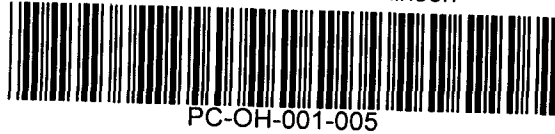


Austin v. Wilkinson



PC-OH-001-005

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

CHARLES E. AUSTIN, et al.,)	Case No. 4:01CV071
)	
Plaintiffs,)	JUDGE GWIN
)	
v.)	PLAINTIFFS' PROPOSED
)	INJUNCTIVE ORDER
REGINALD WILKINSON, et al.,)	
)	
Defendants)	

PLAINTIFFS' PROPOSED INJUNCTIVE ORDER

Hearing Procedures

1. No person shall be placed or retained on Level 5 in violation of the hearing procedures set forth herein.
2. Before being placed or retained on Level 5, a prisoner must be given an opportunity to appear before a classification committee, to make an oral or written statement if he desires, to call witnesses, and to submit documents as evidence. He shall have forty-eight hour notice of the hearing. (See AR 5120-9-53(G), Joint Exhibit VII.)

3. The notice of hearing must inform the prisoner of: (a) the specific, detailed and individualized grounds for which he is being considered for placement or retention on Level 5, and (b) the evidence on which the Department proposes to rely. The notice must inform the prisoner of all grounds that could cause his placement or retention on Level 5. (Opinion and Order at 51.)
4. When a prisoner is given notice of a classification committee hearing, he shall have at least twenty-four hours within which to designate staff and/or inmate witnesses he wishes to call at the hearing. The Department shall permit a reasonable number of witnesses to testify, shall not unreasonably exclude witnesses and, if a witness is excluded, shall state the reason for exclusion on the record. (See AR 5120-9-07(T), Plaintiffs' Exhibit 14.) If a witness is not at the institution, the Department may arrange for his or her testimony by videoconference or speaker phone.
5. Whenever the Department proposes to rely on the statement of an informant whose identity it wishes to withhold, the notice of hearing shall "indicate this reliance and shall disclose to the inmate as much of the substance of the information as possible." (New Policy 111-07, as revised February 7, 2002, section VI(J), attached as Appendix A.) If, at a later stage in the process, the warden or the Chief of the Bureau of Classification wishes to rely on a statement that was not made known to the prisoner at the classification committee hearing, the same procedure shall be followed. (Opinion and Order at 53.)

6. No person who recommended placement of a prisoner on Level 5 shall participate in a later retention decision concerning that prisoner. No person who sat on a prisoner's classification committee shall review that decision as a designee of the warden. (See AR 5120-9-07, section (J)(3), Plaintiffs' Exhibit 14.) The Regional Director shall play no part in either placement or retention decisions.
7. As is the case with Rules Infraction Board hearings (AR 5120-9-07, section X, Plaintiffs' Exhibit 14), the proceedings of classification committee hearings and appeal hearings shall be electronically recorded and retained as long as the prisoner is on Level 5 plus one additional year. Upon request, the prisoner shall be given access to the recording to prepare his appeal.
8. At the conclusion of the hearing, the classification committee shall tell the prisoner its recommendation on the record and, if the committee recommends retention, the prisoner shall be offered an appeal form and told the procedure for appeal.
9. After the classification committee hearing, the committee shall within forty-eight hours provide the prisoner with a detailed written statement setting forth its recommendation and the evidence on which it relied.
10. In the event that either the classification committee or the warden recommends retention of a prisoner on Level 5, the prisoner shall be notified in writing of his right to appeal, given an appeal form, and instructed as to the procedure to be followed.

11. If the prisoner elects to appeal, or if the ultimate decision maker is considering rejection of a recommendation for reduction in security level, the prisoner must have an opportunity to speak face-to-face with the person who will ultimately make the decision before the decision is made. (Opinion and Order at 53-54, 56-57.) Should a prisoner indicate on his appeal form that he wishes to speak face-to-face with the ultimate decision maker, this could be done through videoconference (as suggested by New Policy 111-07, revised February 7, 2002, section VI(J), attached as Appendix A.)
12. After a final decision to place or retain a prisoner on Level 5, the Department must within five working days provide the prisoner with an explanation of the decision containing the facts relied upon and the reasoning used. (Opinion and Order at 53-54, 56.)
13. The procedures set forth above shall apply to members of the class who have been transferred to other correctional institutions but who remain on Level 5.

Criteria for Level 5 Placement and Retention

14. Defendants shall specify the threshold quantity of drugs which, if conveyed, possessed, or introduced by a prisoner, would justify placement or retention on Level 5, e.g., the amount of cocaine required to support a third degree drug trafficking charge. (Opinion and Order at 52, 52 n.)
15. Before a prisoner is placed or retained on Level 5 because of gang-related activity, the Department must demonstrate that a prisoner currently functions as a leader, enforcer, or recruiter for a gang and is personally involved in violent or disruptive behavior. (Opinion and Order at 52-53.)

