

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

JOHNNY ALMODOVAR, HERNANDEZ BAILEY-EL,
PABLO BARRARA, ISIAH BELL, ARYULES BIVENS,
NED BROOKS, CORNELIUS BURNS, ROOSEVELT
BURRELL, GARY CLARK, SHAWN COATES,
MAURICE COLEMAN, KENNARD COMBS,
RICHARD FLOOD, LARRY FOUTCH, MARK
FREEMAN, LARRY GAMBRELL, JOHN GILL,
TIMOTHY HALL, MICHAEL JOHNSON, THEODORE
KNOX, JOSE MARTINEZ, VICTOR PINTO, MILTON
POPE, VINCENT REYNA, TYSHAWN ROSS, JIMMY
SANTIAGO, BRIAN SMITH, JOSEPH SORRENTINO,
MICHAEL SPARLING, ANTONIO TRIPLETT, MARK
VON PERBANDT, KEVIN WALLACE, JOSEPH
WATKINS, and ROBERT WESTEFER, individually and
on behalf of all others similarly situated

Plaintiffs,

v.

DONALD J. SNYDER, Jr., in his official capacity as the
Director of the Illinois Department of Corrections,

Defendant.

No. 99 MR 404

**AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTION**

Plaintiffs, Johnny Almodovar, Hernandez Bailey-El, Pablo Barrara, Isiah Bell, Aryules Bivens, Ned Brooks, Cornelius Burns, Roosevelt Burrell, Gary Clark, Shawn Coates, Maurice Coleman, Kennard Combs, Richard Flood, Larry Foutch, Mark Freeman, Larry Gambrell, John Gill, Timothy Hall, Michael Johnson, Theodore Knox, Jose Martinez, Victor Pinto, Milton Pope, Vincent Reyna, Tyshawn Ross, Jimmy Santiago, Brian Smith, Joseph Sorrentino, Michael Sparling, Antonio Triplett, Mark Von Perbandt, Kevin Wallace, Joseph Watkins, and Robert Westefer, through their attorney, Alan Mills of the Uptown People's Law Center, as their amended complaint against the defendant, Donald Snyder, state as follows:

NATURE OF THE CASE

1. This is an action brought by inmates at Tamms Correctional Center who are in Administrative Detention status and have been in such status at Tamms for at least one year. The plaintiffs were not granted timely one year review hearings as required by state law. The remainder of the plaintiffs were granted one year review hearings, but did not receive timely rulings. None of the plaintiffs received periodic 90 day reviews, as required by state law. While all of the plaintiffs ultimately received decisions last year, defendant continues to contend that the Illinois Department of Corrections ("the Department") is not required to hold either one year hearings every year nor to review plaintiffs' continued placement at Tamms every 90 days. In Counts 1 and 2, plaintiffs allege that defendant's procedures for reviewing plaintiffs' continued placement at Tamms violate state law.

2. After this case was filed, on November 1, 1999, defendant promulgated a new administrative directive, "Renunciation of Affiliation with Security Threat Groups" ("the Renunciation policy"). The Renunciation policy provides that unless an inmate agrees that he will no longer affiliate with a gang, and provides the Department with all information he has regarding the structure and activities of the gang, he will not be permitted to leave Tamms. Based upon this new policy, each of the plaintiffs was denied transfer after this case was filed. In Counts 3 through 7, plaintiffs contend that the Renunciation policy violates federal and state law.

FACTS COMMON TO ALL COUNTS

The Parties

3. Johnny Almodovar was transferred to Tamms Correctional Center on March 9, 1998 and has been there continuously through the date of this complaint.

4. Hernandez Bailey-El was transferred to Tamms Correctional Center on April 8, 1998 and has been there continuously through the date of this complaint.

5. Pablo Barrara was transferred to Tamms Correctional Center on March 16, 1998 and has remained there continuously through the date of this complaint.

6. Isiah Bell was transferred to Tamms Correctional Center on April 12, 1998 and has remained there continuously through the date of this complaint.

7. Aryules Bivens was transferred to Tamms Correctional Center on July 16, 1998 and has remained there continuously through the date of this complaint.

8. Ned Brooks was transferred to Tamms Correctional Center on April 6, 1998 and has remained there continuously through the date of this complaint.

9. Cornelius Burns was transferred to Tamms Correctional Center on August 31, 1998 and has remained there continuously through the date of this complaint.

10. Roosevelt Burrell was transferred to Tamms Correctional Center on August 28, 1998 and has remained there continuously through the date of this complaint.

