

FILED

OCT 1 1971

U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN M. BACH, FATHER PHILIP BERRIGAN
S.S.J., JOHN THEODORE GLICK, THOMAS
R. HOSMER, KEVIN B. JONES, DAVID
MALAMENT, prisoners presently incar-
cerated at the Federal Correctional
Institution at Danbury, Connecticut;
JOHN HALLORAN, JOHN J. PHILLIPS,
WILLIAM T. IRELAND, MITCHELL SNYDER,
prisoners presently incarcerated at
the Medical Center for Federal Pri-
soners, Springfield, Missouri; and
EDWARD A. GERSH, presently incarcer-
ated at Lewisburg Federal Peniten-
tiary,

Plaintiffs

v.

JOHN MITCHELL, Attorney General of
the United States, NORMAN CARLSON,
director of the Federal Bureau of
Prisons, JOHN J. NORTON, Warden of
the Federal Correctional Institution,
Danbury, Connecticut, DR. CICCONE,
Director of the Springfield Medical
Center for Federal Prisoners, GEORGE
J. REED, Chairman of the United States
Board of Parole and all members of
the United States Board of Parole,
WILLIAM F. HOWLAND, JR., GERALD E.
MURCH, WILLIAM E. AMOS, MAURICE H.
SIGLER, PAULA A. TENNANT, CURTIS C.
CRAWFORD, WILLIAM T. WOODWARD, JR.;
and RICHARD HEANEY, Assistant Direc-
tor, United States Bureau of Prisons,

Defendants.

1988-71

CIVIL ACTION
NO. R 376

FILED

OCT 1 1971

JAMES F. DAVEY, Clerk

VERIFIED COMPLAINT *For Declaratory Judgment*

1. This action is brought by JOHN M. BACH, Father PHILIP BERRIGAN S.S.
J., JOHN THEODORE GLICK, THOMAS R. HOSMER, KEVIN B. JONES, DAVID MALAMENT,
JOHN HALLORAN, JOHN J. PHILLIPS, WILLIAM T. IRELAND, MITCHELL SNYDER, and
EDWARD A. GERSH to enjoin any and all disciplinary action taken against
them and to declare unconstitutional the procedures by which these actions
were accomplished, including, but not limited to, loss of "good time" or
parole eligibility, administrative transfers to other federal prisons, se-
gregated or solitary confinement or other temporary or permanent change

2

of security status for alleged infractions of prison rules and regulations; and to order the reinstatement of parole granted plaintiffs BACH and SNYDER; to order the return of plaintiffs GERSH, HALLORAN, and SNYDER to Danbury Federal Prison; and further to order the reinstatement of any "good time" lost by all plaintiffs. Plaintiffs BACH, BERRIGAN, GLICK, HOSMER, JONES, and MALAMENT are presently incarcerated at the Federal Correctional Institution, Danbury, Connecticut (hereinafter Danbury). Plaintiffs HALLORAN, PHILLIPS, IRELAND and SNYDER are presently incarcerated at the Medical Center for Federal Prisoners, Springfield, Missouri (hereinafter Springfield). Plaintiff GERSH is incarcerated at Lewisburg Federal Correctional Institution (hereinafter Lewisburg).

I. JURISDICTION

2. This action arises under the First, Fifth, and Sixth^{and Eighth} Amendments to the United States Constitution, 28 U.S.C. §§ 1331 and 1361, and under Sections 551 et seq. of the Administrative Act, and the Administrative Procedure Act, 5 U.S.C. §701 et seq. and under 28 U.S.C. §4207 and regulations pursuant thereto, 28 C.F.R. 2.22, 2.23.

3. The amount in controversy, exclusive of interests and costs, exceeds \$10,000 as to each of the above-named plaintiffs.

4. All plaintiffs seek judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring unconstitutional the disciplinary actions taken against them and the procedures by which these actions were accomplished. All plaintiffs also seek equitable relief, to wit, preliminary and permanent injunctions and the issuance of a writ in the nature of a mandamus, as authorized by 28 U.S.C. §1361, to prevent any further disciplinary action or deprivation without due process of law.

5. Plaintiffs BACH and SNYDER seek judgment pursuant to §§2201

and 2202 declaring unconstitutional the revocation of their paroles, and granting preliminary and permanent injunctions and/or the issuance of a writ in the nature of mandamus pursuant to 28 U.S.C. §1361 reinstating the grant of parole at least until the completion of an immediate hearing consistent with the due process of law.

