONSO SAMUELS,
Plaintiff-Appellant,

v.

DEPARTMENT OF CORRECTION, NEW YORK
CITY, and DEPUTY WARDEN MICHAEL CANTWELL,
Defendants-Appellees.

O R D E R

Alphonso Samuels appeals from the June 29, 1982, judgment of the District Court for the Eastern District of New York (Joseph M. McLaughlin, Judge) dismissing his complaint for failure to state a claim on which relief can be granted. Samuels alleged that while confined as a pre-trial detainee in the Queens House of Detention, he was denied an opportunity to attend the wake or burial of his twin children who died shortly after birth and to visit his wife who was in intensive care at a hospital in Queens following the premature birth of the children.

Though the pro se complaint was written on a form captioned "Form to be used by prisoners in filing a complaint under the Civil Rights Act, 42 U.S.C. § 1983," it specifically alleged a violation of the partial final judgment entered in "73 C. 1364 (J.F.D.) by the United

States District Court Eastern District of New York, (Section Y)." This referred to a section of the consent judgment entered in 1979 in *Detainees of the Queens House of Detention v. Malcolm*, 73 Civ. 1364 (E.D.N.Y. 1979), a class action suit alleging a variety of violations of rights of inmates of the Queens House of Detention. That suit included claims concerning denials of visitation rights in the event of family emergencies. Section Y of the consent judgment provided, subject to security considerations, opportunity for visits by inmates in the event of significant family events such as deaths and serious illness of close family members. The judgment also provided an opportunity for recourse to the District Court for enforcement. The judgment was entered in favor of a class that included all detainees who are or will be incarcerated at the Queens House of Detention. Upon consent of the parties to the partial final judgment, all claims resolved by the judgment were transferred to the District Court for the Southern District of New York to facilitate enforcement by Judge Lasker, before whom were pending similar actions involving penal institutions within the Southern District.

In this case, Judge McLaughlin ruled that the alleged denial of visitation had not denied Samuels any rights protected by the Constitution; the District Judge did not make any reference to the claim that the denial of visitation violated the judgment in 73 Civ. 1364, perhaps thinking that any claim for violation of that judgment should be litigated in the Southern District of New York, to which enforcement of the judgment had been transferred.

We conclude that it is unnecessary and inappropriate to assess the issues tendered on appeal as to whether Judge McLaughlin correctly determined that no denial of constitutional rights occurred. The complaint alleged a violation of a judgment and sought compensatory damages for contempt. See *Vuitton v. Carousel Handbags*, 592 F.2d 126, 130 (2d Cir. 1979). To whatever extent the complaint could be interpreted, from its pro forma heading or otherwise, as claiming a denial of constitutional rights, such a claim had already been reduced to judgment in favor of a class of which Samuels is a member. Thus,

Samuels did not have to persuade the Court of the legal sufficiency of his allegation; he had only to persuade the appropriate Court that the facts of his case violated the terms of the consent judgment and that he was entitled to damages.^{1/} No adjudication of a section 1983 claim should have been made; instead, the case should have been transferred to the Southern District for Judge Lasker's consideration as an enforcement matter. See Pub. L. 97-164, § 301(a) (1982), to be codified at 28 U.S.C. § 1631.

Accordingly, the judgment is reversed and the cause remanded with directions to transfer the complaint to the District Court for the Southern District of New York, where it may be assigned to Judge Lasker's docket.

W. H. Tombers

F. O. [unclear]

W. Pierce
Circuit Judges.

^{1/} We intimate no views as to whether Samuels is entitled to relief. We take note of the fact that the consent judgment applies to visits within New York City and that Samuels' children were buried on Long Island outside the boundary of New York City. However, the complaint alleges that Samuels' wife was confined at a hospital within New York City, and Samuels alleges that the wake for his children was to have been held at the hospital.