11. Gary Clark was transferred to Tamms Correctional Center on August 24, 1998 and has remained there continuously through the date of this complaint.

12. Shawn Coates was transferred to Tamms Correctional Center on April 6, 1998 and has remained there continuously through the date of this complaint.

13. Maurice Coleman was transferred to Tamms Correctional Center on April 13, 1998 and has remained there continuously through the date of this complaint.

14. Kennard Combs was transferred to Tamms Correctional Center on September 3, 1998, and has remained there continuously through the date of this complaint.

15. Richard Flood was transferred to Tamms Correctional Center on September 9, 1998 and has remained there continuously through the date of this complaint.

16. Larry Foutch was transferred to Tamms Correctional Center on August 24, 1998 and has remained there continuously through the date of this complaint.

17. Mark Freeman was transferred to Tamms Correctional Center on March 30, 1998 and has remained there continuously through the date of this complaint.

18. Larry Gambrell was transferred to Tamms Correctional Center on March 24, 1998 and has remained there continuously through the date of this complaint.

19. John Gill was transferred to Tamms Correctional Center on July 6, 1998 and has remained there continuously through the date of this complaint.

20. Timothy Hall was transferred to Tamms Correctional Center on April 15, 1998 and has remained there continuously through the date of this complaint.

21. Michael Johnson was transferred to Tamms Correctional Center on April 1, 1998 and has remained there continuously through the date of this complaint.

22. Theodore Knox was transferred to Tamms Correctional Center on August 24, 1998 and has remained there continuously through the date of this complaint.

23. Jose Martinez was transferred to Tamms Correctional Center on April 2, 1998 and has remained there continuously through the date of this complaint.

24. Victor Pinto was transferred to Tamms Correctional Center on September 3, 1998 and has remained there continuously through the date of this complaint.

25. Milton Pope was transferred to Tamms Correctional Center on March 16, 1998 and has remained there continuously through the date of this complaint.

26. Vincent Reyna was transferred to Tamms Correctional Center on April 9, 1998 and has remained there continuously through the date of this complaint.

27. Tyshawn Ross was transferred to Tamms Correctional Center on April 27, 1998 and has remained there continuously through the date of this complaint.

28. Jimmy Santiago was transferred to Tamms Correctional Center on March 23, 1998 and has remained there continuously through the date of this complaint.

29. Brian Smith was transferred to Tamms Correctional Center on August 25, 1998 and has remained there continuously through the date of this complaint.

30. Joseph Sorrentino was transferred to Tamms Correctional Center on March 12, 1998 and has remained there continuously through the date of this complaint.

31. Michael Sparling was transferred to Tamms Correctional Center on August 25, 1998 and has remained there continuously through the date of this complaint.

32. Antonio Triplett was transferred to Tamms Correctional Center on March 26, 1998 and has remained there continuously through the date of this complaint.

33. Mark Von Perbandt was transferred to Tamms Correctional Center on April 22, 1998 and has remained there continuously through the date of this complaint.

34. Kevin Wallace was transferred to Tamms Correctional Center on April 4, 1998 and has remained there continuously through the date of this complaint.

35. Joseph Watkins was transferred to Tamms Correctional Center on August 31, 1998 and has remained there continuously through the date of this complaint.

36. Robert Westefer was transferred to Tamms Correctional Center on August 28, 1998 and has remained there continuously through the date of this complaint.

37. Tamms Correctional Center, where all plaintiffs are currently confined, is located in Alexander County, Illinois.

38. Defendant Donald N. Snyder, Jr. is the Director of the Illinois Department of Corrections. The principal office of the Illinois Department of Corrections is located in the County of Sangamon, Illinois and, upon information and belief, defendant is a resident of Sangamon County.

39. In his capacity as the Director of the Illinois Department of Corrections, defendant is responsible for the approval of all rules and regulations of the Department, and responsible for ensuring that all Departmental employees comply with applicable state law and administrative regulations and, in particular, promulgated the Renunciation policy (as described below). Further, defendant is responsible for ensuring that inmates in Administrative Detention status at Tamms Correctional Center receive timely review hearings. He is sued in his official capacity.

Description Of The Plaintiff Class

40. Plaintiffs seek to represent a class consisting of all inmates who are currently or may in the future be (a) confined to Tamms Correctional Center, (b) in Administrative Detention status, and (c) have been in such status for at least one year.

