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NOTICE TO THE PLAINTIFF CLASS

JAMES A. COLLINS, Director,
Texas Department of
Criminal Justice, Insti-
tutional Division, et al.,
Defendants.

PLEASE TAKE NOTICE that pursuant to the stipulation of the parties and the order of the court signed and entered _____ August 20, 1992, the attached proposed Final Judgment has been submitted by agreement of the parties. This notice is being given to you because all prisoners confined in the Texas Department of Criminal Justice Institutional Division ("TDCJ-ID") have been previously determined by the court to be members of the plaintiff class and you therefore have rights which may be affected by the entry of an order approving the proposed Final Judgment. As further explained below under the heading "OBJECTIONS," you (any TDCJ-ID prisoner) have the right to file an objection with the Court if you believe that the proposed Final Judgment is not fair and reasonable to TDCJ-ID prisoners. For your objection to be considered, you have to mail it to the

Court and certain other persons, at the addresses given below, and you have to do this by October 19, 1992

DESCRIPTION OF THE CASE

This action was brought by David Ruiz and other named prisoners of TDCJ-ID, as plaintiffs, on behalf of a class of all TDCJ-ID prisoners. The defendants are James A. Collins, Director of TDCJ-ID, and the members of the Texas Board of Criminal Justice. The United States, through the Civil Rights Division of the Department of Justice, is plaintiff-intervenor (although the United States recently supported defendants' motion for complete relief from all court orders).

The court previously ordered that plaintiffs could maintain this action as a class action on behalf of all TDCJ-ID prisoners. The case proceeded to trial on the merits in 1978 and 1979. On December 12, 1980, the court filed a Memorandum Opinion making findings of fact and conclusions of law on the issues in this action. The court ordered the parties to meet and attempt to agree on a proposed decree. On April 20, 1981, the court approved and entered the Consent Decree by which the parties resolved some of the issues. On the same day the court entered its Decree resolving the issues in the case that the parties could not settle. An Amended Decree was entered on May 1, 1981. On June 23, 1982, the United States Court of Appeals for the Fifth Circuit entered an order affirming in part and vacating in part the Amended Decree.

From 1981 through the present, the Ruiz case has been in its "compliance phase." In this phase, lawyers for the class of prisoners, lawyers for the prison system, the Office of the Special Master, experts and prison officials all have been a part of a process the purpose of which was to reform the prison system and bring it into compliance with the court's decrees. Prisoners familiar with conditions in the 1970's and in the early 1980's know that there has been a substantial transformation in the manner in which the prison system is managed. For example, during the compliance phase, TDCJ-ID created a system to provide medical care for prisoners where one had not existed before. It replaced "inmate guards" or "building tenders" with freeworld employee guards. It replaced a classification system based only on prisoners' age, size, and number of convictions with a more modern system based on many more indicators designed to separate potentially predatory prisoners from potential victims. It installed law libraries on every unit and established rules and regulations that protect prisoners' rights to bring their grievances to courts and public officials. It built outdoor yards and indoor recreation areas and greatly increased prisoners' opportunities for out of cell time. It developed a counsel substitute program. It created a contact visitation program and constructed spaces to permit contact visitation. It created a program to make prisoner work assignments and work areas safer and more healthful (involving, among other things, trained personnel doing inspections and ordering repairs of

dangerous conditions and requiring prisoners to use certain safety equipment on certain jobs). It repaired and renovated buildings. It decreased the population of prison units that existed in 1985. It increased its central management staff and took some discretion from unit wardens by creating system-wide rules.

During the compliance phase, the court entered thousands of pages of orders governing many aspects of TDCJ-ID's operations. For example, the Comprehensive Health Care Plan that the court ordered TDCJ-ID to comply with is itself several hundreds of pages.

