United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

JUDGE PIERCE

Civil Action File No. 79 CIV. 6228

SUMMONS

Anthony Bottom a/k/a Jalil Abdul Muntaqim,
Charles Meriwether Jr. a/k/a/ Radu Allah, Ralph Hall,

Plaintiffs,

v.

Walter Mondale, Thomas P. O'Neill, G. William Miller,
Benjamin R. Civilitte, Thomas Coughlin, David R. Harris,

Defendants.

To the above named Defendants:

You are hereby summoned and required to serve upon Anthony Bottom a/k/a Jalil Abdul Muntaqim, Charles Meriwether Jr. a/k/a Radu Allah, Ralph Hall, plaintiffs Pro Se, whose address is Anthony Bottom #77-A-4283, Drawer B, Stormville, New York 12582, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/_____

Raymond F. Burghardt, Clerk of Court

/s/_____

[Illegible], Deputy Clerk

[Seal of Court]

Date: November 19, 1979

NOTE: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

United States District Court

SOUTHERN DISTRICT OF NEW YORK

Complaint: Civil No. 79 CIV. 6228

Anthony Bottom a/k/a Jalil Abdul Muntaqim;

Charles Meriwether Jr. a/k/a/ Radu Allah;

Creative Communications Committee: Ralph Hall, President,
on behalf of all members thereof, and those similarly situated;

Plaintiffs,

—against—

Walter F. Mondale, individually, and as President of Senate in Congress;

Thomas P. O'Neill, individually and as United States
Speaker of the House of Representatives in Congress;

G. William Miller, individually, and as United States Secretary of the Treasury;

Benjamin R. Civilitte, individually, and as
United States Attorney General of the Justice Department;

Thomas Coughlin, individually and as Commissioner
of the New York State Department of Corrections;

David R. Harris, individually and as Superintendent of Green Haven Correctional Facility, *et al.*,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR THE REPEAL OF THE THIRTEENTH AMENDMENT TO U.S. CONSTITUTION AND DECLARATORY JUDGMENT FOR PUNITIVE AND INJUNCTIVE RELIEF

I. HISTORICAL FACTS OF PLAINTIFFS' CONSTITUTIONAL DEPRIVATIONS AND VIOLATIONS OF INTERNATIONAL LAW

The Thirteenth Amendment of the U.S. Constitution reads as follows:

> Section 1: Slavery prohibited.
> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."
>
> Section 2: Power to enforce amendment.
> "Congress shall have power to enforce this article by appropriate legislation."

The Thirteenth Amendment to the Constitution of the United States was submitted to the legislatures of several states by the thirty-eighth Congress on the 1st of February, 1885, and

declared in a proclamation of the Secretary of State, dated the 18th of December 1885, to have been ratified by the legislatures of twenty-seven of the thirty-six states, viz: Alabama, Arkansas, Connecticut, Georgia, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia and Wisconsin. Subsequent to the proclamation, it was ratified by California, Florida, Iowa, New Jersey, Oregon and Texas.

The primary objective of the Thirteenth Amendment was to end a barbaric and vicious period in American history of chattel slavery, peonage, and involuntary servitude. The Thirteenth Amendment was the last effort of Government to institute legislative and congressional policy in dispute with the slave trade and mode of slavery that was being practiced by the Southern States. Prior to the enactment of the Thirteenth Amendment the ordinance of 1787 embraced the concept for the abolition of chattel slavery, as the Supreme Court stated in *Bailey v. Alabama*, 219 U.S. 219 (1911).

> "The language of the Thirteenth Amendment was not new. It reproduced the historic words of the ordinance of 1787 for the government of the Northwest Territory and gave them unrestricted application within the United States and all places subject to their jurisdiction. The plain intent was to abolish slavery of whatever name or form, and all badges and incidents; to render impossible any state of bondage; to make labor free, by prohibiting that control by which the personal service of man is disposed of or coerced for another's benefit which is the essence of involuntary servitude."

The Confiscation Act of 1861 and 1862 paved the road towards the end of chattel slavery as it was then practiced … The Act of April 16, 1862 ch. 54, 1, 12 Stat. 376, stated "Neither slavery nor involuntary servitude shall hereafter exist in said District (District of Columbia)." The Act was directed at Negro slavery, and attempts to extend the bill to include white persons, did fail … See: Congress Globe, 37th Congress 2d. Session 1643 (1862). The Act of June 19,

1862, 12 Stat. 432, applied the same prohibitions to the Territories. The Emancipation Proclamation 12 Stat. 1268 (1863) applied to "persons held as slaves" in the states in rebellion. A "Confiscation Bill" declared that slaves of rebels "shall be forever free of their servitude and not again held as slaves." The Act of July 16, 1862, ch. 195, 9, 12 Stat. 599… The Northwest Ordinance 1 Stat. 53 (1787) followed the draft by Thomas Jefferson of the Ordinance of 1784, and was directed against the legal enforcement of "conditional servitude under indentures of covenants," a practice which had long existed in Virginia, "at least to the extent that such indentures were not entered into voluntarily, without the compulsion of a previously existing debt or obligation…" See *Hamilton*, supra, note 2, at 48. "It was universally understood that Article VI (of the Northwest Ordinance) did not confer any political or Civil Rights on Negros." *Id.* at 52. See also *Slaughter House Cases*, 83 U.S. (16 Wall) 36, 49-50 (1872). Under the Emancipation Proclamation on January 1, 1863, then-President Lincoln stated:

> "I do order and declare that all persons held as slaves within said designated States and parts of States are, and henceforth shall be free; and that Executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons."

