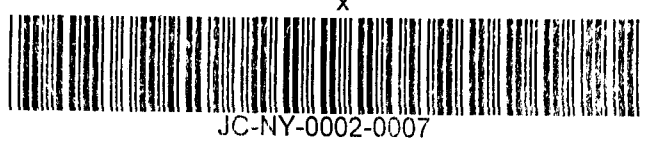


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



JAMES BENJAMIN, et al.

Plaintiffs,

- against -

BERNARD B. KERIK, et al.,

Defendants.

**ORDER re: RED ID Status and
Restraint Status Due Process**

75 Civ. 3073 (HB)

Hon. HAROLD BAER, JR., District Judge:

WHEREAS this Court held hearings pursuant to the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626(b)(3), including a hearing conducted in February 2000 (the "February Hearing") as to the constitutionality of certain of the Consent Decree provisions; and

WHEREAS following the February Hearing, this Court issued an Opinion and Order dated June 5, 2000 ("June 5 Order") in which I found that certain of Defendants' practices at issue in the February Hearing are constitutional and others are unconstitutional; and

WHEREAS the relief ordered below is necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation; and

WHEREAS this Court is mindful of the substantial weight that must be given to any adverse impact on public safety or the operation of a criminal justice system caused by the relief granted; and therefore, consistent with my findings of fact and conclusions of law set forth in my June 5 Order with respect to RED ID status due process and restraint status due process; it is hereby

ORDERED that any inmate who has been found to be in possession of a weapon or who uses

See # 264 F3d 175
(2d Cir 2001) on
both of these ✓

or attempts to use a weapon is subject to placement in Red ID status; and it is further

ORDERED that any inmate who exhibits violent behavior is subject to placement in enhanced restraint status; and it is further

ORDERED that within 72 hours of placing an inmate in Red ID and/or enhanced restraint status, the Department of Correction (the "Department") must afford said inmate a hearing in accordance with Wolff v. McDonnell, 418 U.S. 539 (1974); and it is further

ORDERED that within 72 hours following the conclusion of such hearing, a written decision shall be prepared by the hearing officer and provided to the inmate, and such written decision will include a recitation of the evidence relied on and the reason for the sanctions chosen, and further, such written decision will also identify the inmate's placement(s); identify the reasons for such placement(s); and inform the inmate of his/her right to appeal the placement(s) to the facility's deputy warden for security; and it is further

ORDERED that if an inmate is placed in both Red ID and enhanced restraint status, the written report shall clearly state the reasons for both placements and notify the inmate of his/her right to appeal each such placement; and it is further

ORDERED that the facility's deputy warden for security shall review appeals of placements in Red ID and/or enhanced restraint status and render a written decision within seven days of receiving an appeal from an inmate, and such written decision shall state the reasons for the decision, and the appealing inmate shall be given a copy of the written decision within 24 hours of its issuance; and it is further

ORDERED that inmates on Red ID and/or restraint status may seek further review of such placement based upon good cause, including a change in circumstances or newly available evidence, and the facility's deputy warden for security shall provide such further review upon receiving a request for further review from an inmate, which must set forth the alleged good cause for the review, and inmates will be notified in writing of the availability of this further review and the standards that they must meet at the time that they receive the decision on their appeal; and it is further

ORDERED that the Department shall provide a monthly medical review of the health of prisoners subject to RED ID status and restraint status so that the Department may ascertain whether the physical restraints imposed are physically disabling or have adverse medical consequences for prisoners so restrained; and it is further

ORDERED that the Department shall formulate a plan establishing alternative means of restraining prisoners who are determined to suffer adverse health or physically disabling consequences as a result of the imposition of non-routine restraints; and it is further

ORDERED that the Department shall establish procedures to ensure, among other things, that the above requirements are implemented and the Department shall submit such procedures in the form of a Proposed Departmental Directive Regarding RED ID Status and Restraint Status Due Process ("Proposed Directive"), to the Court and the Plaintiffs for review within thirty days from the date hereof, at which time a ten-day review and comment period will commence; and the Plaintiffs within that period may submit comments on the Department's Proposed Directive to the Court for its consideration; and it is further