In March, 1990, based on evidence of progress towards compliance with the court's orders, the court ordered that the Office of the Special Master close its Houston office and be relieved of the obligation to actively monitor compliance with the court's orders. The court further ordered that the parties attempt to negotiate the terms of a final order that would terminate the court's active intervention in the administration of Texas state prisons. Those negotiations have produced the proposed Final Judgment that has been submitted by the parties for the court's approval.

THE PROPOSED FINAL JUDGMENT

The full text of the proposed Final Judgment is printed below. To fully understand what it says, you should read both this summary and the full text below.

The proposed Final Judgment brings active federal court supervision of Texas state prisons under the Ruiz case to an end. Under Sections XV and XVI of the proposed Final Judgment, unless something unexpected happens that results in a further court order, the Office of the Special Master and the court-appointed lawyers who have been representing the plaintiff class of prisoners will be relieved of all of their duties by June 1, 1993. They will be relieved of some of their duties before June 1, 1993. After June 1, 1993, the only Ruiz orders that will exist are the provisions of the proposed Final Judgment that are marked with an asterisk (*) in the full text of the Final Judgment which is printed below. These provisions will remain in effect unless and until there is a future court order changing that. For this to happen, there would have to be a motion by a party (the prison system or the prisoners). The court would base its ruling on any such motion on the facts on which the motion was based and the governing federal law.

Though the proposed Final Judgment, if approved by the court, will relieve TDCJ-ID of most currently existing Ruiz court orders, TDCJ-ID will continue to operate under its own systematically developed rules, regulations, policies and practices in all areas of its operations. And though the proposed Final Judgment, if approved by the court, will terminate the monitoring that has been carried out by the Office of the Special Master and attorneys representing the class of all TDCJ-ID prisoners, subsection XVII requires TDCJ-ID to continue

to employ its own staff "to ensure effective monitoring of all TDCJ-ID rules, regulations, policies and practices related to each area addressed by the Final Judgment." (The proposed Final Judgment addresses every area of prison operations that has been a subject of the Ruiz case.)

Section XXII of the proposed Final Judgment provides that any action to enforce the Final Judgment be brought in the United States District Court for the Southern District of Texas.

The proposed Final Judgment is organized by subjects (for example, classification and medical care). It replaces all other orders in Ruiz, which means that the only Ruiz order that will exist if the proposed Final Judgment is entered is the Final Judgment itself. (Three orders affecting only prisoner witnesses in proceedings prior to April, 1982, are also left in place.) What follows is a summary of the provisions of the proposed Final Judgment on a subject-by-subject basis.

STAFFING

Current orders require a staffing ratio of one employee for every six prisoners, and require specific numbers of uniformed and non-uniformed employees. The proposed Final Judgment includes only one staffing provision, subsection II.A, which requires in general terms that TDCJ-ID retain "sufficient trained security and non-security staff to provide for and maintain the security, control, custody and supervision of prisoners, taking account of the security and custody levels for the prisoner population and the design of defendants' facilities."

SUPPORT SERVICE PRISONERS

Current court orders that ended the "building tender" or "inmate guard" system specify in detail what duties cannot be given to prisoners because those duties should be performed by paid employees rather than privileged convicts. The proposed Final Judgment, subsection III.A, includes only a general provision prohibiting prisoners from being placed in positions to exercise authority over other prisoners.

DISCIPLINE

Currently, Ruiz court orders cover almost every aspect of discipline in TDCJ-ID and include somewhat detailed provisions about the system for providing prisoners with employees as "counsel substitutes" in disciplinary matters. Section IV of the proposed Final Judgment continues TDCJ-ID's current practices by requiring that major disciplinary hearings be tape-recorded so that the prisoner or his counsel substitute can review the tape, that there continue to be a program for providing staff counsel substitutes, and that prisoners in solitary confinement get the same daily ration of food as prisoners in the general population. It also requires that TDCJ-ID follow its own disciplinary rules, and it gives the Board of Criminal Justice the power to change those rules.

