

(Exhibit B)
UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

MARCUS BYNUM, et al

Plaintiffs

v.

GOVERNMENT OF THE DISTRICT
OF COLUMBIA,

Defendant

Civil Action No. 02-956 (RCL)

Next Event: Fairness Hearing: February
7, 2006 [Proposed].

**ORDER PRELIMINARILY APPROVING SETTLEMENT, CLASS NOTICE
AND NOTICE OF HEARING [PROPOSED]**

Upon review and consideration of the Settlement Agreement and the exhibits attached thereto (the “Settlement Agreement”) made and entered into on _____, 2005, between the Named Plaintiffs in the above-captioned action (the “Class Representatives”), individually and as representative of the classes certified by this Order, and the District of Columbia (“Defendant”),

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

PRELIMINARY APPROVAL OF SETTLEMENT

1. This Order incorporates by reference the definitions in the Settlement Agreement, a copy of which is attached to this Order, and also incorporates Exhibits C through E, thereto. All terms defined therein shall have the same meaning in this Order.

2. The Settlement Agreement is hereby preliminarily approved, subject to further consideration thereof at the Fairness Hearing provided for below. The Court finds that the settlement amount of \$12,000,000.00 is within the range such that final settlement approval may be appropriate, following notice to the Class and after consideration of any objections. The Court preliminarily finds that the terms of the Settlement Agreement are within the range of what would constitute a fair, reasonable, and adequate settlement in the best interests of the Class as a whole, and that the terms of the Settlement Agreement satisfy the Federal Rules of Civil Procedure 23(e) and due process requirements.

DEADLINES FOR NOTICE, FILING OBJECTIONS AND OPT-OUTS, AND DATE OF FAIRNESS HEARING

3. The Court has set the following dates for purposes of this class action [Proposed]:

- a. Final class identifying information must be provided to class counsel in computerized form by the District of Columbia by September 20, 2005;
- b. Mailing Class and Settlement Notice to Class: Must be postmarked by October 20, 2005;
- c. E-mailing Class and Settlement Notice on Superior Court Trial Lawyers Association list serve: By October 20, 2005;
- d. Posting the Notice (along with extra copies of the Claim Form) by the District of Columbia on each Unit of the D.C. Jail and the Correctional

Treatment Facility: By October 20, 2005;

e. Publication of summary notice by other methods: effected by November 7, 2005;

f. Filing of Plaintiffs' Motion for Award of Attorney's Fees and Costs: Must be filed by November 7, 2005;

g. Filing of Class Members' Objections to any aspect of the Settlement (including Plaintiffs' Motion for Award of Attorney's Fees and Costs): Must be filed by December 23, 2005;

h. Deadline to opt-out: Must be postmarked or received by December 23, 2005;

i. Deadline for filing class claims: Must be postmarked or received by December 23, 2005;

j. Filing of Opposition or Reply to Objections (including to objections to award of attorney's fees and costs): Must be filed by January 20, 2006; and

k. Final Approval Hearing: February 7, 2006.

4. In the event that the class notice is not mailed and initially published within the time specified herein, the subsequent dates contained herein will be deferred for the number of additional days before such notice occurs without the need for additional court approval. However, the Court must approve any change of the date of the Final Approval Hearing.

CERTIFICATION OF OVERDETENTION CLASS AND STRIP SEARCH CLASS

5. The Court has previously certified both an Overdetention Class and a Strip Search Class under both Fed. R. Civ. P. 23(b)(2) and (b)(3). This is a hybrid class action, certified under Fed. R. Civ. P. 23(b)(2) with regard to seeking injunctive relief on over-detentions, and strip searches of inmates under the definition of the strip search class set forth set forth herein. Therefore, regarding prospective injunctive relief, no member of the class may opt-out. With regards to monetary relief, the class is certified under Fed. R. Civ. P. 23(b)(3) and class members have a right to opt out of the monetary relief stage.

The Over-Detention Injunctive Relief Class is defined as:

- (a) Each person who has been, is or will be incarcerated in any District of Columbia Department of Corrections facility beginning in the three years preceding the filing of this action on or about May 16, 2002 up to and until the date this case is terminated; and (b) who was not released, or, in the future will not be released by midnight on the date on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired.

The Over-Detention Monetary Relief Class is defined the same as above except that it ends on August 31, 2005.