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JAMES BENJAMIN, et al.,

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- against -

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75 Civ. 3073 (HB)

ORDER

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WHEREAS following the February Hearing, this Court issued an Opinion and Order dated June 5, 2000 ("June 5 Order") in which I found that certain of Defendants' practices at issue in the February Hearing are constitutional and others are unconstitutional; and

WHEREAS the relief ordered below is necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation; and

WHEREAS this Court is mindful of the substantial weight that must be given to any adverse impact on public safety or the operation of a criminal justice system caused by the relief granted; and therefore, consistent with my findings of fact and conclusions of law set forth in my June 5 Order with respect to attorney visiting procedures; it is hereby

ORDERED that the Department of Correction (the "Department") shall establish

procedures to ensure, among other things, that attorney visits commence within forty-five minutes of the time that an attorney or representative or employee of an attorney (collectively, "attorney") checks in at the Rikers Island Control Building, or within thirty minutes of the time that an attorney checks in at a correctional facility located off Rikers Island ("borough facility"), or at a Rikers Island facility if the attorney has a pass that enables him or her to proceed directly to the facility without first checking in at the Rikers Island Control Building; and it is further

ORDERED that Defendants' procedures will include taking and immediately addressing complaints by attorneys who have been waiting longer than forty-five minutes at a Rikers Island facility or longer than thirty minutes at a borough facility for an attorney visit, and said procedures will include provisions that permit attorneys to make appointments to see a prisoner in advance of a visit to a facility. In addition, Defendants' procedures will detail how the Department plans to audit compliance with this Order; and it is further

ORDERED that said procedures may provide that under exceptional circumstances including but not limited to an inmate's unforeseen absence from the facility or the stoppage of movement in the facility for security reasons, attorney visits may be delayed, but that any such provision is not meant to include the morning count, but only emergency situations; and it is further

ORDERED that the Department procedures will ensure that an adequate number of attorney visiting rooms are made available at each facility based on an historical analysis of the number of attorney visits to said facility over the past two years, and further that such rooms afford the requisite degree of privacy so as to foster attorney-client confidentiality; and it is further

ORDERED that the Department shall submit the aforementioned procedures, in the form of a Proposed Departmental Directive Regarding Attorney Visitation ("Proposed Directive"), to the Court and the Plaintiffs for review within thirty days from the date hereof, at which time a ten-day review and comment period will commence; and the Plaintiffs within that period may submit comments on the Department's Proposed Directive to the Court for its consideration; and it is further

ORDERED that following that ten-day review and comment period, the Department shall make changes, if any, to the Proposed Directive as the Court finds necessary to achieve compliance with Federal law and the June 5 Order, and the Department shall have fifteen days in which to implement any Amended Directive; and it is further

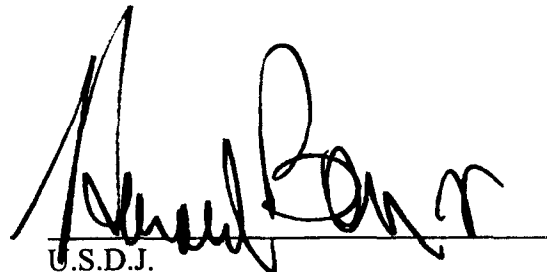
ORDERED that following that fifteen-day implementation period, the Defendants shall enforce and promulgate the Amended Directive; and it is further

ORDERED that the Court will maintain continuing jurisdiction to insure that the concerns of the Department and the Plaintiffs may be resolved expeditiously, and if necessary supplemental orders will issue; and it is further

ORDERED that for two years from the date of this Order, Defendants shall report to the Court quarterly, on the first Monday after the end of each calendar year quarter, on their compliance with the terms of this Order; and if the Plaintiffs deem it appropriate, they may respond to such quarterly reports.

SO ORDERED.

Dated: August 3, 2000
New York, New York


U.S.D.J.