ADMINISTRATIVE SEGREGATION

Currently, TDCJ-ID is under court order to follow its Administrative Segregation Plan, which covers most aspects of administrative segregation operations. Under Section V of the

proposed Final Judgment, that court order will no longer be in effect beginning on January 1, 1993. Beginning on January 1, 1993, the proposed Final Judgment requires only that prisoners in administrative segregation be single-celled.

WORK HEALTH AND SAFETY

TDCJ-ID has been under detailed court orders governing policies and procedures to protect the health and safety of prisoners at work assignments. Under Section VI of the proposed Final Judgment, these court orders governing the health and safety of prisoners at work assignments will no longer be in effect.

USE OF FORCE

Currently, there are comprehensive Ruiz orders governing the use of force by guards against prisoners, investigations of possible unnecessary or excessive force incidents, and discipline of employees who use unnecessary or excessive force. If the proposed Final Judgment is approved, these orders will no longer be in effect. Rather, Section VII of the proposed Final Judgment requires that the Board governing TDCJ-ID maintain written policies and procedures concerning the use of force -- policies and procedures that prohibit unnecessary and excessive force and that provide for investigation of incidents and discipline for officers who break the rules -- and enforce those policies and procedures at all prison units. Only the Board, and no official below the level of the Board, will have the power to change these policies and procedures.

ACCESS TO COURTS

Section VIII of the proposed Final Judgment treats this issue in a manner similar to that described above for use of force. Currently, TDCJ-ID is under Ruiz court order to follow its Access Rules. After January 1, 1993, only the Board governing TDCJ-ID, and no official below the level of the Board, will have the power to change the access to courts policies and procedures.

PHYSICAL CONDITION OF PRISON UNITS

Under current court orders, TDCJ-ID has developed a system for inspecting prisons units and repairing things that are not working properly. It has also developed a system for doing routine maintenance that is supposed to help keep machines and systems working properly. In Ruiz, these orders concern what we call preventive and routine maintenance. These orders will cease to exist when the proposed Final Judgment is approved by the court, under Section IX.

The 1985 Crowding Stipulation included a section on "Major Structural Deficiencies." As a result of this group of court orders, most of the prison units that existed in 1985 have had extensive renovations, including new roofs, new surfacing in showers, and new kitchens and dining rooms. The final renovations that are now being completed are of the heating and ventilation systems. Section X of the proposed Final Judgment provides for the monitoring of renovations to make sure they have been completed properly. Some of the monitoring is being done by

a team of TDCJ-ID employees, and some is being done by a group of experts employed by the Office of the Special Master. Once the monitoring is completed ^{W.W.G.} ~~which is expected to be~~ (which is expected to be in late 1992 or early 1993), there will be no further court orders concerning physical conditions.

PROGRAMMATIC AND RECREATIONAL ACTIVITY

Current court orders impose detailed requirements on TDCJ-ID to give prisoners the opportunity to engage in activity outside of their cells and dormitories. They require that all prisoners who are medically capable of working be given full-time work or a full-time combination of work and school, and that all prisoners (except those who refuse to work) be allowed a certain amount of recreational time and time for other activities. Between 1985 and 1989, as a result of these orders, outdoor recreation yards were built on all units, and new gymnasiums were added to many units. These orders require, among numerous other things, that prisoners have the opportunity to go to the yards or gyms for a certain number of hours each day. These orders are a part of the 1985 Crowding Stipulation and they will cease to exist when the proposed Final Judgment is approved by the court, under Section XI of the Final Judgment. Subsection XIII.C on Crowding requires that TDCJ-ID take reasonable steps to make various activities available to prisoners outside of their living areas.

CONTACT VISITING

The 1985 Crowding Stipulation required TDCJ-ID to create a program permitting contact visits for certain prisoners

classified SAT I, II, III or IV. Section XII of the proposed Final Judgment continues to require that TDCJ-ID have a contact visiting program, but it lets TDCJ-ID make whatever rules it deems appropriate about contact visiting.