6. Plaintiffs HALLORAN, SNYDER and GERSH seek judgment granting a preliminary and permanent injunction and/or the issuance of a writ of mandamus pursuant to 28 U.S.C. 1361 compelling their return to Danbury.

II. PARTIES

A. Plaintiffs

7. JOHN BACH, Father PHILIP BERRIGAN, JOHN THEODORE GLICK, THOMAS R. HOSMER, KEVIN B. JONES and DAVID MALAMENT, are citizens of the United States and presently incarcerated at Danbury Federal Prison.

8. JOHN HALLORAN, JOHN J. PHILLIPS, WILLIAM T. IRELAND, and MITCHELL SNYDER are citizens of the United States and presently incarcerated at the Medical Center for Federal Prisoners, Springfield, Missouri.

9. Plaintiff GERSH is a citizen of the United States and presently incarcerated at Lewisburg Federal Penitentiary.

B. Defendants

10. Defendant JOHN MITCHELL is the Attorney General of the United States.

11. Defendant NORMAN CARLSON is the Director of the Federal Bureau of Prisons.

12. Defendant JOHN J. NORTON is the duly appointed warden of the

Federal Correctional Institution, Danbury, Connecticut.

13. Defendant Dr. CICCONE is the director of the Springfield Medical Center for Federal Prisoners.

14. Defendant GEORGE J. REED is the Chairman of the United States Board of Parole.

15. Defendant RICHARD HEANEY is the Deputy Director of the United States Bureau of Prisons.

16. Defendants WILLIAM F. HOWLAND, JR., GERALD E. MURCH, WILLIAM E. AMOS, MAURICE H. SIGLER, PAULA A. TENNANT, CURTIS C. CRAWFORD, WILLIAM T. WOODWARD, JR. are all members of the United States Board of Parole.

17. All defendants are sued in their individual and official capacities.

FIRST CAUSE OF ACTION

18. On or about August 6, 1971, Plaintiffs JOHN BACH, EDWARD GERSH, JOHN THEODORE GLICK, THOMAS HOSMER and DAVID MALAMENT attempted to distribute among their fellow inmates a written statement criticizing and suggesting peaceful protest against conditions within the federal prison system, particularly the lack of procedural rights afforded prisoners before the Parole Board. [A facsimile of the statement is annexed hereto as Exhibit A.]

19. The statement generated discussion among inmates and the exchange of ideas.

20. As a result of these activities, the above-named plaintiffs were immediately apprehended and placed in Danbury's Intensive Training Unit (I.T.U.), the euphemistic appellation for the solitary

confinement facilities.

21. While in solitary confinement, plaintiffs continued their peaceful protest by refusing all food until such time as prison authorities would seriously consider and discuss with plaintiffs the prisoners' complaints.

22. On or about Saturday, August 6, 1971, after approximately 1 day of fasting, the above plaintiffs were transferred to the prison infirmary.

23. On or about Monday, August 9, 1971 plaintiffs PHILIP BERRIGAN, JOHN PHILLIPS, JOHN HALLORAN, KEVIN B. JONES, WILLIAM IRELAND and MITCHELL SNYDER attempted to circulate the above-described statement (Exhibit A) of criticism of the prison and parole system. As a result of this activity, these plaintiffs were immediately apprehended and placed in solitary confinement.

24. Plaintiffs PHILIP BERRIGAN, JOHN HALLORAN, WILLIAM IRELAND, KEVIN B. JONES, JOHN PHILLIPS and MITCHELL SNYDER also refused to take food until such time as the prison authorities would discuss prison grievances, but were never transferred to the infirmary.

25. Sometime after plaintiffs' transfer to solitary confinement and without appropriate notice of charges, summary hearings on the question of the propriety of thier confinement to solitary were held, other disciplinary action was instituted, and in none of these hearings were there the traditional procedures assuring the fairness of the factual determinations.

26. On informations and belief, all plaintiffs were summarily punished at the above noted proceedings by the forfeiture of "good time" earned, as punishment for their participation in these constitutionally protected activities.

27. On or about August 5, 1971, approximately 50 inmates joined plaintiffs in a hunger strike and refused to work in protest against general prison conditions and the treatment accorded plaintiffs.

28. On information and belief, these approximately 50 inmates were punished for their actions by being locked in their cells or placed in solitary confinement. None of the aforesaid were, however, removed to the prison infirmary; nor were they transferred to Springfield, nor was any other disciplinary action taken against them.