This proclamation did not end slavery, but rather defined the course of history that was to follow. Soon after the Confiscation Act and the Emancipation Proclamation were instituted into law, the course of slavery forged towards peonage and involuntary servitude.

Although the Thirteenth Amendment was intended to free African slaves from chattel bondage, the Amendment forbade the slavery of any other nation of people in the United States, the slavery and involuntary servitude of Chinese, Native Americans, Mexicans and Anglo-Saxons according to the following cases: *Slaughter House Cases*, 83 U.S. 36, 21 L. Ed. 394 (1873); *U.S. vs. The Chocktaw Nation*, 193 U.S. 115, 48 L. Ed. 640, 24 S.Ct. 411, *Hodges vs. U.S.*, 203 U.S. 1, 51 L. Ed. 65, 27 S.Ct. 6.

The Civil War, which did end slave trade, the Confiscation Act, the Emancipation Proclamation, the Thirteenth Amendment to the U.S. Constitution and the Anti-Peonage Act of March 3, 1867 further curtailed the brutal and vicious brand of chattel slavery then practiced in the United States. Throughout the end of the late 1800s and into the 1900s to the present day, slavery in America still exists in one form or another, as the 13th Amendment does in fact condone and encourage slavery in U.S. prisons. As stated in the case of *Ruffin vs. Commonwealth*, 62, Va (21 Gratt.) 790, 796 (1871):

> "A convicted felon, whom the law in its humanity punishes by confinement in penitentiary(s) instead of death, is subject while undergoing punishment, to all the laws which the legislature in its wisdom may enact for the government of that institution and control of its inmates. For the time being, during his term of service in the penitentiary, he is in a state of penal servitude to the state. He has, as a consequence of his crime, not only forfeited his liberty, but all of his personal rights except those which the law in its humanity accords to him. He is for the time being a slave of the State… They are slaves of the State undergoing punishment for heinous crimes committed against the laws of the land…"

During the early 1900s, peonage rendered for debt became the mode of slavery and involuntary servitude. The prisoner was stated as having to pay a debt owed to society for the crime against the laws of the land.

The system of peonage, although "a status or condition of compulsory service based upon indebtedness of the peon to the master. The basal fact is indebtedness …" *Clyatt vs. U.S.*, 197 U.S. 207, 215 (1905). As stated by Huff, in Peonage of Debt Slavery in the Land of the Free, 3 Nat. B.J. 43 (1945): "This system was inherited by the United States through the acquisition of the Territory of New Mexico from the Republic of Mexico … So far as we know, it is a product of the Western Word." See also *U.S. vs. McClellan*, 127 Fed. 971, 973 (S.D. Ga 1904), from which state officials and members of the United States Congress continued to gain a debt of peonage from convicted felons.

The Anti-Peonage Act of March 2, 1867 was made into law, but it was not until peonage cases in 1903 that a prosecution under the Anti-Peonage Act took place. Shapiro, Involuntary Servitude: The need for a more flexible approach, 19 Rutgers L. Rev. 65 (1964) states:

> "… The courts construed conditions of peonage to be enforced servitude by which the servitor is restrained of his liberty and compelled to labor in liquidation of some debt or obligation, either real or pretended, against his will; and any agreement giving another the right to exact such servitude is invalid … and treated as though made involuntarily, and affords the creditor or master no protections" 123 Fed. 671 (M.D. Ala. 1903) … The court held, for instance, that a person who (1) hires another or induces him to sign a contract by which he agrees during a term to be imprisoned or kept under guard, and who (2) in enforcing the agreement holds the party to the performance of the contract by threats of punishment or other influence, thereby subduing his free will, is guilty of holding such person to a condition of peonage…"

The legal development of the 13th Amendment and the Anti-Peonage Act evolved towards Criminal Code Title 18 of the United States Code, Sections 1581, 1583 (which originate from the Slave Kidnapping Act of May 21, 1866, 14 Stat 50 and 1584 (Supp. IV, 1951), all of which specifically deal with slavery and involuntary servitude.

The 1946 United States Code Title 8, Section 56 further elaborated the principles embodied in the succinct language of the Thirteenth Amendment. This status had been applied or referenced in a number of important cases; *Pollack vs. Williams*, 322 U.S. 4 (1944); *Taylor vs. Georgia*, 315 U.S. 25 (1942); *United States vs. Reynolds*, 235 U.S. 133 (1914); *Cyatt vs. U.S.*, 197 U.S. 207 (1905), but this statute does not apply to involuntary servitude nor slavery. Then, in 1948, Title 18 statutes again preserve a number of old sections pertaining to slavery: 1582, 1585, 1586, 1587, 1588.