41. The plaintiff class consists of two sub-classes. The first sub-class, referred to herein as Class A, consists of those plaintiffs who have not had their one year review hearing at all. The second sub-class, referred to herein as Class B, consists of those plaintiffs who have appeared before the Transfer Review Committee in a timely manner, but who did not receive a timely decision as to their continued placement at Tamms.

42. There are currently over 100 inmates confined to Tamms Correctional Center in Administrative Detention status. Plaintiffs do not know the number of inmates who are members of Class A and Class B; however, upon information and belief each class contains at least 35 people.

43. Joinder of all inmates who are or will become members of the plaintiff class is impracticable.

44. The questions of fact and law which are common to the class predominate any questions affecting individual members of the class.

45. The named plaintiffs will fairly and adequately protect the interest of the class.

46. A class action is an appropriate method for the fair and efficient adjudication of the claims herein.

Tamms Correctional Center

47. Tamms Correctional Center is the highest security prison operated by the Illinois Department of Corrections ("IDOC"). It is located in the Village of Tamms in Alexander County, in the very southern most portion of the State of Illinois. It is located approximately 370 miles from the City of Chicago, where the families of the majority of inmates reside.

48. Tamms was opened on March 9, 1998. It is designed to hold approximately 500 inmates, but has never in fact held more than its current population of approximately 275 inmates.

49. Tamms is designed to be extremely harsh. IDOC officials have stated that they want conditions at Tamms to be so bad that inmates throughout the system are motivated to follow all departmental rules based upon the mere threat of being transferred to Tamms.

50. The conditions of confinement at Tamms present inmates with atypical and significant hardships in relation to the ordinary incidents of prison life, including the hardships imposed at the most restrictive segregation units in Illinois' maximum security prisons. At Tamms, control and punishment are imposed through extreme social isolation, severely restricted movement, and an environment that virtually eliminates all external stimuli.

51. Tamms consists of eight self-contained cell blocks, called pods, each holding six wings of 10 cells. A centralized control booth operates all lights and doors and the water supply; video cameras provide visual surveillance; intercoms provide communication between inmates and guards without human contact, and allow guards to eavesdrop on inmates.

52. To restrict the movement of inmates, each pod is a self-contained living unit that includes an exercise area, a shower, a room containing a few law books, and a multi-purpose room which is used by the medical staff, all controlled from the central control booth. Movement between pods is through an underground tunnel.

53. At Tamms, each inmate spends between 23 and 24 hours a day, seven days a week, in a single 70 square foot concrete cell. Each cell contains only a concrete bed, a stainless steel combination sink and toilet, a mirror, a shelf, and two boxes for storing personal property. As is explained below, most inmates are not permitted a television, radio, or cassette player. Each cell has a narrow window placed high on the wall from which it is impossible for inmates to see anything unless they stand on their bed. The cell door is made of steel mesh that is difficult to see through. Located at the bottom of the door, a few feet off the ground, is a slot (sometimes referred to as a chuckhole) which is used to pass food to the inmates. It is locked from the outside. The inmates' view through the steel mesh of their cell door is of a plain concrete wall. Inmates cannot see each other.

54. Inmates do not leave these cells for meals, which are served on plastic trays pushed through the chuck hole. The trays and all utensils must be placed back in the chuck hole by the inmate within 30 minutes of being served. Inmates do not leave to visit with other inmates.

Inmate contact with each other is strictly forbidden. Inmates do not leave their cells for communal religious services, educational programs, or jobs, none of which exist at Tamms. Those inmates who can read (and many cannot) are permitted a limited number of books in their cells. Most inmates cannot listen to the radio or watch television as those are privileges allowed only to those inmates in AD¹ status who have advanced to behavioral level three.

55. Inmates cannot socialize or communicate with other prisoners, except by yelling into the pod, where the extreme echoing effect makes it extremely difficult to hear and virtually impossible to understand. In addition, on many wings, one or more prisoners scream or bang on cell walls throughout the day and night, so that other inmates cannot sleep.

56. The only time inmates regularly leave their cells is to exercise or take a shower. Depending on an inmate's status, these are permitted one to four times a week. Occasionally, they may use the law books or see a social worker, both within the pod. Very rarely are they permitted to travel outside the pod to the health care unit or the visitor's room. At no time are two or more inmates on a wing allowed outside of their cells at the same time.

57. Whenever an inmate leaves his cell for any purpose except exercise and shower, and each time he returns, he must submit to a full body cavity search. First, he removes his clothes and hands them to the guard. Standing naked, he must display his ears, feet, and hands. Then he must bend over, his back to the guard, and spread his buttocks. He must raise his penis so the guards can examine his testicles. He may be ordered to expose the groove around the tip of his penis or, if not circumcised, to pull back the foreskin.