The Strip Search Injunctive Relief Class is defined as:

Each person who, beginning in the three years, preceding the filing of this action, up until the date this case is terminated, has been, is or will be (i) in the custody of the Department of Corrections; (ii) taken to Court from a Department of Corrections facility; (iii) ordered released by the court or otherwise became entitled to release by virtue of the court appearance because the charge on which he had been held was no longer pending or was dismissed at the hearing, was ordered released on his own recognizance, or had posted bail, was sentenced to time served, was acquitted or was otherwise entitled to release; (iv) was returned to a Department of Corrections facility, to be processed out of Department of Corrections custody; and (v) was subjected to a strip search and/or visual body cavity search without any individualized finding of reasonable or probable cause that he was concealing contraband or weapons; before being released, regardless of whether he was over-detained.

The Strip Search Monetary Relief Class is defined the same as above except that it ends on August 31, 2005.

CLASS-WIDE PROSPECTIVE RELIEF STRIP SEARCH CLASS

6. The plaintiffs' claims for prospective relief regarding the strip search class will be resolved by the D.C. Department of Corrections' plan to divert inmates ordered released or otherwise entitled to release from the Superior Court of the District of Columbia to a secure location outside of the open population of the D.C. Jail or another location where they will not be subject to a strip search, absent

individualized suspicion, while the record review for detainers and warrants and property retrieval are conducted prior to release. This process shall be implemented on or before August 31, 2005. The Monetary Relief Strip Search Class will extend through that date.

7. The parties will defer the initiation of class notice until after August 31, 2005.

8. If the District has not accomplished the change in the strip search procedure by August 31, 2005, then any persons strip searched after that time will not be members of the Strip Search Monetary Relief Class, will not be provided notice of this settlement and may proceed to claim money damages separate from this settlement.

9. In addition, the Strip Search Injunctive Relief Class and class counsel will be free at that point to pursue litigation in this case to enjoin the District's continuing Strip Search policy, and the District will be free to oppose it. Any fees awarded to the class as prevailing parties for such litigation shall be separate from the Class Fund Attorney's Fees.

CLASS REPRESENTATIVES

10. Marcus Bynum, Kim Nabinette, Leroy S. Thomas, Dianne Johnson, Gloria Scarborough, and Julian Ford are hereby confirmed as Class Representatives for the Class.

CLASS COUNSEL

11. William Claiborne and Lynn Cunningham are hereby confirmed as counsel, and Barrett S. Litt is hereby appointed as counsel, for the Class Representatives and the Class (“Class Counsel”). The contact information for Class Counsel follows below:

William Claiborne Law Offices of William Claiborne 717 D Street, NW Suite 210 Washington, D.C. 20004 Phone: 202-824-0700 Fax: 202-824-0745	Lynn Cunningham Professor of Clinical Law The George Washington University Law School 306 Westview Drive P.O. Box 1547 Dubois, Wyoming 82513 Phone: (307) 455-3334 Fax:	Barrett S. Litt Litt, Estuar, Harrison, Miller & Kitson, LLP 1055 Wilshire Blvd., Ste # 1880 Los Angeles, CA 90010 Phone: 213-386-3114 Fax: 213-380-4585
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12. Pursuant to F. R. Civ. P. Rule 23(g)(1)(C)(i), the Court considered the following points in appointing class counsel: (1) the work counsel has done in identifying or investigating potential claims in the action, (2) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action, based in part on affidavits submitted by counsel in support of their motions to certify (3) counsel's knowledge of the applicable law, (4) the resources counsel committed to representing the class; as well as other matters pertinent to counsel's ability to fairly and adequately represent the interests of the class. The Court finds that Plaintiffs’ counsel have done extensive research in this case, including taking numerous depositions and affidavits and interviewing numerous persons who have knowledge of the case, and thoroughly analyzing the computer records of the District

of Columbia. Plaintiffs' counsel are competent to represent the members of the class.

13. Class Counsel are authorized to act on behalf of the Class with respect to all acts or consents required by or which may be given pursuant to the Settlement, and such other acts reasonably necessary to consummate the Settlement.

14. Class Counsel shall make an application for Class Fund Attorneys' Fees (that portion of the Class Fund awarded as attorney's fees and costs to Class Counsel). Litigation costs and the costs of class notice and administration shall constitute a cost separate from attorneys fees and will be paid separately from the attorney's fees out of the Settlement Funds. The amount of litigation costs and the costs of class notice and administration, which will be determined by the Court, will be paid from the portion of the Settlement Funds that are to be distributed to class members (as opposed to the reversion fund).