29. On Wednesday, August 11, 1971, attorneys of record for plaintiffs BERRIGAN and GLICK, namely William Bender, William Cunningham, S.J., William Kunstler, and Paul O'Dwyer, attempted to contact their clients. They were informed that the Warden was not available.

30. On or about August 11, 1971, as a result of the events of August 6 and 9, and without prior hearings, plaintiffs were transferred to Springfield.

31. On or before August 11, 1971, defendant NORTON did not notify any or all of the above-named attorneys of the impending transfer to Springfield.

32. On information and belief, Attorney Gerald Singer, a member of the California Bar was, at all times relevant to the incidents alleged in this complaint, counsel of record for plaintiff SNYDER. Attorney Singer was at no time notified by defendants of the actions taken against his client.

33. On information and belief, plaintiffs were summarily transferred to Springfield in order to discipline and segregate them from the prison population for distributing leaflets to fellow inmates and for attempting to lead a non-violent hunger strike and

work-stoppage protesting prison conditions.

34. At no time prior to, or indeed following, plaintiffs' transfer to Springfield was a hearing held on the propriety of this punitive transfer.

35. On or about Monday, September 20, 1971 Plaintiffs BACH, BERRIGAN, GERSH, GLICK, HOSMER, JONES and MALAMENT were returned from Springfield to Danbury. Plaintiffs HALLORAN, PHILLIPS, IRELAND and SNYDER were kept at Springfield. Plaintiff GERSH was subsequently transferred to Lewisburg.

36. On information and belief, defendants intend to transfer plaintiffs HALLORAN and SNYDER to Milan Federal Penitentiary and Allenwood Federal Prison Camp, respectively.

37. On information and belief defendants have under consideration plans to disperse all plaintiffs to different locations throughout the country.

38. On information and belief, all final determinations regarding classification and transfer of plaintiffs are being made by defendant HEANEY of the Bureau of Prisons, Washington, D.C.

39. The above described actions of defendants violated plaintiffs' constitutional rights in the following ways:

(a) The discipline of plaintiffs by solitary confinement, loss of good time, and transfer to Springfield and then to locations other than Danbury constitutes suppression of and punishment for the exercise of the rights of free speech, association and petition for redress protected by the First Amendment to the United States Constitution.

(b) The solitary confinement of plaintiffs and loss of good time without a fair hearing or aid of counsel

constitutes a denial of due process and right to counsel contrary to the Fifth and Sixth Amendments to the Constitution.

(c) The disciplinary transfer of plaintiffs to Springfield and subsequent transfers, without notice or any hearing whatsoever constitutes a denial of due process and right to counsel contrary to the Fifth and Sixth Amendments to the Constitution.

(d) The singling out of plaintiffs from the other inmates at Danbury participating in the hunger strike for punitive and segregatory transfer to Springfield denied them the equal protection of the laws guaranteed by the Fifth Amendment to the Constitution.

(e) The exclusion of counsel by defendant NORTON's failure to honor counsel's request to confer with their clients and his failure to notify counsel of their client's transfer to Springfield denied them the right to counsel protected by the Sixth Amendment.

SECOND CAUSE OF ACTION

41. Plaintiffs JOHN BACH and MITCHELL SNYDER repeat and reallege each and every allegation set forth in paragraphs 19-39.

42. On or about August 25, 1971, plaintiffs BACH and SNYDER were notified by the Board of Parole that the paroles previously granted to them and scheduled to begin on September 20, 1971 and January 4, 1972, respectively, had been revoked and will not be reconsidered until January of 1972. (Attached hereto as Exhibits B, C, and D, entitled "Notice of Action - Board of Parole.")

43. Plaintiffs BACH and SNYDER had never been notified that their parole determination had been reopened by the Board of Parole, or the reasons therefor. No hearing was held concerning revocation of parole, and no reason has been given for such action.

44. On information and belief Attorney Singer, counsel of record for plaintiff SNYDER was never informed that disciplinary action in the form of parole revocation was under consideration or had been taken against his client.

45. The revocation of parole previously granted plaintiffs BACH and SNYDER violated their constitutional rights as follows:

(a) Revocation of parole for the exercise of the rights of free speech, association and petition for redress, constitutes an impermissible sanction upon the exercise of the rights protected by the First Amendment.

(b) Revocation of parole without notice of charges, assistance of counsel, and opportunity to contest the charges, including the right to cross-examine adverse witnesses and to call witnesses on their own behalf, deprived them of due process and the right to counsel guaranteed by the Fifth and Sixth Amendments.