58. After dressing, he must back up to the cell door and place his hands through the chuck hole where the guard handcuffs them. The inmate then must kneel or lie on the floor while the guard shackles his ankles. Throughout this procedure, the guard wears latex or leather gloves to ensure that the inmate never has any human contact. If the inmate moves outside of his pod,

¹ Administrative Detention. The different categories of inmates are described in paragraphs 63-65, below.

he is surrounded by two or three guards, who place their arms on his chest and shoulders and his movements may be tracked by a guard with access to a semi-automatic rifle. These punitive and humiliating exchanges are the only time a Tamms inmate feels another person's touch, except when he is examined by a doctor. Even such examinations usually take place while the inmate's legs are shackled and his arms may be held by guards.

59. On some days, inmates are allowed out of their cells for an hour to exercise and shower. Inmates in the most restricted categories² are permitted one hour of yard and one shower per week. Inmates in the most liberal categories are permitted seven hours of yard and five showers per week. Exercise takes place in a concrete "yard", about 15 by 30 feet, located at the end of each pod. The yard is completely empty; it contains no recreation equipment, no drinking fountain, and no toilet. The walls are solid concrete. A stainless steel plate covers two thirds of the yard; the remaining one third is steel mesh. The view through the steel mesh is often an inmate's only glimpse of natural light and the outside world. Many inmates go for weeks without leaving their cells to exercise because their privileges have been removed for disciplinary reasons.

60. An inmate's contact with friends and family is infrequent, uncomfortable, and without physical contact. Telephone calls are prohibited, except in the case of documented emergencies (however, even family members' fatal illnesses are not considered emergencies). Visits are cumbersome, short, expensive for the visitor, and inhospitable. Each visit must be arranged at least two weeks in advance for a specific time. The visit is forfeited if the visitor is late. As Tamms is approximately 370 miles from Cook County, and an hour's car ride from the nearest train station or airport, timely arrival is difficult and the trip is expensive. Visits last no longer than two hours. A thick glass shield separates the visitor from the inmate. All communication is through a microphone that distorts voices and cuts off all conversation if more than one person tries to talk at once. All such conversations are monitored by the guards. Both the visitor and the inmate must sit on steel stools which are attached to the floor too far from the

² The behavioral levels which govern privileges are explained in paragraphs 63-65.

glass shield for conversation to be comfortable. The inmate's legs are chained to a bolt in the floor. If the inmate is in segregation, he is handcuffed.

61. Communication with religious personnel is similarly restricted and is not confidential. There is no provision for confidential confessions and it is extremely difficult to arrange for the taking of sacrament.

62. Communication between inmates and attorneys is also severely restricted. Inmates are not permitted to initiate calls to their attorneys. Rather, attorneys must request, in writing, that the inmate be permitted to call. Unless the attorney can convince Tamms' staff that the communication cannot be in writing or in person, permission for a legal call will be denied. If an attorney does visit an inmate in person, the visit is through the same thick glass plate described above and the conversation is monitored by guards. There is no facility available for confidential communication. Written communications from attorneys are theoretically confidential; however, inmates' cells are searched frequently and during such a search all papers, including confidential legal correspondence, are examined.

63. Inmates at Tamms are divided into two categories. Inmates who have been found guilty of a disciplinary violation and sentenced to segregation at another prison prior to being transferred to Tamms are held in segregation status. Inmates in segregation status who are transferred to Tamms do not receive any hearing or opportunity to contest their placement at Tamms. They are not even provided a reason for their transfer to Tamms. When an inmate completes his segregation sentence, he has the right to appear before the transfer review committee to determine whether continued placement at Tamms in AD status is appropriate.

64. All other inmates at Tamms are in Administrative Detention ("AD") status. Administrative Detention is not related to any specific disciplinary violation by an inmate. Rather, an inmate is placed in AD status based upon a generalized determination by the IDOC that the inmate is a danger to the safety and security of staff or inmates, or other similar reasons. An inmate transferred to Tamms in AD status is entitled to a hearing within 10 days of his transfer

before a transfer review committee at which time he may make an oral statement, but has no right to review the evidence relied upon or to call witnesses or present documents to support his contention that he should not have been transferred to Tamms.

