

 KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Smith v. Thompson, E.D.Ky., July 23, 2010
1995 WL 378529

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United States District Court, S.D. New York.

James BENJAMIN, et al., Plaintiffs,

v.

Benjamin J. MALCOLM, et al., Defendants
And related cases.

No. 75 Civ. 3073 (HB). | June 26, 1995.

Attorneys and Law Firms

John Boston, The Legal Aid Soc., Prisoners' Rights Project, New York City, for plaintiffs.

Thomas Bergdall, City of New York, New York City, for defendants.

Opinion

OPINION AND ORDER

HAROLD BAER, JR., District Judge.

MOTION TO AMEND "INMATE JEWELRY" PROVISION

*1 The presence of gangs in the New York City Department of Correction jails, particularly those jails located on Rikers Island, while hardly a new phenomenon, has recently been ascribed as a cause for multiple violent incidents. As a consequence, defendants seek to ban the possession, wearing, and display of all jewelry that identifies inmates as members of certain specified "Security Risk Groups" or gangs. In relation to the City's pre-trial detainees, defendants have requested a modification of the "Inmate Jewelry" provision of the consent decrees entered in *Benjamin v. Malcolm*, 75 Civ. 3073, and related cases (*Maldonado v. Ciuros*, 76 Civ. 2854; *Detainees of the Brooklyn House of Detention for Men v. Malcolm*, 79 Civ. 4913; *Detainees of the Queens House of Detention for Men v. Malcolm*, 79 Civ. 4914; *Forts v. Malcolm*, 76 Civ. 101; and *Ambrose v. Malcolm*, 76 Civ. 190) (the "Consent Decrees").

After extensive discovery, briefing, and argument, both sides have reached almost full agreement and the results

of their labor with a minor modification are detailed in the Court approved accompanying documents: Exhibit A contains the language that will supplement the existing Consent Decrees and details the "Implementation Procedures" the defendants must follow in instituting the changed policies; Exhibit B, meanwhile, consists of the notices that will be posted throughout the jails, as detailed below.

There are two gangs in the City's jail system that staff contend are primarily responsible for the disturbances and acts of violence over the last twelve to eighteen months. They are the Almighty Latin Kings Network, which has an estimated membership of 1500 Hispanic men within the system, and the smaller but growing NETAS. The latter gang is comprised of fewer men, but it accepts those of any race willing to adhere to certain principles and thus its numbers are growing.

The reason the defendants have sought modification of the Consent Decrees is that while originally some jewelry regardless of color was allowed, it now seems that each gang has identifiers, consisting primarily of beads of certain colors, which, when worn by a prisoner, may signal trouble. Consequently, the defendants have asked that the Consent Decrees be modified to make certain that the color combinations that identify gang membership ("gang identifiers") are kept out of the facilities or confiscated. The staff at the jails has catalogued a number of problems associated with the use of gang identifiers. They include incidents that start out as relatively minor and escalate when fellow gang members see the beads of one of their own and come to his aid. Another concern is that the beads are worn as a way to introduce new prisoners to other members and thus provide opportunities to network and for recruiting new members. Finally, I have concluded that the staff and inmates cannot help but be psychologically affected by the display of gang identifiers, thereby making the already superhuman effort at even-handed treatment throughout the jail system even more difficult.

*2 Both sides have reviewed the literature and incident reports on the gangs and the gang violence inside the various facilities and concluded that a modification of the Consent Decrees is appropriate. That modification will supplement the existing jewelry limitation prohibiting the introduction into the jails, as well the continued possession, wearing or display of, jewelry determined by the defendants to be an identifier of a security risk group. Certain religious beads, for example, Rosary, Dhikr, and Santeria beads, that bear the prohibited colors will not be confiscated as long as they are not displayed. Violators will be punished with Grade III followed by Grade II offenses for the first and second infractions, respectively.

Benjamin v. Malcolm, Not Reported in F.Supp. (1995)

The Inmate Jewelry provision of the Consent Decrees shall be modified by adding to that provision in each of the Consent Decrees the language set forth in Exhibit A hereto, and the defendants in implementing this modification shall follow the terms of the Implementation Procedures also set forth in Exhibit A during the first eight months of said implementation.

