

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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.

CIVIL ACTION
NO. B-376

AMENDED VERIFIED
COMPLAINT

AMENDED VERIFIED COMPLAINT FOR A WRIT OF HABEAS CORPUS: DECLARATORY
RELIEF: AND INJUNCTIVE RELIEF

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

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, and under Sections 551 et seq. of the Administrative Procedure Act, and under 18 U.S.C. § 4161 et seq. and § 4201 et seq. and regulations pursuant thereto, 18 C.F.R. 2.13, 2.22, 2.23, 2.40, 2.41. Jurisdiction is based on 28 U.S.C. §§ 1331, 1361 and 2241 et seq.; and on the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

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. Plaintiff BACH seeks issuance of a writ of habeas corpus pursuant to 28 U.S.C. §2241 to same effect.

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 their 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 information and belief, all plaintiffs were summarily punished at the above noted proceedings by the forfeiture ^{or withholding} 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

40. Plaintiffs JOHN BACH and MITCHELL SNYDER repeat and reallege each and every allegation set forth in paragraphs 18-39.

41. On or about August 9, 1971, the Board of Parole found JOHN BACH and MITCHELL SNYDER deserving of parole and ordered their release on parole effective September 20, 1971 and January 4, 1972, respectively.

42. On or about August 25, 1971, plaintiffs BACH and SNYDER were notified by the Board of Parole that the aforesaid paroles previously granted to them had been revoked and would 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 and the continued incarceration of plaintiff BACH since September 20, 1971, the effective date of his right to be released on parole, violates the Constitution, statutes, and regulations of the United States, to wit:

(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.

(c) Revocation of parole without affording plaintiffs any of the basic procedural due process standards provided by the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and by 28 U.S.C. § 4207, and regulations pursuant thereto, 18 C.F.R. 2.40, 2.41, is violative of those acts.

46. By letter to Defendant REED, dated September 24, 1971, William C. Cunningham, S.J., Counsel for plaintiffs, requested pursuant to 18 C.F.R. 2.22 and 2.23 that the Board of Parole review its revocation of parole in a manner consonant with the constitutional, statutory and regulatory guarantees heretofore cited. Receipt of that letter was acknowledged by Defendant Reed by return receipt. To date, however, the Board of Parole has not responded to the request. Petitioner has thereby exhausted whatever administrative remedy might arguably have been available. ["Exhibit E"]

47. No previous application to this Court or to any federal court or judge has been made for a writ of habeas corpus on the grounds alleged herein.

EQUITY

48. 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).

49. In particular, the transfer of plaintiff GERSH to Lewisburg and 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 35-38 of this complaint, would do them all irreparable harm by preventing any further future communication or association among plaintiffs and between 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.

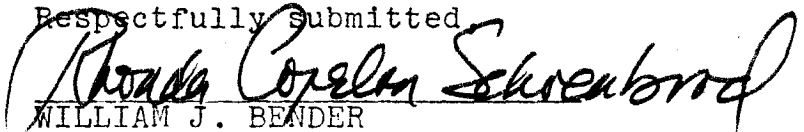
50. The second cause of action, as set forth in Paragraphs 40-45, constitutes immediate and irreparable harm and injury to plaintiffs BACH and SNYDER, who were scheduled to be released on parole at the end of September and the beginning of January, respectively. The revocation of parole for exercise 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 review.

51. 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 and petition for a writ of habeas corpus 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 good time withheld from or forfeited by plaintiffs.
4. Cause to issue preliminary and permanent injunctions mandating the immediate return of plaintiffs HALLORAN, SNYDER and GERSH to Danbury.
5. Cause to issue after full and complete hearing, preliminary and permanent injunctions ordering reinstatement of the parole granted to plaintiffs BACH and SNYDER.
6. Order the release of plaintiff BACH in the custody of his counsel or other suitable person as the court directs, or on bail in such amount as the court directs, pending hearing of this complaint and petition for a writ of habeas corpus.
7. 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.
8. For such other relief as the Court shall deem proper and equity requires.

Respectfully submitted



Of Counsel:

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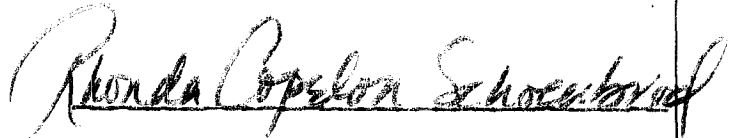
PAUL O'DWYER
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New York, N.Y. 10004 (212) 269-3939

THOMAS CLIFFORD
207 Orange Street
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VERIFICATION

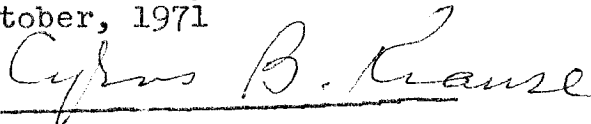
Rhonda Copelon Schoenbrod, being duly sworn, deposes and says:

I am counsel in the within action. I have read the foregoing amended complaint and to the best of my knowledge all that is stated therein is true except as to those allegations made on information and belief, and as to said matters, I believe it to be true.



RHONDA COPELON SCHOENBROD

Sworn to before me
this 13th day of
October, 1971



NOTARY PUBLIC

CYRUS B. KRAUSE
NOTARY PUBLIC, State of New York
Qualified in New York County
41 St. #2369010
Cert. Rec'd with New York Co. D.E. of 10/13/71
Commission Expires March 31, 1980 72

EXHIBIT A

FACSIMILE OF LEAFLET DISTRIBUTED AT DANBURY

A STATEMENT TO OUR FELLOW INMATES:

Nine days ago Dan and Phil Berrigan were denied parole. Dan was told to do his whole bit despite the fact that his health has gotten worse. There is a chance that he could die in prison. Philip was given an unheard of 16 months set-off. We believe this unjust treatment of the Berrigans is due to their continued strong opposition to the government's murderous policies in Indochina and the inhuman treatment of all prisoners here in the U.S.

The Parole Board's behavior was, however, very typical in many ways. We all know that to have the best chance of making parole one must act like an obedient slave; that we are not told what information goes into our file for the parole board to see; that we are given no reason for the Board's actions; that often we must wait many weeks or months to hear back. In short, we, as were the Berrigans, were treated by the prison and the Parole Board as less-than-humans and as less-than-men.

We must take a stand against these injustices. As a result we are beginning a human strike and work strike and will go to the hole until action is taken on the following demands:

- The speedy release of Dan and shortened set-off for Phil Berrigan.
- The shutting down of the new tiger cages under construction on Con Son Island, South Vietnam, used to torture men and women struggling for peace and human dignity.
- The establishment of these prisoner rights
 - the right to see all material in one's file at a parole hearing.
 - the right to receive word back in two weeks time
 - the right to be given a reason for whatever action the parole board takes.

We ask you, our brother inmates to consider joining us by refusing to work, refusing to eat, or by joining us in the hole as free men.