65. When an inmate enters Tamms in AD status he is placed in behavioral level one. His behavioral level is reviewed every 90 days and, if the IDOC determines that his behavior has improved, he is promoted to behavioral level two and thereafter to behavioral level three, the highest level. Each promotion gains an inmate additional privileges, such as an expanded list of commissary items, additional shower and yard time, and the right to purchase audio visual equipment.

Administrative Detention Review Process

66. Pursuant to 730 ILCS 5/3-2-2, the Illinois Department of Corrections has issued certain regulations governing the operation of Tamms Correctional Center (20 Illinois Administrative Code Section 505).

67. Section 505.70(a) provides, in pertinent part:

The Transfer Review Committee shall review the record of each committed person in administrative detention at the Tamms Correctional Center every 90 days to determine whether continued placement is appropriate.

68. Section 505.70(b) provides, in pertinent part:

A hearing shall be held every year in accordance with Section 505.60 to determine whether continued placement in Administrative Detention in the Tamms Correctional Center is appropriate.

Section 505.60 establishes the procedures by which this hearing is to be held, including an opportunity for the inmate to appear in person. Section 505.60 further provides that the hearing should be conducted within 10 days of the inmate's placement at Tamms.

69. On August 1, 1999, defendant promulgated Administrative Directive 05.12.110, which provided, among other things, that an inmate at Tamms who the IDOC has "validated" as a member of a gang (now referred to as a "security threat group"), "must renounce [gang]

affiliation in accordance with Administrative Directive 05.08.105 to become eligible for release from closed maximum security status...". A copy of AD 05.12.110 is attached as Exhibit One.

70. On November 1, 1999, defendant promulgated Administrative Directive 05.08.105 ("the Renunciation policy"), a copy of which is attached as Exhibit Two.

71. Inmates at Tamms (including each of the named plaintiffs) were not permitted to have a copy of either AD 05.08.105 or AD 05.12.110. Rather, beginning on or about November 23, 1999, officials at Tamms distributed Warden's Bulletin 99-150 (attached as Exhibit Three) and read (but refused to provide a copy of) Exhibit A to AD 05.08.105.

72. Pursuant to the Renunciation policy, defendant requires that in order to be eligible for transfer from Tamms, an inmate must both renounce any intent to associate with other gang members in the future and provide information regarding the structure and activities of the gang with which he was alleged associated.

73. Renunciation involves two steps. First, an inmate must agree to renounce. After an inmate agrees, then he must participate in an interview with staff from Internal Affairs or the IDOC's gang unit during which he is required to provide detailed information regarding his activities and the activities of other gang members.

74. After an inmate renounces, defendant (or another employee acting under defendant's direction) decides whether the renunciation is sincere.

75. If an inmate refuses to renounce, or if it is decided that his renunciation is not sincere, then the inmate is not eligible for transfer from Tamms.

76. Renunciation, in many cases, requires that an inmate admit to participation in criminal activities, or to membership in a conspiracy involving criminal conduct by other inmates or non-inmates.

77. Inmates are not provided with immunity from criminal prosecution based upon any statements they make during their renunciation interview.

78. Inmates are not provided or permitted counsel during their renunciation interview.

79. There are no publicly available criteria governing the Department's decision regarding validation of whether an inmate is a gang member, and thus subject to the Renunciation policy. Such determinations are, upon information and belief, generally based on hearsay or information provided by unidentified informants of questionable reliability.

80. An inmate who is wrongfully identified as a gang member cannot honestly comply with the Renunciation policy.

81. An inmate who is a gang member would be at great personal risk of retaliation from other gang members should it become known that he renounced.

82. The family of an inmate who renounces would be at great risk of retaliation from other gang members should it become known that the inmate renounced.

83. Each of the plaintiffs was denied transfer following his annual review hearing based, in substantial part, upon a finding by the defendant that he had not complied with the Renunciation policy.

84. But for the Renunciation policy, each of the plaintiffs, upon information and belief, would have been transferred from Tamms.

Exhaustion Of Administrative Remedies

A.

Timely Review Hearings

85. Plaintiffs have requested that the Department hold one year review hearings or, in the case of the members of Class B, have requested rulings.

86. Plaintiffs Clark, Foutch, Gambrell, Gill, Hall, Knox, Reyna, Ross, Santiago, Sorrentino, Triplett, Von Perbandt, and Watkins all filed grievances complaining of defendant's failure to hold timely hearings or issue timely decisions. In each case, defendant or his agents ruled that either it was not a grievable issue or that the regulation did not require that hearings be held early year that one spends in Tamms; rather, hearings need only be held every calendar year.