This order shall not take effect until after the completion of notification to the class. The parties have agreed to a notice to class members, the Notice to Class of Modification of Jewelry Provisions of Consent Decrees, which is attached hereto as Exhibit B, has been prepared in both English and Spanish. This notice shall be posted conspicuously in each housing area dayroom, institutional law library, receiving room, gymnasium and chapel of each jail facility housing pre-trial detainees. Class members shall have three weeks from the day the notice is posted to make comments either directly to the Court or to plaintiffs' counsel, who shall promptly forward any comments they receive to the Court. Barring objections that the Court determines warrant modification of this order's terms, the order shall take effect and shall be deemed final upon the Court's review of the class members' comments. Should the Court determine that any such comments warrant modification, the parties will be provided an opportunity to be heard on said comments and any proposed modification. This constitutes the opinion and order of the Court.

ATTACHMENT

***MODIFICATION TO THE INMATE JEWELRY
PROVISION OF THE CONSENT DECREES***

[AFTER EXISTING LANGUAGE, INSERT:]

In addition, defendants may prohibit the entry into the facility, and the possession, wearing and display of jewelry which displays a color scheme determined by defendants to be an identifier of a Security Risk Group (gang), defined as a group acting together who pose a threat to the safety, security, good order and discipline of the institution, provided that inmates shall continue to be permitted to possess, wear and display Rosary Beads, Dhikr Beads, Santeria Beads or religious pendants and other religious objects. However, when these religious items are in a prohibited color scheme, they cannot be displayed, except that incidental or inadvertent exposure of Rosary Beads, Dhikr Beads, Santeria Beads or religious pendants and other religious objects that are in a prohibited color scheme, for example, while showering, saying the rosary or other religious observance, dressing

or undressing or sleeping, shall not be considered "display." An inmate who displays religious items that are in a prohibited color scheme may, in the first instance, be infractioned for violation of Institutional Rule 118.1, a Grade III offense, and be warned in writing that any subsequent display of the item shall result in confiscation and an infraction for Possession of Contraband—Security Risk Group Items, a Grade II offense. Subsequent display by the inmate may result in confiscation of the item and an infraction for Possession of Contraband—Security Risk Group Items, a Grade II offense. All items confiscated shall be safeguarded pursuant to existing Departmental procedures outlined in Directive 2307, dated April 30, 1993.

*3 The Department's policy outlined above shall be implemented in the first eight months of said policy in accordance with the procedures set forth in the "Implementation Procedures For Security Risk Group Contraband."

EXHIBIT A

**IMPLEMENTATION PROCEDURES FOR
SECURITY RISK CONTRABAND**

The Department of Correction ("the Department") will train its uniformed staff at all jails, at a minimum, by providing roll call training sessions which shall include demonstrations of appropriate, non-confrontational methods of insuring inmate compliance. The Department's Central Office will prepare training materials and will observe and monitor training to ensure uniformity and consistency among jails. Staff members shall receive a copy of the operations order entitled "Removal of Security Risk Contraband" (the "operations order"), as well as an oral description of its contents.

Special instruction in appropriate, non-confrontational methods of insuring inmate compliance will be given to search teams during the period when the policy is first enforced and thereafter.

The Department's chaplains will be provided orientation as to their role under the policy and where opportunity permits will aid in mediating disputes of a religious nature.

The training materials will make clear that the prohibition on "white" and "yellow" in the operations order does not refer to silver and gold-colored metal.

The Department will train its adjudication captains

(disciplinary hearing officers) in the new policy, emphasizing that inmates are not deemed to have “displayed” religious items in a prohibited color scheme unless the display is purposeful, that first offenses should ordinarily result in reprimands unless there are significant aggravating factors, and that penalties as harsh as segregation are usually inappropriate in connection with the display of religious items in prohibited color schemes. The Central Office will review the processing of all infractions for possession or display of gang identifiers to ensure conformity with these policies.

The Department will notify the New York City Board of Correction in advance of the phase-in schedule of this policy at the jails. The New York City Board of Correction may be present during the 0730 and 1530 housing area searches during the first few days of the policy’s implementation at each jail. The Board of Correction will be permitted to videotape the searches during the first few days of the policy’s implementation at each jail, provided however, that this is not intended to set a precedent or express any opinion with respect to Board of Correction videotaping in the jails.

