

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THOMAS PUGH, JR., EDWARD HAMIL and  
CLAY CHATIN,

Plaintiffs,

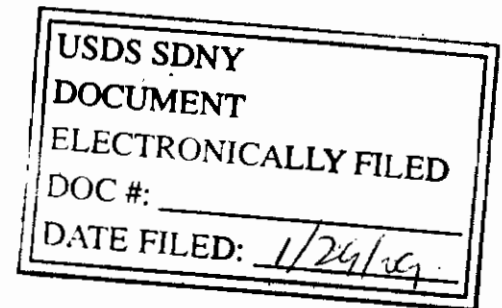
- against -

GLENN S. GOORD, Commissioner of the  
New York State Department of  
Correctional Services; ISMAIL ABDUR  
RAHIM, Ministerial Program  
Coordinator for Islamic Affairs;  
WARITH DEEN UMAR, former Ministerial  
Program Coordinator for Islamic  
Affairs; MUHAMMAD SALIH AHMED, former  
acting Ministerial Program  
Coordinator for Islamic Affairs;  
MARK LENARD, Director of Ministerial  
and Family Services; JOHN R. LoCONTE,  
former Director of Ministerial  
and Family Services; FRANK HEADLEY,  
former Deputy Commissioner for  
Program Services; JOHN NUTTAL, Deputy  
Commissioner for Program Services and  
former Assistant Commissioner for  
Program Services; WILLIAM MAZZUCA,  
Superintendent of Fishkill  
Correctional Facility; ADA PEREZ,  
former Deputy Superintendent for  
Program Services at Fishkill  
Correctional Facility; JIMMIE HARRIS,  
Deputy Superintendent for Program  
Services at Fishkill Correctional  
Facility and former Director of  
Ministerial and Family Services,

Defendants.

No. 00 Civ. 7279 (RJS)

STIPULATION OF SETTLEMENT



PRIVATE SETTLEMENT AGREEMENT

WHEREAS, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the attorneys for Plaintiffs Thomas Pugh, Jr., and Clay Chatin, and Defendants Glenn

S. Goord, Mark Leonard, Frank Headley, John Nuttall, William Mazzucca, Ada Perez and Jimmie Harris ("State defendants"), Defendant John LoConte (Defendant LoConte) and Defendant pro se Warith Deen Umar (Defendant Umar) in their individual and official capacities, and any successors thereto, parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action;

AND WHEREAS, the New York State Department of Correctional Services does not consider, utilize or make religion a factor in any inmate transfer decision;

AND WHEREAS, the above entitled action be and the same hereby is settled on the particular circumstances of this case, on the following terms and conditions, which terms and conditions it is agreed are of and shall have no legal precedential value in any other case either between the parties to this case or any other parties:

1. Plaintiffs discontinue this action with prejudice and discharge and release all State Defendants (Glenn S. Goord, Mark Leonard, Frank Headley, John Nuttall, William Mazzucca, Ada Perez and Jimmie Harris) Defendant John LoConte, and Defendant pro se Warith Deen Umar in their individual and official capacities and their successors or assigns; the State of New York; and New York State Department of Correctional Services, including its agencies, subdivisions, employees, private contractors or assignees, of any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which relate in any way to the subject matter of this action, and further agree to discontinue and/or not commence in any court, arbitration or administrative action, any litigation or claims against State Defendants (Glenn S. Goord, Mark Leonard, Frank Headley, John Nuttall, William Mazzucca, Ada Perez and Jimmie

Harris), Defendant John LoConte and Defendant pro se Warith Deen Umar, the State of New York; and New York State Department of Correctional Services ("DOCS"), pertaining to the underlying facts, circumstances or incidents that gave rise to the aforementioned action, or any results of the aforementioned facts, circumstances or incidents. Notwithstanding any other provision of this agreement, Plaintiffs retain the right to enforce this private settlement agreement.

2. The parties hereto agree that the above captioned action shall be discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

3. Defendants have denied that they violated any constitutional or statutory rights of the plaintiffs and the parties agree that no provision of this private settlement agreement shall be interpreted to be an acknowledgment of the validity of any of the allegations or claims that have been made in the action.

4. This private settlement agreement does not constitute a determination of, or admission by any party to any underlying allegations, facts or merits of their respective positions. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect beyond the specific provisions stipulated to. This private settlement agreement does not form and shall not be claimed as any precedent for, or an agreement by the parties to any generally applicable policy or procedure in the future.