45. Revocation of parole without affording plaintiffs any of the basic procedural due process standards provided in 28 U.S.C. 4207 and the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., is violative of those acts.

EQUITY

46. The first cause of action, as set forth in paragraphs 18-39 of this complaint constitutes immediate and irreparable harm and injury to the individual plaintiffs. The policies and practices complained of herein have already been applied and continue to be applied to suppress plaintiffs exercise of First Amendment rights. Given the preferred status of First Amendment rights, subjecting prisoners to infringement of these protected rights, itself, constitutes irreparable harm. Fortune Society v. McGinnis, 319 F. Supp. 901 (S.D.N.Y., 1970); Palmigiano v. Travisono, 317 F. Supp. 776 (D.R.I., 1970).

47. In particular, the impending transfer of plaintiffs HALLORAN and SNYDER and the threat of transfer of other plaintiffs to prisons located throughout the United States as alleged in Paragraphs 36-38 of this complaint, would do them all irreparable harm by preventing any future communication or association among plaintiffs and between plaintiffs and fellow inmates at Danbury. Furthermore, if such action is taken prior to final hearings in this Court on the merits of this complaint, plaintiffs will be effectively denied their right to pursue this cause of action, as transfer to a location other than Danbury would make it impossible for them to confer with each other or with counsel, all of whom are located in New York.

48. The Second cause of action, as set forth in Paragraphs 40-45 constitutes immediate and irreparable harm and injury to plaintiffs BACH and SNYDER, who were scheduled to be released on

parole at the end of September and the beginning of January, respectively. The revocation of parole for exercise of First Amendment protected rights is per se irreparable harm. Moreover, since reconsideration of their parole status would not, in the normal course, occur until sometime in January, 1972, the immediate equitable relief of the Court is required to protect their right to release, as previously granted them, as well as their present expectations of release.

49. Plaintiffs have no adequate or complete remedy at law to redress the aforesaid violations of their constitutional and statutory rights and this suit for injunction and action in the nature of mandamus is their only means of securing complete and adequate relief. No other remedy would offer plaintiffs substantial and complete protection against continuation of defendants' unlawful and unconstitutional policies and practices.

WHEREFORE, plaintiffs respectfully pray that this Court:

1. Take jurisdiction of this cause;
2. Enter judgment declaring unconstitutional according to the First, Fifth and Sixth Amendments, the actions of defendants, their agents or employees, as alleged in this complaint.
3. Cause to issue preliminary and permanent injunctions ordering reinstatement of the parole granted to plaintiffs BACH and SNYDER.

Or, in the alternative, cause to issue preliminary and permanent injunctions, ordering reinstatement of such parole until such time as they be given written notification of charges upon which revocation is to be considered and a full hearing attended by the traditional guarantees of procedural due process, including the assistance of counsel, the right to cross-examine adverse witnesses and call witnesses on their own behalf and the preparation of a verbatim transcript.

4. Cause to issue preliminary and permanent injunctions mandating the immediate return of plaintiffs HALLORAN and SNYDER to Danbury.

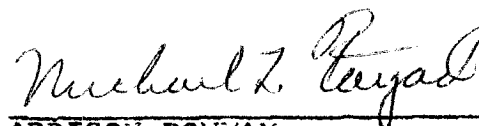
5. Cause to issue preliminary and permanent injunctions prohibiting defendants, their agents or employees, from in any way limiting, curtailing or imposing restraints on the exercise of plaintiffs' First Amendment rights, to wit transfer to any federal correctional institution other than Danbury, transfer to maximum security facilities, including segregation or solitary confinement, loss of statutory good time" or preexisting eligibility for parole without the due process of law.

Respectfully submitted,



WILLIAM J. BENDER
WILLIAM C. CUNNINGHAM, S.J.
WILLIAM H. KUNSTLER
RHONDA SCHOENBROD
c/o Center For Constitutional Rights
588 Ninth Avenue
New York, N.Y. 10036
(212)265-2500

PAUL O'DWYER
50 Broad Street
New York, N.Y. 10004
(212)269-3939



ADDISON BOWMAN
MICHAEL FAYAD
PETER WEISMAN
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202)347-7702

Of Counsel:

JANICE GOODMAN
c/o Center For Constitutional Rights
588 Ninth Avenue
New York, N.Y. 10036
(212)265-2500