The Department will provide an orderly and accessible system for inmates to surrender prohibited items for safekeeping during the 15–day notice period at each jail before the policy is introduced. The Deputy Warden for Programs at each jail will be in charge of this program. The Housing Captains in each jail shall advise inmates that both the Housing Captains and the Programs Captain in each jail will make themselves available to the inmates during this 15–day notice period for the voluntary and confidential surrender of prohibited items. During the housing rounds conducted in each jail during this 15–day notice period, Housing Captains will inquire discreetly of inmates as to whether they wish to voluntarily surrender prohibited items, and will make appropriate arrangements for inmates to do so. Among other methods, inmates who request confidentiality in the voluntary surrender of prohibited items will be individually called to a housing or program area, as is appropriate, and be permitted to surrender said items in privacy. In their discretion, Housing Captains and the Programs Captain will avail themselves of other methods of voluntary surrender which will ensure confidential surrender of prohibited items.

*4 The Department of Correction shall advise the Office of Compliance Consultants, plaintiffs’ counsel, and the New York City Board of Correction before adding additional items or colors to the list of security risk group (gang) identifiers beyond those identified in the Operations Order.

EXHIBIT B

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

James Benjamin, et al., Plaintiffs,

—against—

Michael P. Jacobson, et al., Defendants

and related cases.

75 Civ. 3073 (HB)

**NOTICE TO CLASS OF MODIFICATION OF
JEWELRY PROVISIONS OF CONSENT DECREES**

These cases challenge the conditions of confinement in the New York City jails. The Court has certified them as class actions on behalf of all the pre-trial detainees in the City jails. Most of the issues in the litigation were settled in 1979 by Stipulations for Entry of Partial Final Judgment, also known as the “Consent Decrees.”

The Consent Decrees provide that detainees may wear and receive jewelry in jail as long as it is not expensive or usable as a weapon. (The exact provisions appear at the end of the notice.) The City has asked the Court to modify this provision to permit it to restrict jewelry, including beads, that is used as identifiers for gangs, which the City refers to as “security risk groups.”

The Court has concluded that the City is entitled to modification. The Court has reviewed the City’s motion and the response from the Prisoners’ Rights Project of The Legal Aid Society, the attorneys for the plaintiff class. The City has shown that gang activity has contributed to serious violence in the jails on some occasions and has argued that restricting the display of gang identifiers will help reduce gang-related violence. A copy of the Court’s opinion is attached.

The Court has tentatively approved the proposed modification, which has been revised in certain respects after discussions with plaintiffs’ counsel and with the Court. The Court will consider comments by detainees before deciding whether to grant final approval. The comment procedure is set out below.

Benjamin v. Malcolm, Not Reported in F.Supp. (1995)

The proposed modification generally prohibits possession and display of jewelry, including beads, that is in particular color schemes (discussed below). Violations may result in disciplinary action. However, the modification contains safeguards for detainees' rights. Detainees may possess religious jewelry, such as Rosary beads, Dhikr beads, Santeria beads, pendants, and other religious objects—even in prohibited color schemes—as long as they do not display them (for example, they can wear them under their clothes). The Department of Correction's internal policy will provide that a captain will be notified before jewelry is confiscated involuntarily and that a member of the clergy will be notified if the item is purported to have religious significance. Jewelry that is confiscated shall be safeguarded pursuant to Department of Correction procedure, which means that the jewelry will be put in the detainee's property or sent to someone outside the jail at the detainee's expense.

The modification is to be phased in, one jail at a time. Each jail is to have a 15-day period during which detainees may surrender prohibited items before the modification goes into effect. Both the Housing Captains and the Programs Captain are to make themselves available to the inmate population to receive these items from inmates. The City Board of Correction will be permitted to be present during housing area searches when the policy is first introduced at each jail and may videotape the searches. Correctional staff (and search teams in particular) will be instructed in non-confrontational methods of insuring compliance. The Department of Correction will distribute copies of its Operations Order entitled Removal of Security Risk Contraband to all staff.

*5 The color schemes that will be prohibited are yellow and black, white and black, and black, white and red. The Department of Correction will notify the Board of Correction, the Office of Compliance Consultants, and Legal Aid before adding to the list of prohibited color schemes.

