

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES BENJAMIN, et al.,

Plaintiffs,

-against-

BERNARD KERIK, et al.,

Defendants,

and related cases.

ORDER RE: PARTIAL TERMINATION
OF CONSENT DECREES AND
SUPPLEMENTARY ORDERS

75 Civ. 3073

The defendants have moved pursuant to the Prison Litigation Reform Act (PLRA), 18 U.S.C. 3626(b), to terminate the consent decrees and supplementary orders in these consolidated cases. Under that statute, the decrees and orders must be terminated unless the court makes findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of Federal rights, extends no further than necessary to correct the violation of the Federal right, and is narrowly drawn and the least intrusive means to correct the violation.

The consent decrees in these consolidated cases comprise the Stipulations for Entry of Partial Final Judgment, agreed to by the parties and adopted by the respective courts during 1978 and 1979, and the Stipulation for Entry of Supplemental Final Judgment in Rosenthal v. Malcolm, signed in June 1980 and approved by the court on June 10, 1981. These orders are substantially uniform in their terms. References to the consent decrees in this document shall generally be to the Stipulation for Entry of Partial Final Judgment in Benjamin v. Malcolm, 75 Civ. 3073 (MEL), signed November 29, 1978 and approved by the court on March 14, 1979. The terms of this Order shall apply equally

to the corresponding paragraphs in the Stipulations for Entry of Partial Final Judgment in the other above captioned cases. Where terms of the said Stipulations in the other above captioned cases differ from those in the Benjamin Stipulation, those terms will be addressed separately. Supplementary orders to the consent decrees will also be addressed separately.

Plaintiffs' counsel informed the court by letters of November 18, 1999 and December 16, 1999, that plaintiffs could not show a current and ongoing violation of Federal rights as to certain issues and would not contest the motion as to them. By order of December 9, 1999, the court directed separate hearings on those issues that were contested. The parties entered into a private settlement agreement, copied to the court on February 6, 2000, concerning access to telephones, pursuant to which the plaintiffs agreed not to contest the motion for termination as to that issue. A hearing was held commencing February 7, 2000, on the issues of due process in placement in restrictive housing and the use of non-routine restraints, law library operations, attorney visiting, and the processing of inmate correspondence. The court issued its findings and conclusions in its Opinion and Order of June 6, 2000, and entered remedial orders on August 3, 2000 and August 10, 2000 concerning attorney visiting and non-routine restraints respectively. A hearing was held commencing May 15, 2000, on the issues of environmental health, personal hygiene, and related issues set out below in ¶ 4, and the matter is now sub judice. A hearing concerning fire safety remains to be scheduled.

Accordingly, it is ORDERED, ADJUDGED, AND DECREED:

1. The following provisions of the Stipulation for Entry of Partial Final Judgment in Benjamin v. Malcolm, 75 Civ. 3073 (MEL), signed November 29, 1978 ("Benjamin Consent Decree"), are terminated, in the absence of evidence supporting findings of a current and ongoing

violation of Federal rights:

§ A, Possession and Receipt of Clothing Items

§ B, Inspection of Clothing

§ C, Inmate Jewelry

§ E, Receipt of Packages

§ F, Possession and Receipt of Publications

§ G, Correspondence

§ H, Confiscation of Property

§ I, Procedures for Cell Searches

§ K, Body Cavity Searches

§ L, Commissary Costs

§ M, Dayroom Access

§ N, Eating Outside of Cells

§ P, Inmate Council Participation by Special Status Detainees

§ Q, Communal Religious Services for Segregated Detainees

§ U, Punitive Segregation

§ V, Food Service, subsections titled Nutrition and Menu Planning and Food Services

Personnel

§ W, Movement

§ X, Significant Family Events

§ Y, Housing for Homosexuals, Transvestites and Transsexuals

§ Z, Access to Newspapers

§ AA, Law Library

§ BB, Lock-In/Lock-Out Time

§ CC, Telephones

§ DD, Optional Lock-In

§ EE, Implementation Dates for various provisions

2. The provisions of the Benjamin Consent Decree contained in § O, Attorney Visiting, are replaced by the terms of the court's Order of August 3, 2000, concerning attorney visiting.

3. The provisions of the Benjamin Consent Decree contained in § R, Due Process and Programs for Detainees in High Security Categories, are replaced by the terms of the court's Order re: Red ID Status and Restraint Status Due Process of August 10, 2000.

4. The provisions of the Benjamin Consent Decree contained in § D, Laundry; § J, Linens and Bedding; § S, Environmental Health, § T, Personal Hygiene; and § V, Food Service, subsection titled Food Preparation and Service, which are addressed in whole or in part in ongoing proceedings before the court, are not affected by this order and will be addressed by further order of the court. The same is true of the Order re: Consent Decree Compliance During In-House Food Service, signed December 14, 1994, and the Supplemental Order re: Food Service, signed October 2, 1995.