CROWDING

Subsection XIII.A of the proposed Final Judgment sets forth acknowledgements that both parties (the prison system and the prisoners) are making about supply of and demand for prison beds and the current population in Texas prisons. The purpose of these acknowledgements is to establish certain facts relied on by the parties as of the time the parties negotiated the Final Judgment.

Subsection XIII.B establishes a maximum population limit for the existing TDCJ-ID prison system. That maximum population number is 2,300 prisoners/beds higher than the current population caps imposed by the Crowding Stipulation. That is, the proposed Final Judgment, if approved, will permit TDCJ-ID to house 2,300 more prisoners on presently existing units, after it does the things required by Exhibit B (e.g., put new beds in certain locations; move administrative segregation populations off of some units and convert those areas to general population housing where double-celling is permitted).

Subsection XIII.C of the proposed Final Judgment requires TDCJ-ID to look at how crowding affects conditions on each unit and to take reasonable steps to combat the negative effects of crowding.

Subsection XIII.D of the proposed Final Judgment establishes certain rules for any new prisons or portions of prisons that TDCJ-ID chooses to add to increase its overall capacity. The rules established under subsection XIII.D give TDCJ-ID much more discretion over the kind of new capacity it can add than it had under the 1985 Crowding Stipulation. They do, however, impose some limits that are designed to provide safeguards for prisoners. All new housing must be of permanent construction, except that tents may be used for new correctional programs such as work camps and wilderness camps that TDCJ-ID does not have at this time.

Under subsection XIII.D, newly constructed prisons must be designed by licensed architects and engineers and built in accordance with their detailed designs. The intended maximum population that the unit is being designed for must be specified in advance, and the designs must "promote sound classification and security practices and the safety, health and well-being of both prisoners and staff, and shall provide adequate living space for prisoners" (subsection XIII.D.2). If TDCJ-ID wants to increase the maximum population figure from that set initially at the time of design, it must meet certain other requirements (mandated by current state law) at that unit. In establishing the maximum population for a new unit, TDCJ-ID is required to take account of the need for inter- and intra-unit flexibility for classification and prisoner movement (subsection XIII.D.3).

Certain transient-use beds may not be counted for capacity purposes in new units (subsection XIII.D.7).

Under subsection XIII.D.4, TDCJ-ID may add to its capacity by taking over pre-existing structures. The rules for pre-existing structures are more restrictive than the rules for new construction but they are much less restrictive than the requirements of the 1985 Crowding Stipulation.

Subsection XIII.D.5 permits TDCJ-ID to add to its capacity by building additions at most existing units. (No additions are permitted at the Darrington, Clemens, Ramsey I, Ramsey II, Wynne, Eastham, Ellis I, Huntsville and Retrieve units.) The additions must be designed by licensed architects and engineers and must be permanent construction (not tents), like other new construction, and they must not result in an impairment of the provision of the services, facilities and conditions to the prisoners assigned to the addition or to the unit to which the addition or renovation is added.

INTERPRETATION SERVICES FOR PRISONERS WHO SPEAK ONLY SPANISH

A case called Gomez was joined with Ruiz some years ago. Gomez was brought on behalf of the class of TDCJ-ID prisoners who speak Spanish but not English. Since Gomez was filed, TDCJ-ID has developed a program to ensure that prisoners who speak only Spanish will have access to interpreters as necessary to enable them to use the law library and grievance process and to defend themselves against prison disciplinary charges. Section XIV of the proposed Final Judgment acknowledges that TDCJ-ID has created

the system of providing interpretation services. It does not establish a continuing court order on this matter. This is because the lawyer for the subclass of Gomez plaintiffs has monitored the interpretation system and ascertained that it satisfies the need for Spanish-English interpretation services sufficient to protect the constitutional rights of access to the courts and to governmental officials and to disciplinary due process.

