

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
FITZPATRICK PERRY, et al.,	)	
	)	
Plaintiffs,	)	
	)	C.A. NO. 89-00031-RWZ
v.	)	
	)	
GUY W. GLODIS, SHERIFF OF	)	
WORCESTER COUNTY, et al.	)	
	)	
Defendants.	)	
_____	)	

**JOINT MOTION TO AMEND CONSENT DECREE**

Pursuant to Rule 60(b)(5) and Rule 60(b)(6) of the Federal Rules of Civil Procedure, the Defendant Guy W. Glodis (Sheriff of Worcester and Superintendent of the Worcester County Jail and House of Correction) and the Plaintiffs jointly move the Court to amend the August 29, 1989 Consent Decree. Defendant Glodis and the Plaintiffs request that the Court conditionally allow the attached Modification to Consent Decree and, following a thirty-day notice and comment period described in the Modification, enter the Modification to Consent Decree as a final Order.

As grounds for this Motion, the Plaintiffs and Defendant Glodis state that there has been a significant change in facts or law which warrant an amendment of the 1989 Consent Decree and that the proposed Modification is suitably tailored to the changed circumstances. In addition, the parties refer this Court to the Memorandum of Law in Support of the Joint Motion to Modify the Consent Decree as filed by each party as well as the proposed Order.

July 3, 2007

Respectfully Submitted,  
Guy W. Glodis, Sheriff of Worcester  
and Superintendent of the Worcester County  
Jail and House of Correction,  
by his attorneys,

/s/  
Jeffrey R. Turco, Esquire  
Special Assistant Attorney General  
B.B.O. Number: 635532  
Brian Knuuttila, Esquire  
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July 3, 2007

The Plaintiffs,  
by their attorney,

/s/  
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July 3, 2007

The Plaintiffs,  
by their attorney,

/s/  
Peter J. Costanza, Esquire  
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Boston, Massachusetts 02108



Motion). This Consent Decree was approved by the Court (Zobel, J.) on October 6, 1989.

The Consent Decree was approved “**without any finding of liability or other determination on the merits...**”. (Exhibit “A” to Defendant’s Motion). The Commissioner of Corrections and the Commissioner of Public Health were not a party to the Consent Decree, nor subject to its provisions. The Consent Decree applied to Sheriff John M. Flynn and to his successors in office, agents and employees. (Exhibit “A” to Defendant’s Motion, page 4, paragraph 2). Sheriff Guy W. Glodis, by virtue of his election as Sheriff for Worcester County, on or about November 2004, is the successor in office of Sheriff John M. Flynn. In addition, while the Consent Decree applies to the Commissioners of the County of Worcester, this Court should note that the Worcester County form of government has been abolished and therefore, the office of Commissioner of the County of Worcester no longer exists.

### **ARGUMENT**

#### **MODIFICATION OF THE CONSENT DECREE IS WARRANTED**

The parties jointly seek to amend the Consent Decree as there have been significant changes in fact and law since 1989 which warrants revision of the Consent Decree and the proposed joint modification is suitably tailored to the changed circumstances. Rufo v. Inmates of Suffolk County Jail, et al, 502 U.S. 367 (1992).

In the present action, at the time the Court approved the Consent Decree, the Court did not make any findings of fact with respect to any alleged violations of federal law. However, more significantly, the Defendant has taken numerous actions to address the alleged federal law violations including but not limited to the following:

1. All pre-trial detainees are presently classified by means of a modified objective point based classification system;
2. Social services have been increased and are provided to all inmates;
3. Upon admission, inmates are searched by necessary security personnel only and said searches are conducted in private;
4. Inmates are provided an informational handbook, written in both English and Spanish;
5. Inmates are provided adequate access to legal materials, as the Worcester County Jail not only provides for two permanent attorneys and a full time paralegal, but additionally periodically updates its law library;
6. The jail provides adequate medical care and presently provides medical health services, substance abuse counselors, a medical doctor, a physician, a nurse practitioner, a dentist, an x-ray technician, an optometrist, an emergency medical technician, nine registered nurses and eleven licensed practical nurses.

Notwithstanding the same, according to the Department of Correction, the entire facility of the jail (including the annex, modular complex and the old jail) has a rated capacity of eight hundred twenty eight inmates. Since 1989, when the Consent Decree was entered, there has been a significant upsurge in the number of the inmate population. On average, while the number of inmates will fluctuate daily, the expected number of inmates will be approximately one thousand four hundred, with a high water mark of one thousand four hundred ninety two inmates. Sheriff Glodis has found it necessary to double bunk many cells initially designed for single cells.

Defendant, Guy W. Glodas maintains that the original Consent Decree covered only the old jail, which consisted of the maximum security facility, the Herman Building, the medium security facility, the Deignan Building, Mini-5, the minimum security facility, the Work Release facility and County Lockup. In contrast, Plaintiffs maintain that the entire facility, including the annex, and modular buildings, should be covered by

the new modified Consent Decree. Plaintiffs further maintain that a population cap of one thousand two hundred fifty one inmates is warranted for the entire facility. The Defendant, Guy W. Glodis maintains that overcrowding in and of it self is not a per se violation of the Constitution, but recognizes that it may give rise to unconstitutional conditions. Inasmuch, the Defendant, Guy W. Glodis reluctantly agrees that a population cap of 1251 is warranted for the entire facility.

In addition, the Defendant, Guy W. Glodis maintains that the proposed Amended Consent Decree is suitably tailored to the changed circumstances. Defendant, Guy W. Glodis maintains that it is necessary for this Court to amend the Consent Decree which arms the Superior Court of Worcester with a mechanism in order to alleviate prison overcrowding which will protect the public interest. See, Duran v. Elrod, 760 F.2d 756, 759 – 761 (7<sup>th</sup> Cir. 1985) (modification allowed to avoid pretrial release of accused violent felons). The Amended Consent Decree would enable the Superior Court of Worcester County, to release prisoners, by means of a pre-release, pre-detainee program in order to alleviate overcrowding conditions at the Worcester facility.

#### **ISOLATION CELLS**

The Amended Consent Decree would ensure that the utilization of the isolation cells is in compliance with the requirements of the United States Constitution, as well as the regulatory requirements as set forth by the Massachusetts General Laws c. 127 §41.

**CONCLUSION**

For the foregoing reasons, the Defendant, Guy W. Goldis hereby requests this Court amend the Consent Decree as set forth on the proposed Order filed herewith.

July 3, 2007

Respectfully Submitted,  
Guy W. Glodis, Sheriff of Worcester  
and Superintendent of the Worcester County  
Jail and House of Correction,  
by his attorneys,

/s/  
Jeffrey R. Turco, Esquire  
Special Assistant Attorney General  
B.B.O. Number: 635532

/s/  
Brian Knuuttila, Esquire  
Special Assistant Attorney General  
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CERTIFICATE OF SERVICE

I, Raymond J. Reed, Esquire hereby certify that on this 3 day of July, 2007, the foregoing **DEFENDANT, GUY W. GLODAS' MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION TO AMEND A CONSENT DECREE PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE RULE 60(b)(5) AND Rule 60 (b)(6) DEFENDANT, GUY W. GLODAS' MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION TO AMEND A CONSENT DECREE PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE RULE 60(b)(5) AND Rule 60 (b)(6)** filed through the ECF System will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants:

Notice of Electronic Filing:

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YURKO, SLAVESSEN & Remz, P.C.  
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/s/ \_\_\_\_\_  
Raymond J. Reed