5. Following the execution of this private settlement agreement, and its being approved by the Court, DOCS shall accommodate the plaintiffs by affording them an alternative Shiite Muslim Jumah service pursuant to the following procedures and conditions hereinafter enumerated, in a manner which is intended to preserve and foster the legitimate penological interests of DOCS and the State of New York, so as to preserve the safety and security of staff and inmates alike:

- a. Any and all volunteer Shiite imams or inmate facilitators who officiate at the alternative Shiite Jumah service hereinabove described shall be designated and approved pursuant to all applicable DOCS' rules, regulations, directives and procedures relating to the recruitment and employment of outside volunteer religious chaplains or such facilitators. However, DOCS reserves the absolute right to direct that its Central Office Shiite Chaplain shall conduct the alternative Shiite Jumah service hereinabove described at a designated facility.
- b. The inmates who wish to avail themselves of the alternative Shiite Jumah service hereinabove described, including but not limited to the Plaintiffs, must have self-identified themselves as Shiite Muslims pursuant to DOCS' rules, regulations, directives, and procedures governing an inmate's self-identification of their religion. Notwithstanding the provisions of DOCS' Directive # 4202, all inmates presently identified as Muslims at a facility where Plaintiffs are presently confined shall have the right to identify themselves as Shiite Muslims within sixty days of the execution of this agreement and its approval by the Court. A new sixty-day period as described herein will commence at any facility to which a plaintiff is transferred within 48 hours of Plaintiff's arrival at that new facility. Following the sixty-day period, the provisions of DOCS Directive # 4202 shall govern.
- c. In order for the alternative Shiite Jumah service, as hereinabove described, to be scheduled and conducted, a minimum of five (5) self-identified Shiite Muslims, including one or more of the Plaintiffs and including the imam, if present, or in the alternative, an inmate facilitator, must be available and desirous of availing

themselves of the alternative Shiite Jumah service.

- d. An inmate's right to avail himself of and participate in the alternative Shiite Jumah service shall always be governed and restricted by DOCS' generally applicable rules, regulations, and directives relating to, but not limited to, religious programing, special housing assignments, protective custody assignments, administrative segregation assignments, a facility lockdown situation, and any and all legitimate penological needs intended to preserve the safety and security of the correctional facility.
- e. DOCS shall have the exclusive and absolute right to designate an appropriate space, which shall be distinct from the existing facility masjid, for the conduct of the alternative Shiite Jumah service hereinabove described, which shall occur during the same general time period as the regular Friday facility Jumah service at the facility masjid. Consistent with facility needs and generally applicable directives and regulations, DOCS shall use its best efforts to designate a space that can reasonably accommodate the number of self-identified Shiites at each facility where the alternative Shiite Jumah service is held.
- f. The individual Plaintiffs herein may avail themselves of the terms of this agreement in the facility in which they are assigned or may in the future be assigned pursuant to their present sentence of imprisonment or a re-incarceration, within the three-year term of this agreement, pursuant to a parole violation related to the present sentence of incarceration.
- g. The terms of the agreement are unique and limited to the Plaintiffs herein and may

not endure or pass by assignment or custom to any other party or person. Only the Plaintiffs named in this agreement shall have standing to seek enforcement of any of the terms and conditions of this agreement, which does not confer, and is not intended to confer rights on any other party.

h. This agreement in no way limits the authority or ability of DOCS to make penological decisions regarding, but not limited to, an inmate's Security Level, Facility Assignment and Transfer, and/or Institutional Programming and/or the safety of staff and inmates.

i. The term of this private settlement agreement shall be for three years (3) following its execution, approval by the Court and filing of the stipulation of discontinuance herein; however, in the event DOCS determines to discontinue the alternative Shite Jumah service for any of the Plaintiffs herein upon the expiration of the three-year period herein above recited, DOCS will provide that plaintiff with no less than 60 days notice of that intention together with a brief written statement of the reason.

j. The parties hereto specifically agree that each shall bear all costs, attorney's fees and expenses incurred in connection with this litigation.