PROGRAM FOR MENTALLY RETARDED PRISONERS

This is an area of Ruiz that, under Section XVIII of the proposed Final Judgment, is being turned back over to TDCJ-ID (and, as with all areas of the case being turned back over to TDCJ-ID, subsection XVII of the proposed Final Judgment requires TDCJ-ID to employ the staff necessary to monitor the policies and procedures relating to the Mentally Retarded Offender Program).

HEALTH SERVICES

There currently are hundreds of pages of orders concerning the provision of health services for prisoners. Most of those orders will cease to exist if the proposed Final Judgment is approved. Subsection XIX.B of the proposed Final Judgment requires that TDCJ-ID look carefully at the practices in three areas of health care between now and the end of 1992, and that it take appropriate action in those areas, if necessary. The three areas are sick call, shortage of nurses, and the system for prisoners and their families or friends to raise questions concerning the adequacy of health care provided to an individual

prisoner (the "Patient Liaison Program"). As of December 31, 1992, the Final Judgment, if approved, would release TDCJ-ID from all but five general orders concerning non-psychiatric health care. Those five general court orders are stated in subsection XIX.D.

PSYCHIATRIC SERVICES

TDCJ-ID is currently subject to a comprehensive court order concerning psychiatric services. Section XX of the proposed Final Judgment, if approved, will relieve TDCJ-ID from most of the provisions of the current court orders. Subsection XX.B sets three priorities for the TDCJ-ID psychiatric services program between now and the end of 1992. Those three priorities are making sure that prisoners with psychiatric illnesses are not inappropriately housed in administrative segregation, increasing the individualized nature of psychiatric services, and improving the systems for monitoring the quality of psychiatric services delivered to individual patients. Subsection XX.D provides that the same five continuing orders concerning health care in subsection XIX apply to psychiatric services as well as other areas of health care. Subsection XX.D also requires TDCJ-ID to employ an outside psychiatric consultant to consult with TDCJ-ID psychiatric staff through December 31, 1994.

DEATH ROW

Under current court orders, TDCJ-ID created programs for death row prisoners involving substantial out-of-cell time for death-sentenced prisoners who are willing and able to participate

in the death row work program and less out-of-cell time for "death row segregation prisoners". The proposed Final Judgment, if approved by the court, will eliminate these court orders. However, the proposed Final Judgment does require that there be a work and activity program for death row work capable prisoners, that there be an activity program for death row segregation prisoners, that death row segregation prisoners be single-celled, that there be single and double cells for death row work capable prisoners, and that any death row prisoners who are double-celled be in cells of at least 80 square feet.

OBJECTIONS

If you wish to object to any of the terms of the proposed Final Judgment, on the ground that the terms are not fair and reasonable to the plaintiff class, your objections must be filed, in writing, with the Clerk of the United States District Court, Southern District of Texas, 515 Rusk Avenue, Houston, Texas 77002. All such objections must be filed by you or by an Attorney on your behalf, before October 19, 1992. A copy of your objections must be sent to the following attorneys for the various parties: Law Office of Donna Brorby, Attorneys for Class Plaintiffs, 750 Battery Street, 7th Floor, San Francisco, California 94111; Laurie I. Weinstein, Attorney for the United States, Civil Rights Division, U.S. Department of Justice, Room 966, 320 First St., N.W., Washington, D.C. 20530; Robert Ozer, Assistant Attorney General, P.O. Box 12548, Austin, Texas 78711;

and Ruiz Special Master, Vincent M. Nathan, Nathan & Roberts, 644 Spitzer Building, 520 Madison Avenue, Toledo, Ohio 43604.

The court urges that if you make any objection it should be very brief, specific and to the point. Please do not file any unnecessary objections, or otherwise make it unnecessarily difficult for the court finally to resolve the issues pertaining to the proposed Final Judgment. No objection will be considered unless it shows specifically why the terms of the proposed Final Judgment are not fair and reasonable. The court will not consider any objections filed after October 19, 1992. The hearing on objections will be held on October 28, 1992.

DATED: August 20, 1992


UNITED STATES DISTRICT JUDGE