CLASS AND SETTLEMENT NOTICE

15. Class Counsel shall (1) provide the Class and Settlement Notice to the Class Administrator for distribution according to the schedule set forth above; (2) cause the Class and Settlement Notice to be published by e-mail on the list serve of any relevant lawyers' associations representing indigent defendants in the District of Columbia Superior Court; and (3) cause publication in the form of a modified and shortened form of the Class Notice at least in the following newspapers: Washington Post, Washington Times and the City Paper, as well as up to three regional newspapers as plaintiffs shall determine, in consultation with the Class

Administrator, are reasonably necessary to provide notice to the class, not to exceed three regional newspapers, unless plaintiffs obtain consent from defendant, which shall not be unreasonably withheld, or approval from the court. The notice shall be published twice a week for two weeks, in the section of the newspaper ordinarily devoted to local news, and on at least one Sunday for each newspaper with a Sunday edition.

16. Defendant shall post the Class Notice on each Unit of the D.C. Jail and the Correctional Treatment Facility, along with extra copies of the Claim Form. The Notice shall remain posted until the period for class members to return the Claim Form has expired.

17. No later than July 30, 2005, the District of Columbia shall make available, to the extent that such information has not already been provided, the name, address, social security number, date of birth and driver's license information of class members, to the extent it exists and is reasonably available from its records, to Class Counsel, to be forwarded to the Class Administrator in computerized form to the extent it exists in computerized form, to facilitate locating class members. Such information shall be confidential, and may not be disclosed to anyone except counsel of record, the Class Administrator, and such representatives of the District of Columbia.

18. Defendant shall make available to plaintiffs' counsel from the JACCS and CIS computer databases, and other databases, and paper records, information

reasonably necessary for administration and verification of claims, to the extent necessary and reasonably accessible.

19. The District of Columbia undertakes to use reasonable efforts to assist Plaintiffs in obtaining from Court Services and Offender Supervision Agency (“CSOSA”) prior to the deadline for sending notice, upon a written request from Class Counsel the most recent address, social security number, date of birth and driver's license information, to the extent reasonably available, in computerized form, of the Class Members, so that the data can be provided to the Class Administrator.

20. At least 15 days before the Fairness Hearing, Class Counsel and/or the Class Administrator shall serve and file a sworn statement by Class Counsel or the Class Administrator attesting to compliance with the provisions of this Order governing Class and Settlement Notice. This shall include a list of all people who have opted out of the class. This shall be filed no less than 10 days prior to the hearing in this case.

21. The Court approves the Class and Settlement Notice attached as Exhibit C.

22. The Court approves the Claim Form attached as Exhibit D to the Settlement Agreement.

23. The Court finds that the notice required by the foregoing provisions of this Order is the best notice practicable under the circumstances and shall constitute

due and sufficient notice of the Settlement and the Fairness Hearing to all Class Members and other persons affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Rule 23 Federal Rules of Civil Procedure and due process.

THE CLASS ADMINISTRATOR

24. The Court approves Class Counsel's retention of Rosenthal & Company as Class Administrator, to administer the distribution of the Class and Settlement Notice and publication of the Class and Settlement Notice, and to distribute the proceeds of the settlement to all eligible Class Members pursuant to the Allocation And Distribution Plan set out in the Final Order of Approval of Settlement.

25. The Class Administrator shall preserve all written communications from Class Members in response to the Class and Settlement Notice at least until December 31, 2006, or pursuant to further order of the Court. All written communications received by the Class Administrator from Class Members relating to the Settlement Agreement shall be available at all reasonable times for inspection and copying by Counsel for the Parties.

26. The Class Administrator shall be compensated from the portion of the Settlement Funds separate from the Class Fund Attorneys' Fees for its services in connection with notice and administration and for the costs of giving mailed and published notice, pursuant to such orders as the Court may enter from time to time.

27. The District shall pay to the Class Administrator the costs of preparing

and publishing the Class Notice and other expenses related to the publication and distribution of notice to the class. The Class Administrator shall provide an estimate of the costs of notice no later than July 20, 2005, and the necessary funds shall be paid to the Class Administrator no later than August 8, 2005, and supplemented in the event the Class Administrator provides a supplemental estimate. Any such payments shall be credited against the \$12 Million Class Settlement. However, if for any reason this settlement is not ultimately approved, the District shall have no claim against Plaintiffs, the Class, Class Counsel or the Class Administrator for reimbursement of the costs of notice and related costs for which it advanced funds, except to be credited in any subsequent settlement of this case.