In other words, according to defendant, an inmate who arrived at Tamms on the first day it opened (March 9, 1998), was not entitled to a hearing until December 31, 1999, over 21 months later.

87. In defendant's motion to dismiss plaintiffs' complaint in this case, defendant adopted the same position.

88. There is a clear controversy between the parties regarding the interpretation of Section 505.70 of Title 20 of the Illinois Administrative Code.

B.

Renunciation Policy

89. The question of whether the Renunciation policy violates state or federal law is not a grievable issue.

90. In the alternative, plaintiff Joseph Watkins filed a grievance on December 1, 1999 challenging the legality of the Renunciation policy. That grievance was finally denied by the Administrative Review Board and the defendant on or about February 25, 2000.

Harm To Plaintiffs

91. Confinement at Tamms Correctional Center is significantly more onerous than confinement in any other prison operated by the Illinois Department of Corrections in the State of Illinois.

92. The restrictions at Tamms are far more onerous than those in place at any other institution operated by the Illinois Department of Corrections.

93. As a result of their continued placement at Tamms Correctional Center, plaintiffs' physical and mental health has deteriorated and will continue to deteriorate.

94. There is a genuine dispute between plaintiffs and defendant regarding the interpretation of Section 505.70 Title 20 of the Illinois Administrative Code and the legality of the Renunciation policy which is ripe for decision.

95. Plaintiffs have no adequate remedy at law and will suffer continuing harm absent relief from the Court.

COUNT ONE

Defendant's Failure To Hold Timely Hearings Violates The Applicable Sections Of The Illinois Administrative Code

96. Plaintiffs reallege paragraphs 1 through 95 as if they were set forth in full in this Count One.

Defendant's Failure To Hold Timely Hearings

97. The first inmates in Administrative Detention status were transferred to Tamms in March, 1998.

98. During the two years which Tamms has been open, the transfer review committee has never held 90 day reviews to determine whether continued placement at Tamms is appropriate. Rather, defendant has promulgated an unwritten rule that inmates must remain at Tamms a minimum of one year before being considered for transfer and will only be considered for transfer once a year.

99. Instead of reviewing the appropriateness of continued placement at Tamms, the 90 day reviews have instead been used to review an inmate's disciplinary record at Tamms in order to determine his behavioral level (and thus what privileges he will be entitled to).

100. Beginning in March, 1999, and continuing until approximately July, 1999, the Department held hearings in accordance with Section 505.60 approximately one year after inmates were transferred to Tamms.

101. Beginning in late July or early August, 1999, the Department stopped holding such hearings and, upon information and belief, no one year review hearings have been held at any time during the last 60 days.

102. Plaintiffs, Johnny Almodovar, Isiah Bell, Cornelius Burns, Roosevelt Burrell, Gary Clark, Kennard Combs, Richard Flood, Larry Foutch, John Gill, Theodore Knox, Victor Pinto, Brian Smith, Michael Sparling, Antonio Triplett, Joseph Watkins and Robert Westefer, were confined in Administrative Detention status at Tamms Correctional Center in excess of one year

without having appeared before the Transfer Review Committee for their one year review hearings as required by Section 505.70.

103. Upon information and belief, defendant has ordered that no more hearings be held as he has not yet formulated and approved standards which would be applied at such hearings.

Failure To Timely Rule

104. Plaintiffs Hernandez Bailey-El, Pablo Barrara, Aryules Bivens, Ned Brooks, Shawn Coates, Maurice Coleman, Mark Freeman, Larry Gambrell, Timothy Hall, Michael Johnson, Jose Martinez, Milton Pope, Vincent Reyna, Tyshawn Ross, Jimmy Santiago, Joseph Sorrentino, Mark Von Perbandt, and Kevin Wallace have had one year review hearings on dates ranging from March 2, 1999 to July 20, 1999.

105. These plaintiffs waited until December, 1999, or January, 2000, before they received a decision regarding their continued placement at Tamms.