The exact words of the proposed modification are set out below. Complete copies of the proposed order and attachments, including the Operations Order, can be obtained at the jail law library.

Detainees may submit written comments or objections to the proposed modification either to the Court or to plaintiffs' counsel no later than _____, 1995 [three weeks from the posting of this notice].

Plaintiffs' counsel's address is:

Prisoners' Rights Project
The Legal Aid Society
15 Park Row—23d floor
New York, N.Y. 10038

Comments received by counsel will be conveyed to the Court.

The Court may be contacted directly at this address:

Hon. Harold Baer, Jr.
United States District Judge
United States Courthouse
500 Pearl Street
New York, N.Y. 10007

THE EXISTING CONSENT DECREE PROVISION:
Section C of the Consent Decrees provides:

Defendants shall permit detainees to wear and to receive wedding rings and other jewelry and watches, except that defendants may prohibit the wearing of a particular article of such jewelry if it is expensive or if there is a reasonable likelihood that it will be used as a weapon; provided that wedding rings and religious jewelry of a size and type typically worn in civilian situations, including those made of gold, silver and small stones, shall not be prohibited.

THE EXISTING CONSENT DECREE PROVISION FOR THE ADOLESCENT RECEPTION AND DETENTION CENTER:

In 1990, section C of the Consent Decree that applies to the Adolescent Reception and Detention Center was modified to read:

Defendants shall permit detainees to wear and receive a wristwatch, a wedding ring and a piece of religious jewelry. If an inmate elects not to wear a wedding ring he may wear another ring in its place; if he elects not to wear a piece of religious jewelry, he may instead wear another piece of jewelry. Defendants may prohibit the wearing of a ring that is not a wedding ring or of a particular article of non-religious jewelry, if it is expensive; however, wedding rings and religious jewelry of a size and type typically worn in civilian situations, including those made of

gold, silver and small stones, shall not be prohibited. Any item of jewelry, including religious jewelry, may be prohibited if there is a reasonable likelihood that it will be used as a weapon.

THE PROPOSED MODIFICATION FOR ALL JAILS:

The following language would be added to Section C of the Consent Decrees:

MODIFICATION TO THE INMATE JEWELRY PROVISION OF THE CONSENT DECREES

[AFTER EXISTING LANGUAGE, INSERT:]

In addition, defendants may prohibit the entry into the facility, and the possession, wearing and display of jewelry which displays a color scheme determined by defendants to be an identifier of a Security Risk Group (gang), defined as a group acting together who pose a threat to the safety, security, good order and discipline of the institution, provided that inmates shall continue to be permitted to possess, wear and display Rosary Beads, Dhikr Beads, Santeria Beads or religious pendants and other religious objects. However, when these religious items are in a prohibited color scheme, they cannot be displayed, except that incidental or inadvertent exposure of Rosary Beads, Dhikr Beads, Santeria Beads or religious pendants and other religious objects that are in a prohibited color scheme, for example, while showering, saying the rosary or other religious observance, dressing or undressing or sleeping, shall not be considered "display." An inmate who displays religious items that are in a prohibited color scheme may, in the first instance, be infraacted for violation of Institutional Rule 118.1, a Grade III offense, and be warned in writing that any subsequent display of the item shall result in confiscation and an infraction for Possession of Contraband—Security Risk Group Items, a Grade II offense. Subsequent display by the inmate may result in confiscation of the item and an infraction for Possession of Contraband—Security Risk Group Items, a Grade II offense. All items confiscated shall be safeguarded pursuant to existing Departmental procedures outlined in Directive 2307, dated April 30, 1993.

*6 The Department's policy outlined above shall be implemented in the first eight months of said policy in accordance with the procedures set forth in the

Implementation Procedures For Security Risk Group Contraband, below.

IMPLEMENTATION PROCEDURES FOR SECURITY RISK CONTRABAND

The Department of Correction ("the Department") will train its uniformed staff at all jails, at a minimum, by providing roll call training sessions which shall include demonstrations of appropriate, non-confrontational methods of insuring inmate compliance. The Department's Central Office will prepare training materials and will observe and monitor training to ensure uniformity and consistency among jails. Staff members shall receive a copy of the Operations Order entitled "Removal of Security Risk Contraband" (the "Operations Order"), as well as an oral description of its contents.