THE FAIRNESS HEARING

28. A Fairness Hearing shall be held on February 7, 2006 [Proposed], to consider: (a) the fairness, reasonableness, and adequacy of the Settlement; (b) whether the Final Order of Approval of Settlement, attached as Exhibit E to the accompanying Settlement Agreement, should be entered in its current or some modified form; and (c) the application by Class Counsel for attorneys' fees and expenses (the "Fee Motion").

29. The date and time of the Fairness Hearing shall be set forth in the Class and Settlement Notice, but shall be subject to adjournment by the Court without further notice to the Class Members other than that which may be posted at the Court and on the Court's web site.

30. Any Class Member who objects to the approval of the Settlement Agreement, the Fee Motion, the Named Plaintiffs' Distribution or the Allocation And Distribution Plan may appear at the Fairness Hearing and show cause why the Settlement Agreement, the Fee Petition, the Named Plaintiffs' Distribution or the Allocation And Distribution Plan should not be approved as fair, reasonable, and adequate, and why the Final Order of Approval of Settlement should not be entered, except that no such Class Member may appear at the Fairness Hearing unless the Class Member, at least two weeks before the Fairness Hearing, (a) files with the Clerk of the Court a notice of such person's intention to appear, a statement that indicates the basis and grounds for such person's objection to the Settlement Agreement, the Fee Petition, the Named Plaintiffs' Distribution and/or the Allocation and Distribution Plan, and all documentation, papers, or briefs in support of such objection; and on the same date (b) serves upon all Counsel to the Parties (as listed in the Notice of Proposed Settlement), either in person or by mail, copies of such notice of intention to appear, statement of objections and all documentation, papers, or briefs that such person files with the Court. The required documentation shall include information demonstrating that the objector is a Class Member, including name, address, date of arrest to the extent known, Driver's License number and Social Security number. Final determination of whether any such objector is a class member who has standing to object shall be determined solely from the Defendant's (including Superior Court) records, as supplemented by CSOSA records. In the

absence of the timely filing and timely service of the notice of intention to appear and all other materials required by this paragraph, any objection shall be deemed untimely and denied.

31. Pending final approval of the Settlement Agreement, no Class Member shall, either directly, representatively, or in any other capacity, commence, prosecute against any Defendant or participate in any action or proceeding in any court or tribunal asserting any of the matters, claims, or causes of action that are to be released by the Settlement Agreement upon final approval.

32. In the event of final approval of the Settlement Agreement, all Class Members shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released by the Settlement Agreement, and all such Class Members shall be deemed to have forever released any and all such matters, claims and causes of action as provided for in the Settlement Agreement.

OTHER PROVISIONS

33. In the event the Settlement is not finally approved or is otherwise terminated in accordance with the provisions of the Settlement Agreement, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of Plaintiffs, Defendant, and Class

Members.

Royce C. Lamberth
United States District Judge

cc:

William Claiborne
717 D Street, NW, Suite 210
Washington, D.C. 20004
Phone: 202-824-0700
Fax: 202-824-0745
Co-Lead Class Counsel for Plaintiffs

Barrett S. Litt
Litt, Estuar, Harrison, Miller & Kitson, LLP
1055 Wilshire Blvd., #1880
Los Angeles, CA 90017
Phone: 213-386-3114
Fax: 213-380-4585
Co-Lead Class Counsel for Plaintiffs

Lynn Cunningham
Professor of Clinical Law
306 Westview Drive
P.O. Box 1547
Dubois, Wyoming 82513
Phone: (307) 455-3334
Fax:
Co-Lead Class Counsel for Plaintiffs

Maria C. Amato
Senior Assistant Attorney General
Civil Litigation Division, Equity Section I
441 4th Street, N.W., 6th Floor South
Washington, D.C. 20001
Phone 202/724-6642
Fax: 202/727-0431
Counsel for District of Columbia

Richard S. Love

Chief, Equity I
Civil Litigation Division, Equity Section I
441 4th Street, N.W., 6th Floor South
Washington, D.C. 20001
Phone 202/724-6642
Fax: 202/727-0431
Counsel for District of Columbia

George C. Valentine
Deputy Attorney General
Civil Litigation Division
441 4th Street, N.W., 6th Floor South
Washington, D.C. 20001
Phone 202/724-6642
Fax: 202/727-0431
Counsel for District of Columbia