106. Defendant only held hearings and issued decisions after this case was filed.

WHEREFORE, plaintiffs request that the Court enter:

A. A declaratory judgment holding that defendant's failure to hold timely one year review hearings and issue timely decisions constitutes a violation of 20 Ill. Admin. Code 505.70;

B. An injunction requiring the defendant to provide plaintiffs with timely one year review hearings, issue timely decisions, or, in the alternative, release plaintiffs from Tamms; and

C. Such further relief as the Court deems just and equitable.

COUNT TWO

**CONFINEMENT OF PLAINTIFFS TO TAMMS IN AD STATUS
VIOLATES THE UNIFIED CODE OF CORRECTIONS**

107. Plaintiffs reallege paragraphs 1 through 95 as if they were set forth in full in this Count Two.

108. The operation of Tamms, like every other prison operated by the IDOC, is governed by the provisions of the Unified Code of Corrections ("the Code"), 730 ILCS 5-1-1-1, *et seq.*

109. Section 3-8-7(a) of the Code provides that inmates only may be disciplined for violation of rules which are available to all inmates.

110. Section 3-8-7(e) of the Code establishes the procedures required for the imposition of "disciplinary segregation and isolation".

111. No provision of the Code provides for isolation of inmates in AD status.

112. Defendant's confinement of plaintiffs to Tamms violates Section 3-8-7(a) in that plaintiffs were transferred to Tamms for violation of rules which were not available to inmates prior to their transfer.

113. Defendant's transfer of plaintiffs to Tamms violates Section 3-8-7(e) as the hearing procedures set forth therein were not followed.

114. As a result of defendant's violation of the Code, each of the plaintiffs has been subjected to onerous conditions of confinement far worse than those they would have experienced at any other prison in Illinois.

WHEREFORE, plaintiffs request that the Court enter:

- A. A declaratory judgment holding that defendant's failure to provide plaintiffs with a hearing at which they are charged and found guilty of violating some rule which is available to all inmates violates the Unified Code of Corrections;
- B. An injunction requiring the defendant to transfer plaintiffs out of Tamms; and
- C. Such further relief as the Court deems just and equitable.

COUNT THREE

Defendant's Promulgation Of The Renunciation Policy Violates The Illinois Administrative Procedures Act

115. Plaintiff reallege paragraphs 1 through 95 as if they were set forth in full in this Count Three.

116. The Illinois Administrative Procedures Act, 5 ILCS 100/5-5 ("The APA") requires that all rules of any agency must be adopted pursuant to the procedures set forth in the APA.

117. Section 1-70 of the APA defines "rule" as any "agency statement of general applicability that implements, applies, interprets, or prescribes law or policy...".

118. Section 5-20 of the APA requires that any "rule that implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power."

119. The Renunciation policy applies to all inmates at Tamms and to all prisons operated by the defendant.

120. The Renunciation policy implements a discretionary power to be exercised by the Illinois Department of Corrections regarding the isolation of certain prisoners and operation of a super-maximum security institution (730 ILCS 5/3-2-2(1-5) and (s)).

121. The Renunciation policy was not adopted pursuant to the rule making procedures set forth in the APA.

WHEREFORE, plaintiff request that the Court enter:

- A. A declaratory judgment holding that the Renunciation policy was adopted in violation of the Administrative Procedures Act;
- B. An injunction barring defendant from implementing or enforcing the Renunciation policy and, in particular, from using an inmate's failure to renounce in any way in determining whether his continued placement at Tamms is appropriate; and
- C. Such further relief as the Court deems just and equitable.

COUNT FOUR

The Renunciation Policy Violates The *Ex Post Facto* Clause Of The State And Federal Constitutions

122. Plaintiffs reallege paragraphs 1 through 95 as if they were set forth in full in this Count Four.

123. Prior to 1996, the Illinois Department of Corrections recognized gangs. The Department actively sought the cooperation of the leaders of such groups. During this period, no disciplinary action was taken against inmates for being members of these groups. The Department

cooperated in allowing gang members to cell together, by allowing leaders to make cell assignments, and leaders of the groups were accorded other special privileges.

124. Confinement to Tamms Correctional Center constitutes a severe punishment.

125. The Renunciation policy punishes inmates for activities which, at the time they were taken, were not a violation of any rule of the Department and were, to the contrary, encouraged by the Department.

126. By punishing plaintiffs for activities which, at the time, were approved by the Department, defendant has violated the prohibition against *ex post facto* laws and punishments of Article I, Section 9, as made applicable to the States by the Fourteenth Amendment, of the Constitution of the United States, and of Article I, Section 16 of the Constitution of the State of Illinois.

127. As a result of defendant's enforcement of the Renunciation policy, each of the plaintiffs has been and continues to be subjected to onerous conditions of confinement far worse than those they would have experienced at any other prison in Illinois.