6. All claims for monetary damages (except as specified in paragraph 10 through 13, herein) and attorney's fees, costs and disbursements of any kind against State Defendants (Glenn S. Goord, Mark Leonard, Frank Headley, John Nirtall, William Mazzucca, Ada Perez and Jimmie Harris), Defendant John LoConte (Defendant LoConte) and Defendant pro se Warith Deen Umar (Defendant Umar), the State of New York, and New York State Department of Correctional Services and any of its personnel, pertaining to the underlying facts, circumstances or incidents that gave rise

to the aforementioned action, or any results of the aforementioned facts, circumstances or incidents are hereby waived;

7. This private settlement agreement is subject to and its enactment contingent upon the simultaneous resolution of Orafan, et al. v. Fischer, et al., 95-Civ.-0318 (PAM) (GJD), Northern District of New York, upon terms agreed upon by counsel for all parties;

8. This agreement is a private settlement agreement within the meaning of 18 U.S.C. § 3626, and shall not be deemed to grant "prospective relief" within the meaning of said Section 3626. Nor shall this agreement be deemed to constitute a consent decree or an adjudication on the merits. Neither this agreement, nor any policies or procedures established thereunder, shall define any state or federal constitutional rights, be deemed an admission, or a waiver of sovereign immunity or Eleventh Amendment protection. Moreover, none of the parties will contend that any of the provisions, policies, procedures, and goals stated herein define clearly established constitutional rights of inmates or create any private right of action against the State of New York, its agents, employees, or representatives. This agreement in no way waives or otherwise affects, limits, or modifies the obligations of inmates to comply with the exhaustion requirements of the Prison Litigation Reform Act, DOCS' directives and regulations, or any current or future state or federal law governing the rights and obligations of incarcerated persons. Nothing in this agreement shall be deemed to limit any existing authority of DOCS to transfer inmates to other state or federal jurisdictions. Moreover, nothing in this agreement shall be deemed to require or permit the Defendants to violate the laws of the State of New York or the United States, or to violate any terms or conditions of any collective bargaining agreement to which DOCS or the State of New York is a party. The Defendants are not aware of any conflict between any of the provisions of this

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agreement and any such law or collective bargaining agreement referred to in this paragraph.

9. This private settlement agreement embodies the entire agreement of the parties in this matter and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this private settlement agreement and its approval by the Court regarding the subject matter of the instant proceedings, shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

10. In addition to the above, Plaintiff Thomas Pugh, Jr., shall be paid the sum of \$ 3,000, for deposit in his inmate account, in full satisfaction of any and all claims for relief in this Action, including any claims for attorney's fees, costs and disbursements of any kind and Plaintiff Clay Chatin, shall be paid the sum of \$3,000, through his attorney, in full satisfaction of any and all claims in this Action including any claims for attorney's fees, costs and disbursements of any kind.

11. In consideration of the payment of the sums recited in paragraph #10 above, the Plaintiff Thomas Pugh, Jr., and the Plaintiff Clay Chatin, hereby release and discharge each of the Defendants and any and all current or former employees or agents of New York State or the New York State Department of Correctional Services, in their individual and official capacities, and their heirs, executors, administrators and assigns, and the State of New York and its agencies, including, without limitation, the New York State Department of Correctional Services, from any and all claims, liabilities and causes of action which Plaintiffs or Plaintiffs' representatives, heirs or assigns ever had, now has or hereafter shall or may have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this stipulation and order, except that plaintiff Thomas Pugh, Jr., does not herein release claims against the State of New York that arise out of one action pending in the Court of Claims of the State of New York, captioned Thomas Pugh,



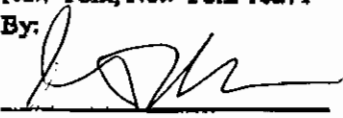
Jr. vs. The State of New York (Court of Claims No. 113488).

12. Payment of the amounts recited in paragraph #10 above is subject to the approval of all appropriate New York State officials in accordance with the provisions for indemnification under Section 17 of the New York Public Officers Law. Plaintiffs and Plaintiffs' counsel agree to execute and deliver to counsel for Defendants all necessary or appropriate vouchers and other documents requested with respect to such payment. The provisions of Chapter 62 of the Laws of 2001 may be applicable to payments by Defendants hereunder.

13. Subject to the provisions of the foregoing paragraphs, in the event payments of the amounts recited in paragraph #10 above are not made within one hundred and twenty (120) days after the receipt by Defendants' counsel from Plaintiffs of a copy of the fully executed So-ordered Stipulation of Settlement as entered by the Court, interest shall accrue on the outstanding principal balance at the rate set forth in 28 U.S.C. § 1961 beginning on the one hundred and twenty-first day after receipt by Defendants' counsel of a copy of the fully executed So-ordered Stipulation of Settlement.