Special instruction in appropriate, non-confrontational methods of insuring inmate compliance will be given to search teams during the period when the policy is first enforced and thereafter.

The Department's chaplains will be provided orientation as to their role under the policy and where opportunity permits will aid in mediating disputes of a religious nature.

The training materials will make clear that the prohibition on "white" and "yellow" in the Operations Order does not refer to silver and gold-colored metal.

The Department will train its adjudication captains (disciplinary hearing officers) in the new policy, emphasizing that inmates are not deemed to have "displayed" religious items in a prohibited color scheme unless the display is purposeful, that first offenses should ordinarily result in reprimands unless there are significant aggravating factors, and that penalties as harsh as segregation are usually inappropriate in connection with the display of religious items in prohibited color schemes. The Central Office will review the processing of all infractions for possession or display of gang identifiers to ensure conformity with these policies.

The Department will notify the New York City Board of Correction in advance of the phase-in schedule of this policy at the jails. The New York City Board of Correction may be present during the 0730 and 1530 housing area searches during the first few days of the policy's implementation at each jail. The Board of Correction will be permitted to videotape the searches during the first few days of the policy's implementation at each jail, provided however, that this is not intended to set a precedent or express any opinion with respect to Board

of Correction videotaping in the jails.

The Department will provide an orderly and accessible system for inmates to surrender prohibited items for safekeeping during the 15-day notice period at each jail before the policy is introduced. The Deputy Warden for Programs at each jail will be in charge of this program. The Housing Captains in each jail shall advise inmates that both the Housing Captains and the Programs Captain in each jail will make themselves available to the inmates during this 15-day notice period for the voluntary and confidential surrender of prohibited items. During the housing rounds conducted in each jail during this 15-day notice period, Housing Captains will inquire discreetly of inmates as to whether they wish to voluntarily surrender prohibited items, and will make appropriate arrangements for inmates to do so. Among other methods, inmates who request confidentiality in the voluntary surrender of prohibited items will be individually called to a housing or program area, as is appropriate, and be permitted to surrender said items in privacy. In their discretion, Housing Captains and the Programs Captain will avail themselves of other methods of voluntary surrender which will ensure confidential surrender of prohibited items.

*7 The Department of Correction shall advise the Office of Compliance Consultants, plaintiffs' counsel, and the New York City Board of Correction before adding additional items or colors to the list of security risk group (gang) identifiers beyond those identified in the Operations Order.

**TRIBUNAL FEDERAL DE DISTRITO
DISTRITO SUR DE NUEVA YORK**

James Benjamin, y otros, Demandante,

—contra—

Michael P. Jacobson, y otros, DEMANDADOS

y casos conexos.

75 Civ. 3073 (HB)

**NOTIFICACION A LA CLASE DEMANDANTE
SOBRE LA MODIFICACION DE LAS
DISPOSICIONES SOBRE JOYAS DE LAS
SENTENCIAS DE HOMOLOGACION**

En estos litigios se impugnan las condiciones de confinamiento en las cárceles de Nueva York. El juez ha certificado estas demandas como acciones colectivas en favor de todos los detenidos preventivamente en las cárceles de la ciudad. La mayoría de las controversias se transaron en 1979 por medio de estipulaciones para que se registrara una Sentencia Definitiva Parcial, también conocidas como "las sentencias de homologación".

Las sentencias de homologación disponen que los detenidos pueden usar y recibir joyas en la cárcel, siempre y cuando no sean de valor ni puedan ser utilizadas como armas. (Al final de esta notificación figura una copia fiel de las disposiciones). La ciudad ha solicitado de este Juez la modificación de esta disposición para permitirle restringir el uso de joyas, incluso sartas de cuentas, utilizadas para identificar pandillas, a las que la ciudad se refiere como "grupos que afectan la seguridad".

Considero que la ciudad tiene derecho a que se realice una modificación. He examinado la solicitud hecha por la ciudad y la contestación presentada por el Proyecto sobre Derechos de los Detenidos (*Prisoners' Rights Project*) de La Sociedad de Asistencia Jurídica (*The Legal Aid Society*), abogados representantes de la clase demandante. La ciudad ha demostrado que la actividad de las pandillas ha contribuido a la existencia en ciertas ocasiones de violencia grave en las cárceles, y ha argumentado que la restricción del uso de artículos que identifican a pandillas ayudará a reducir la violencia relacionada con las bandas. Se adjunta copia de los fundamentos de la sentencia.