WHEREFORE, plaintiffs request that the Court enter:

- A. A declaratory judgment holding that the Renunciation policy violates the *ex post facto* clauses of the federal and state constitutions;
- B. An injunction barring defendant from enforcing the Renunciation policy and from considering whether plaintiffs renounced in determining whether their continued placement at Tamms is appropriate; and
- C. Such further relief as the Court deems just and equitable.

COUNT FIVE

The Renunciation Policy Violates The Prohibitions Against Self Incrimination Contained In The Federal And State Constitutions

128. Plaintiffs reallege paragraphs 1 through 95 as if they were set forth in full in this Count Five.

129. In order to comply with the Renunciation policy, plaintiffs may be required to provide information which could be used in criminal prosecution against them.

130. Failure to comply with the Renunciation policy will lead to indefinite confinement at Tamms, ending only upon expiration one's sentence or, in the case of those plaintiffs serving life sentences, death.

131. Continued placement at Tamms constitutes a severe state imposed punishment.

WHEREFORE, plaintiffs request that the Court enter:

- A. A declaratory judgment holding that the Renunciation policy violates the prohibition against self incrimination contained in the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 2 and 10 of the Illinois Constitution;
- B. An injunction barring defendant from enforcing the Renunciation policy and from considering whether plaintiffs renounced in determining whether their continued placement at Tamms is appropriate; and
- C. Such further relief as the Court deems just and equitable.

COUNT SIX

The Renunciation Process Violates The Procedural Due Process Guarantees Of The Federal and State Constitutions

132. Plaintiff reallege paragraphs 1 through 95 as if they were set forth in full in this Count Six.

133. Transfer to and continued confinement at Tamms subjects plaintiffs to atypical and significant hardships in relation to the ordinary incidents of prison life and to hardships which are not experienced at the most restrictive segregation unit at any of the maximum security prisons in Illinois.

134. Plaintiffs were not provided with an opportunity for a hearing which met the minimum requirements of procedural due process in order to challenge their validation as members of a gang and therefore the application of the Renunciation policy to them.

135. The Renunciation policy does not provide plaintiffs with advanced notice of the charges against them or the evidence upon which the Department relied in validating them as gang

members, nor with an opportunity to call witnesses, present documentary evidence, or otherwise prove that they are not members of a gang.

136. Continued confinement of plaintiffs to Tamms without an opportunity for a hearing to challenge the application of the Renunciation process violates the due process guarantees of the federal and state constitutions.

137. As a result of defendant's violation of plaintiffs' due process rights, each of the plaintiffs has been and continues to be subjected to onerous conditions of confinement far worse than those they would have experienced at any other prison in Illinois.

WHEREFORE, plaintiffs request that the Court enter:

- A. A declaratory judgment holding that the Renunciation policy violates the guarantee of procedural due process contained in the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Illinois Constitution;
- B. An injunction barring defendant from enforcing the Renunciation policy and from considering whether plaintiffs renounced in determining whether their continued placement at Tamms is appropriate; and
- C. Such further relief as the Court deems just and equitable.

COUNT SEVEN

The Renunciation Process Violates The Substantive Due Process Guarantees Of The Federal and State Constitutions

138. Plaintiffs reallege paragraphs 1 through 95 as if they were set forth in full in this Count Seven.

139. By fostering gang membership in the years prior to 1996, the Illinois Department of Corrections has created a situation whereby inmates who inform on other gang members will be in danger of a violent attack on themselves or their families.

140. By publicly announcing that any inmate who is transferred out of Tamms must have successfully completed the Renunciation process, defendant has effectively labeled any inmate transferred from Tamms as an informer.

141. The Renunciation policy places plaintiffs in danger of harm as a result of affirmative actions taken by the state.

142. The Renunciation policy violates the protection against being subjected to state created dangers in violation of the substantive due process guarantees of the federal and state constitutions.

WHEREFORE, plaintiffs request that the Court enter:

- A. A declaratory judgment holding that the Renunciation policy violates the guarantee of substantive due process contained in the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Illinois Constitution;
- B. An injunction barring defendant from enforcing the Renunciation policy and from considering whether plaintiffs renounced in determining whether their continued placement at Tamms is appropriate; and
- C. Such further relief as the Court deems just and equitable.

Respectfully submitted,

Attorney for plaintiffs

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Certificate of Service

I, Alan Mills, an attorney, hereby certify that I served a copy of the foregoing **Interrogatories** upon:

Randall C. Stauffer
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706

by placing same in the United States Post Office box located at 4400 North Broadway, Chicago, Illinois, at or before 5:00pm on March 21, 2000, with proper first class postage affixed.
