

**ENTERED**

March 28, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISIONGUADALUPE GUAJARDO, JR., *et al.*,

Plaintiffs,

v.

TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE,

Defendant.

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CIVIL ACTION NO. H-71-570

**ORDER**

State inmates Donald Wayne Herod (TDCJ #1538539) and Danny A. Niehouse (TDCJ #471602) have filed nearly identical motions for a “show cause proceeding” in this prisoner class action case, which involved the correspondence rules for inmate mail in the Texas prison system and resulted in a consent decree that was approved over three decades ago. *See Guajardo v. Estelle*, 5568 F. Supp. 1354 (S.D. Tex. 1983). Herod and Niehouse each allege that the Texas Department of Criminal Justice is violating the consent decree and the First Amendment of the United States Constitution by restricting the number of envelopes and postage available to indigent offenders, which has hampered their ability to communicate with family and friends. They seek injunctive relief and a finding of contempt for violations of the consent decree. The pending motions (Docket Entry Nos. 1124 and 1125) are denied for the reasons set forth briefly below.

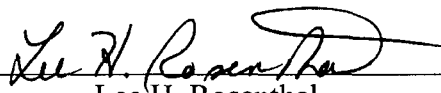
This case has been closed since September 20, 2002, when this court terminated the consent decree. The Fifth Circuit affirmed that decision and the Supreme Court denied further review. *See Guajardo v. Texas Dep’t of Crim. Justice*, 363 F.3d 392 (5th Cir.), *cert. denied*, 543 U.S. 818 (2004). Because the consent decree has been terminated, it no longer provides any basis

for a finding of injunctive relief or contempt of the sort sought by Herod.

To the extent that Herod and Niehouse seek relief for violations of his civil rights, they must pursue a separate civil action under 42 U.S.C. § 1983, which would be subject to restrictions imposed by the Prison Litigation Reform Act (“PLRA”). They may not circumvent these restrictions by attempting to resurrect a closed class action.

Accordingly, it is **ORDERED** that the motions filed by Donald Wayne Herod and Danny A. Niehouse (Docket Entry Nos. 1124 and 1125) are **DENIED**.

SIGNED on March 27, 2017, at Houston, Texas.

  
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Lee H. Rosenthal  
Chief United States District Judge