5. The provisions of the Supplemental Stipulation to the Benjamin Consent Decree, signed March 14, 1979, are terminated in the absence of evidence of a current and ongoing violation of Federal rights.

6. The following separate orders concerning telephone service, which have been treated by the parties' practice as defining the defendants' Consent Decree obligations, are terminated in the absence of evidence of a current and ongoing violation of federal rights: (a) Benjamin v. Malcolm

Consent Order re telephone service, filed October 10, 1978; (b) Forts v. Malcolm Consent Order re telephone service, filed October 10, 1978; (c) Maldonado v. Malcolm Consent Order re telephone service, filed November 22, 1978.

7. The Stipulation for Entry of an Order concerning the inaccessibility of Rikers Island, so ordered September 28, 1979, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

8. The Supplemental Stipulation concerning lock-in/lock-outtime in Rosenthal v. Malcolm, signed March 31, 1981 and so ordered June 10, 1981, is terminated in the absence of evidence of a current and ongoing violation of Federal rights.

9. The Stipulation and Order modifying body cavity search provisions of Consent Decrees, so ordered August 19, 1982, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

10. The Stipulation and Order modifying lock-in/lock-outprovisions of Supplemental Final Judgment by Consent in Rosenthal v. Malcolm, March 30, 1984, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

11. The Stipulation for Entry of Modification of Partial Final Judgments by Consent concerning law libraries, signed September 24, 1985, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

12. The Stipulation and Order modifying lock-in/lock-outprovisions of Supplemental Final Judgment by Consent in Rosenthal v. Malcolm, signed May 23, 1986, so ordered June 10, 1986, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

13. The Stipulation and Order on Enhancement of Program Activities, Detainees of the

Brooklyn House of Detention v. Malcolm, signed May 12, 1988, so ordered May 16, 1988, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

14. The Order re confinement in non-housing areas, signed May 3, 1989, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

15. The Stipulation and Order re: Jewelry in Maldonado v. Ciuros, so ordered March 27, 1990, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

16. The Order re confinement in areas without toilets and sinks, signed November 8, 1990, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

17. The Judgment re confinement in non-housing areas, signed December 21, 1990, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

18. The Judgment re removal of prisoners to non-housing areas, signed June 11, 1991, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

19. The Stipulation and Order for Completion of New Rikers Island Bridge Control Building, signed and so ordered July 2, 1991, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

20. The Order re confinement in non-housing areas, signed July 31, 1991, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

21. The Stipulation for Entry of an Order concerning Rikers Island Bridge Control Sanitation Procedures, so ordered March 10, 1993, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

22. The Supplemental Order for Promulgation and Implementation of Uniform Visit Procedures for Rikers Island Visitor Access, so ordered March 10, 1993, is terminated in the absence

of evidence of a current and ongoing violation of federal rights.

23. The Partial Stipulation and Order for Promulgation of Uniform Visit Procedures for Rikers Island Visitor Access, so ordered March 11, 1993, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

24. The Opinion and Order on Motion to Amend "Inmate Jewelry" Provision, signed June 23, 1995, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

25. The Order re law library services in Central Punitive Segregation Unit, signed April 22, 1996, is terminated in the absence of evidence of a current and ongoing violation of federal rights.

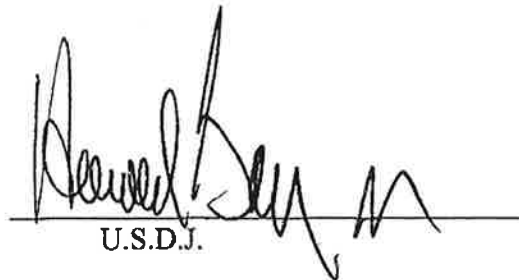
26. The following orders reflect tasks that have been completed or for other reasons impose no continuing obligations on the defendants, and for that reason defendants' motion to terminate is moot as to them.

- a. Supplemental Property Work Plan Order, January 14, 1993
- b. Order re: CPSU inmate and officer safety, read into record April 15, 1994
- c. Stipulation and Order re: CPSU religious services, February 15, 1995
- d. Food service work plan, signed June 14, 1991
- e. Revised food service work plan, filed July 10, 1992
- f. Order re fire safety improvements, signed December 17, 1993
- g. Stipulation regarding HDM windows, filed February 22, 1990
- h. Work plan for sanitation, signed November 10, 1993
- i. Supplemental work plan for sanitation, signed February 25, 1994

27. The Disengagement Plan, signed by the parties May 21, 1987 and approved by the court

on June 2, 1987, is terminated on the ground that it has been displaced by the standards and procedures set out in 18 U.S.C. § 3626 (b).

Dated: New York, N.Y.
August 30, 2000



U.S.D.J.