En principio apruebo la modificación propuesta, que fue revisada en ciertos aspectos después de las conversaciones mantenidas con el abogado de los demandantes. Tomaré en consideración los comentarios de los detenidos antes de decidir si la daré carácter definitivo. El procedimiento para presentar comentarios se expone a continuación.

La modificación propuesta prohíbe en general la posesión y exhibición de joyas, incluso sartas de cuentas, que tengan una combinación particular de colores (explicado más adelante). Todo incumplimiento puede dar lugar a medidas disciplinarias. Sin embargo, en la modificación hay salvaguardas para los derechos de los detenidos. Los detenidos pueden tener joyas de índole religiosa, tales como rosarios, sartas de cuentas de Dhikr, de Santería, medallones y otros objetos religiosos, incluso de las combinaciones de colores prohibidas, siempre que no los exhiban (por ejemplo, pueden usarlos debajo de la ropa). En la política interna del Departamento de Correcciones se dispone que se notificará a un capitán antes de

Benjamin v. Malcolm, Not Reported in F.Supp. (1995)

confiscar una joya en contra de la voluntad del detenido, y que se notificará a un miembro del clero si se adujera que la prenda tuviese significado religioso. La prenda confiscada será guardada de conformidad con el procedimiento establecido por el Departamento de Correcciones, lo que significa que la joya será colocada con las pertenencias del detenido o se enviará a alguien fuera de la cárcel, a costa del detenido.

La modificación se hará en etapas, una cárcel por vez. Antes de que la modificación entre en vigor, en cada cárcel se dará un plazo de 15 días para que los detenidos puedan entregar los artículos prohibidos. Tanto los Capitanes de Alojamiento (*Housing Captain*) como el Capitán de Programas (*Programs Captain*) deben ponerse a disposición de la población carcelaria para recibir dichos artículos de los detenidos. Se autoriza a la Junta de Correcciones de la Ciudad a presenciar los registros de los alojamientos cuando se aplique por vez primera esta política en cada cárcel y se le permitirá filmarlos en cintas de vídeo. Se instruirá al personal de los correccionales (y a los equipos de registro en particular) sobre métodos que aseguren el cumplimiento y que eviten confrontaciones. El Departamento de Correcciones distribuirá a todo el personal copias de la Orden de Operaciones, denominada Remoción de objetos prohibidos que afecten la seguridad.

Las combinaciones de colores que se prohíben son amarillo y negro, blanco y negro, y negro, blanco y rojo. El Departamento de Correcciones notificará a la Junta de Correcciones, la Dependencia de Asesores sobre el Cumplimiento (Office of Compliance Consultants) y la Sociedad de Asistencia Jurídica (Legal Aid) antes de agregar más combinaciones de colores a la lista.

El texto fiel de las modificaciones propuestas figura a continuación. En la biblioteca de la cárcel se pueden obtener juegos completos de las copias del fallo propuesto y sus anexos, incluso de la Orden de Operaciones.

Los detenidos pueden presentar por escrito comentarios y objeciones sobre la modificación propuesta, tanto al tribunal como al abogado de los demandantes, hasta el _____ de 1995 (tres semanas a contar de la fecha del anuncio en cartelera de esta notificación).

La dirección del abogado demandante es:

Prisoners' Rights Project
The Legal Aid Society
15 Park Row—23d floor
New York, N.Y. 10038

Los comentarios que reciba el abogado se remitirán al tribunal.

Para comunicarse directamente con el tribunal, envíe la

correspondencia al:

Hon. Harold Baer, Jr.
United States District Judge
United States Courthouse
500 Pearl Street
New York, N.Y. 10007

LA DISPOSICION ACTUAL DE LA SENTENCIA DE HOMOLOGACION:

La sección C de las sentencias de homologación dispone:

Los demandados permitirán a los detenidos usar y recibir alianzas de casamiento y otras joyas y relojes, pero podrán prohibir el uso de algún artículo en particular entre las joyas antes mencionadas debido a su valor o a la probabilidad razonable de que sea usado como arma; se entiende que no se prohíben las alianzas y joyas de índole religiosa del tamaño y tipo normalmente usadas en situaciones de la vida civil, incluso aquellas hechas de oro, plata y piedras pequeñas.