Dated: New York, New York  
January 9, 2009

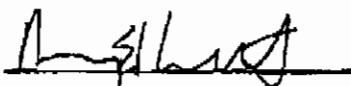
ANDREW M. CUOMO  
Attorney General of the State of New York  
Office of the Attorney General  
Attorneys for State Defendants  
120 Broadway  
New York, New York 10271

By: 

Michael J. Keane  
Assistant Attorney General  
Telephone: (212) 416-8550

Dated: New York, New York  
January 9, 2009  
20

Amy E. Howlett, Esq.  
Aaron O. Lavina, Esq.  
Sullivan & Cromwell  
Attorneys for the Plaintiffs  
125 Broad Street  
New York, New York 10004

By: 

Amy E. Howlett, Esq.  
Telephone: (212) 558-4000

**Michael Keane - Re: Letter to Judge Sullivan re: Pugh Settlement Status**

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**From:** "deenworks@aol.com" <deenworks@aol.com>  
**To:** "Lavine, Aaron O." <Lavinea@sullcrom.com>, "mwalsh.loz4k@gdwo.net" <mwalsh.loz4k@gdwo.net>, "Michael.Keane@oag.state.ny.us" <Michael.Keane@oag.state.ny.us>, "sarah.light@usdoj.gov" <sarah.light@usdoj.gov>  
**Date:** 1/16/2009 9:31 PM  
**Subject:** Re: Letter to Judge Sullivan re: Pugh Settlement Status  
**CC:** "Howlett, Amy" <Howletta@sullcrom.com>

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To all concerned: I understand that the settlement agreement discontinues all legal action against me by the complaining inmates and that I do not have to provide any damages or injunctive relief to them. Under these circumstances I agree to this settlement.

Imam

Warith-Deen Umar dated Jan. 16, 2009

-----Original Message-----

From: Lavine, Aaron O. <Lavinea@sullcrom.com>  
To: 'Mark Walsh' <mwalsh.loz4k@gdwo.net>; deenworks@aol.com <deenworks@aol.com>; Michael.Keane@oag.state.ny.us <Michael.Keane@oag.state.ny.us>; sarah.light@usdoj.gov <sarah.light@usdoj.gov>  
Cc: Howlett, Amy <Howletta@sullcrom.com>  
Sent: Fri, 9 Jan 2009 1:42 pm  
Subject: Letter to Judge Sullivan re: Pugh Settlement Status

Please see attached letter, as delivered to Judge Sullivan this afternoon.

Thank you.

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

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**A Good Credit Score is 700 or Above. See yours in just 2 easy steps!**

Dated: Albany, New York  
January 8, 2009  
26

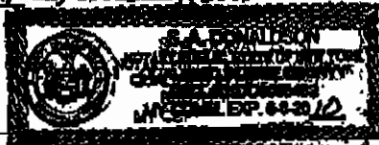
Mark T. Walsh, Esq.  
Gleason, Dunn, Walsh & O'Shea  
Attorney for Defendant John LoConne  
40 Beaver Street  
Albany, New York 12207

By: *Mark T. Walsh*  
Mark T. Walsh  
Telephone: (518) 432-7511

Dated: Gowanda Correctional Facility  
Gowanda, New York  
January 8, 2009  
21

By: *Thomas Pugh, Jr.*  
THOMAS PUGH, JR.

Sworn to before me  
this 21<sup>st</sup> day of January, 2009



January 21, 2009  
*S.A. Donaldson*

Dated: Albany, New York  
January 9, 2009

Warith Deen Umar  
Pro Se  
520 Fuera Bush Road  
Glenmont, New York 12077

By: \_\_\_\_\_  
Warith Deen Umar  
Telephone: (518) 894-4355

Dated: <sup>NY</sup>Brook, New York  
January 9, 2009  
20

By: *Clay Chatin*  
CLAY CHATIN

Sworn to before me  
this 20<sup>th</sup> day of January, 2009

*Francesca Brody*  
FRANCESCA BRODY  
Notary Public, State of New York  
No. 0186178172  
Qualified in New York County  
Commission Expires Oct. 29, 2011



THE COURT APPROVES THIS PRIVATE SETTLEMENT AS TO FORM ONLY AND  
IT IS SO ORDERED:

*Richard J. Sullivan*  
HON. RICHARD J. SULLIVAN  
1/28/09