16. Prisoners shall not be “jumped” more than one security level so as to be placed on Level 5 unless (a) the prisoner is accused of an act of violence, (b) the prisoner has been found guilty of that act of violence by a Rules Infraction Board, and (c) the institutional committee and warden have recommended placement on Level 5. (See Opinion and Order at 15.) If the prisoner is later found Not Guilty by an outside court, the Department shall immediately conduct a new classification committee hearing in which the court’s judgment is given substantial weight. (See Opinion and Order at 17, 17 n.)
17. No prisoner shall be placed on Level 5 for violent conduct unless he has been found guilty of violence within the “last 5 years” (Security Designation Long Form, DRC 2568, attached to Defendants’ Exhibit C, mandated for use in Level 5 placements by New Policy 111-07, revised February 7, 2002, section VI(C), second sentence, attached as Appendix A).
18. If the prisoner has served more time than called for by the Parole Board Guidelines and is not eligible for parole because of his security classification, this factor should be given substantial weight in favor of his security reduction.
19. No prisoner shall be retained on Level 4 or Level 5 except on the basis of “behavior in the last five years, including prior to Level 4 or 5 classification” (Defendants’ Exhibit C, section VI(I), repeated word for word in New Policy 111-07, revised February 7, 2002, section VI(I), attached as Appendix A.)
20. Each prisoner on Level 5 must be informed in writing at least annually of the specific conduct necessary for that prisoner to be reduced from Level 5 and

placed in general population at a lower-security prison, and the length of time within which that security reduction appears reasonably possible. (See Opinion and Order at 55, and New Policy 111-07, revised February 7, 2002, section VI(E), attached as Appendix A.)

21. During privilege reviews, the Behavior Management Team shall suggest programs that would enhance the prisoner's progress toward security reduction.

Additional Required Revisions of New Policy 111-07

22. Prisoners whose security classification is reduced from Level 5A to Level 4B and who remain at OSP until being transferred to SOCF, shall be given credit for time spent on Level 4B at OSP toward the total amount of time they need to serve on Level 4 before being reduced to Level 3, and thereby becoming eligible for parole.
23. Whereas prisoners in Administrative Control were reviewed every 90 days or every 30 days, but under policies proposed by defendants prisoners on Level 4B will have privilege level reviews every six months, thereby inevitably lengthening the time they must spend on Level 4 to more than a year before they become eligible for parole, the Court directs that privilege level reviews for prisoners on Level 4B shall be conducted every three months.
24. Inasmuch as defendants utilize the experience of prisoners afforded congregate recreation as a means of assessing whether those prisoners are ready for security reduction, all prisoners on Level 5A shall be afforded the

opportunity for congregate recreation, unless the prisoner expressly waives that opportunity or forfeits it through abuse of this privilege.

New Classification Hearings

25. When defendants consider that the foregoing changes and revisions directed by the Court have been completed in compliance with the Court's directives, and in any event no later than May 1, 2002, defendants shall report these changes and revisions together with the documents in which they are embodied to plaintiffs' counsel and to the Court.
26. Until the Court has approved the foregoing changes and revisions, no additional prisoners shall be placed on Level 5 unless approved by the Court.
27. After the Court has approved defendants' changes and revisions, defendants shall immediately begin new classification hearings, conducted according to the new procedures and criteria approved by the Court. These hearings shall be conducted in the order of date of arrival at OSP, so that the prisoners who were transferred to OSP in 1998 without due process of any kind, and who have been at OSP for more than three years (see Opinion and Order at 10-18, 46-49), will be reviewed first.
28. In these classification hearings, it shall be rebuttably presumed that prisoners who have been at OSP for three years or more, whose behavior has been good, shall have their security classification reduced.
29. The hearings shall include members of the class who are now at other institutions but are still on Level 5.

Monitoring and Document Production

30. Defendants shall provide to counsel for plaintiffs, prior to their effective date, copies of any additional policies, forms, and other directives adopted by defendants in implementation of this Injunction.
31. Defendants shall provide to counsel for plaintiffs, beginning immediately and thereafter at regular intervals no longer than every three months, a list of all members of the class showing first and last name, number, date of arrival at OSP, current privilege and security level, and name of institution where housed.
32. Defendants shall provide to counsel for plaintiffs, beginning immediately and thereafter at monthly intervals, copies of all Level 5 placement and retention recommendations and final decisions for each and every member of the class whenever a placement or retention decision about that prisoner is made, including any and all forms utilized such as security designation forms, supervision review forms, notice of hearing forms, information presented by the inmate, information presented by staff, classification committee reports of Level 5 placement, and privilege/security level review forms. Upon request, the electronic recording of a hearing shall also be provided.
33. Defendants shall provide monthly to counsel for plaintiffs all documents embodying the program and behavior plans mandated by paragraphs 20 and 21, above.

34. Counsel for defendants shall meet monthly with counsel for plaintiffs to facilitate the delivery of documents, and to discuss and, if possible, resolve any problems related to the implementation of this Order.

Retention of Jurisdiction

35. The Court will retain jurisdiction over this matter for the purpose of enforcement. This Injunction shall terminate in two years upon the motion of either party unless the Court finds the prospective relief is needed to correct an ongoing violation of the Federal right. (PLRA, 18 U.S.C. Section 3626(b)(1)(A)(i))

IT IS SO ORDERED.

Date: _____

James S. Gwin
United States District Judge