LA DISPOSICION DE LA SENTENCIA DE HOMOLOGACION ACTUAL PARA EL CENTRO DE RECEPCION Y DETENCION DE ADOLESCENTES:

En 1990, la sección C de la sentencia de homologación correspondiente al Centro de Recepción y Detención de Adolescentes fue modificada como se indica a continuación:

Los demandados permitirán a los detenidos usar y recibir un reloj pulsera, una alianza de casamiento y una joya de índole religiosa. Si un detenido elige no usar alianza de casamiento, podrá usar otro anillo en lugar de aquella; si elige no usar una joya de índole religiosa, podrá usar otra prenda. Los demandados pueden prohibir el uso de un anillo que no sea una alianza de casamiento, o de una prenda en particular que no sea de índole religiosa si es de valor; sin embargo no se prohibirán las alianzas de casamiento y las joyas de índole religiosa del tamaño y tipo normalmente usadas en situaciones de la vida civil, incluso las de oro, plata y piedras pequeñas. Se podrá prohibir el uso de todo artículo de joyería, incluso las joyas de índole religiosa, si existe una probabilidad razonable de que sea utilizado como arma.

LA MODIFICACION PROPUESTA PARA TODAS LAS CARCELES:

El texto subsiguiente se agregaría a la sección C de las sentencias de homologación:

MODIFICACION A LA
DISPOSICION SOBRE LAS
JOYAS DE LOS DETENIDOS DE
LAS SENTENCIAS DE
HOMOLOGACION

[A CONTINUACIÓN DEL TEXTO ACTUAL
AGREGUESE:]

Además, los demandados pueden prohibir la entrada a la institución, la posesión, uso y exhibición de joyas que tengan una combinación de colores que los demandados hayan determinado como que identifica un Grupo que afecta la seguridad (pandilla—*gang*), definido como un grupo que actuando en conjunto constituye una amenaza a la seguridad, la vigilancia, el orden y la disciplina de la institución, pero los detenidos podrán poseer, usar, y exhibir rosarios, sartas de cuentas de Dhikr, de Santería o medallones u otros objetos de índole religiosa. Sin embargo, cuando estos artículos tengan las combinaciones de colores prohibidas, no podrán ser exhibidos, con la excepción de que no se considerará como “exhibición” la exhibición fortuita o accidental de rosarios, sartas de cuentas de Dhikr, de Santería o medallones u otros objetos de índole religiosa que tengan las combinaciones de colores prohibidas, por ejemplo mientras se tome una ducha, se rece el rosario o se realice algún otro rito religioso, se vista o desvista, o duerma. Un detenido que exhiba artículos religiosos con las combinaciones de colores prohibidas, en primer lugar podrá ser sancionado con una infracción por incumplimiento de la Norma Institucional (*Institutional Rule*) 118.1, falta de grado III, y ser advertido por escrito de que la exhibición subsiguiente del artículo dará lugar a su confiscación y a una infracción por posesión de artículos prohibidos—Artículos de un “grupo que afecta la seguridad”, falta de grado II. La exhibición subsiguiente por parte del detenido podrá dar lugar a la confiscación del artículo y a una infracción por posesión de artículos prohibidos—Artículos de un “grupo que afecta la seguridad”, falta de grado II. Todos los artículos confiscados serán guardados de conformidad con el procedimiento Departamental actual que figura en la Directiva 2307, fechada 30 de abril de 1993.

La política del Departamento expuesta anteriormente se aplicará en los ocho primeros meses de dicha política, de conformidad con los procedimientos expuestos en la “Aplicación de los procedimientos relativos a los artículos prohibidos de los grupos que afectan la seguridad” (*Implementation Procedures For Security Risk Group Contraband*).

**APLICACION DE LOS PROCEDIMIENTOS
RELATIVOS A LOS ARTICULOS PROHIBIDOS
DE LOS GRUPOS QUE AFECTAN LA
SEGURIDAD**

El Departamento de Correcciones (el “Departamento”) capacitará al personal uniformado de todas las cárceles, como mínimo, con sesiones de capacitación sobre cómo pasar lista, en las que se incluirán demostraciones de métodos apropiados y que eviten confrontaciones para asegurar el cumplimiento por parte de los detenidos. La Dependencia Central del Departamento preparará materiales de capacitación y observará y supervisará la capacitación para asegurar la uniformidad y coherencia de su aplicación en las cárceles. Los miembros del personal recibirán una copia de la Orden de Operaciones titulada “Remoción de artículos prohibidos que afectan la seguridad” (la “Orden de Operaciones”), así como una descripción verbal de su contenido.

Desde que se comience a aplicar la política y de ahí en más, se dará capacitación especial a los equipos de cateo sobre los métodos apropiados y que eviten confrontaciones para asegurar el cumplimiento por los detenidos.

Los capellanes del Departamento recibirán orientación en cuanto al papel que deben desempeñar según la política y, cuando sea factible, asistirán en la mediación de las controversias de índole religiosa.

Los materiales de capacitación dejarán en claro que la prohibición del “blanco” y el “amarillo” que figura en la Orden de Operaciones no se refiere a metales plateados o dorados.

El Departamento capacitará a sus capitanes encargados de resolver conflictos (*adjudication captains—disciplinary hearing officers*) en la nueva política, subrayando que no se considera que los detenidos han “exhibido” artículos religiosos con combinación de colores prohibida, salvo que se hubiese exhibido a propósito, que la primera falta ordinariamente debería dar lugar a una reprimenda, salvo que hubiese factores agravantes de importancia, y que las penalidades tan severas como la segregación no corresponden usualmente en casos de exhibición de artículos religiosos con combinación de colores prohibida. La Dependencia Central revisará el trámite de todas las infracciones por posesión o exhibición de artículos que identifiquen a pandillas para asegurar que se cumpla con estas políticas.

El Departamento notificará La Junta de Correcciones de la Ciudad de Nueva York antes de comenzar la

Benjamin v. Malcolm, Not Reported in F.Supp. (1995)

introducción gradual de esta política en las cárceles. La Junta de Correcciones de la Ciudad de Nueva York podrá estar presente durante el registro de la zona de alojamiento que se efectúa a las 7:30 y 15:30 durante los primeros días en que se comience la aplicación de esta política en cada cárcel. La Junta de Correcciones estará autorizada a grabar en vídeo los registros realizados durante los primeros días de la aplicación de esta política en cada cárcel, en el entendimiento, sin embargo, de que con ello no se pretende establecer un precedente ni expresar una opinión en relación con las grabaciones de vídeo hechas en las cárceles por la Junta de Correcciones.

Durante el plazo de notificación de 15 días hasta que entre en vigencia la política en cada cárcel, el Departamento establecerá un sistema ordenado y de fácil acceso para que los detenidos entreguen sus artículos prohibidos a fin de ser guardados. El asistente del director de programas (*Deputy Warden for Programs*) de cada cárcel estará encargado de este programa. Los capitanes de alojamiento de cada cárcel comunicarán a los detenidos que tanto los capitanes de alojamiento como el capitán de programas de cada cárcel estarán disponibles durante el plazo de notificación de 15 días para encargarse de la entrega voluntaria y confidencial de los artículos prohibidos. Durante las rondas en los alojamientos realizadas en cada

cárcel durante este plazo de notificación de 15 días, los capitanes de Alojamiento preguntarán de manera discreta a los detenidos si quieren entregar voluntariamente los artículos prohibidos o no, y harán los arreglos correspondientes para que los detenidos puedan hacerlo. Entre otros métodos, los detenidos que soliciten que la entrega de artículos prohibidos se haga de manera confidencial serán llamados individualmente a la zona de alojamientos o de programas, según corresponda, y se les permitirá entregar dichos artículos en privado. Los capitanes de alojamiento y el capitán de programas podrán, a su criterio, utilizar otros métodos de entrega voluntaria que aseguren la entrega confidencial de los artículos prohibidos.

El Departamento de Correcciones notificará a la Dependencia de Asesores sobre el Cumplimiento, al abogado de los demandantes, y a la Junta de Correcciones de la Ciudad de Nueva York antes de agregar a la lista de artículos de identificación de grupos que afectan la seguridad (pandillas—*gang*) artículos o colores que no aparezcan en la Orden de Operaciones.