These cases and the intent of the law were to curtail and prevent slavery, involuntary servitude and peonage beyond the confinement of prison, or as it affects those who had not been convicted of a specific crime. Historically, the determination of the courts and the legislative bodies of government in enforcing the law has turned a blind eye of justice towards the peonage

of prisoners. Under the color of state law, these constitutional violations were made and vouchsafed because of the intent and language of the Thirteenth Amendment. In the *Slaughter House Case*, 16 Wall. 36, 68 (U.S. 1872), the court stated:

> "That a personal servitude was meant, is proved by the use of the words 'involuntary', which can only apply to human beings. The exception of servitude as punishment for crime gives an idea of the class servitude that is meant. The word servitude is of larger meaning than slavery, as the latter is popularly understood in this country, and obvious purpose was to forbid all shades of African slavery…"

Thus, slavery was never abolished in America, but was rather institutionalized as a class of prisoner servitude.

In *Bailey vs. Alabama*, 219 U.S. 219, 243-244 (1911), the court states:

> "The Thirteenth Amendment prohibits involuntary servitude except as punishment for crime. But the exception, allowing full latitude for the enforcement of penal laws, does not destroy the prohibition. It does not permit slavery or involuntary servitude to be established or maintained through the operation of the criminal law by making it a crime to refuse to submit to the one or to render the services which would constitute the other."

Furthermore, it can be determined that prison servitude and peonage was broadened to extend beyond prison walls and gun towers as in the case of *United States vs. Reynolds*, 235 U.S. 133 (1914) and *Taylor vs. Georgia*, 315 U.S. 25 (1942), where convicts were procured for labor by Alabama State law at $6.00 per month, and when such convicts refused to labor further at such wages, they were brought to court and convicted for refusal.

Prisoners' servitude and peonage as stipulated in the Thirteenth Amendment forges the means from which the State can continue to reap enormous profits from uncompensated labor. This labor preserves an economic foundation for the State, similar to conditions of U.S. industrial growth and development based upon African chattel slavery of the 1600-1800s. This rationale is considered significant, based on the case of *United States vs. Rhodes*, 27 Fed. Cas.

785, 788 (No. 16, 151) (C.C. Ky. 1866), where Justice Swayne observed in reference to the enactment of the Thirteenth Amendment:

> "It trenches directly upon the power of the State and of the people of the State. It is the first and only instance of a change of this character in the organic law. It destroyed the most important relation between capital and labor in all states where slavery existed. It deeply affected the fortunes of a large portion of their people. It struck out of existence millions of dollars worth of property."

Today, prison labor reaps an exorbitant profit of over 1.4 billion dollars annually for the State and Federal government. Such labor and profit from nearly a half million imprisoned persons across the United States, of which 77% are Black, Mexican, Native American, Hispanic and Oriental races.… The Proclamation of the Thirteenth Amendment ending one form of slavery to institutionalize another maintains a historically forged condition on a particular class: the poor, the unfortunate, the uneducated, the unskilled and the under-class that, because of either economic hardships and/or racial oppression, must resort to crime to feed, house and clothe themselves, will also come to even greater physical and psychological torment forced into a condition of penal slavery once convicted of a crime.

> "It was the policy of the State to keep the Negro laborer poor, to confine him as far as possible to menial occupations, to make him a surplus labor reservoir and to force him into peonage and unpaid toil."

DuBois, *Black Reconstruction in America* 696 (1935). See also: Report, Asst. Attorney General (Charles W. Russell) to Att. Gen. (1908), in DuBois*, Occasional Papers, American Negro Academy*, No. 15.

Hence, the determination of the State in maintaining oppressive living conditions, such conditions that breed crime and eventually imprisonment and slave labor, is further recognized as today Black unemployment exceeds 40% of the Black population. It can be understood how the Thirteenth Amendment of the U.S. Constitution preserves the institution of slavery and

involuntary servitude, stemming from the foundation of African chattel slavery. In Carr, Federal Protection of Civil Rights op. cit. supra note 67 at 120 in reference to section 1581;

> "… the Act remains an ancient statute, originally directed against a rather specific and now largely archaic form of servitude, and its use on a broader basis will always present technical difficulties…"

Could not this same be applied to the Thirteenth Amendment, upon which this archaic law presents technical difficulties as barbaric and horrendous prison conditions are maintained? As well stated in Brodis, The Federally-Secured Right to be Free from Bondage, Geo. L. J. 367 at 383-397 (supra, note 67, at 391):

> "… a thoroughgoing and sweeping revision of the peonage, slavery and involuntary servitude…"

is needed, to the extent the Thirteenth Amendment of the U.S. Constitution is repealed.

The Thirteenth Amendment is the basis from which slavery has been institutionalized to the proportion that prison labor has become an economic foundation within the existing State and Federal government.

II. PRISON LIBERTY, LABOR AND CONDITIONS BASED ON THIRTEENTH AMENDMENT VIOLATIONS IN JUXTAPOSITION TO FIRST, FOURTH, FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS

Since 1878 all Sections of 1581-8 pertaining to peonage and involuntary servitude have been amended within Title 42 USC § 1994 of the Federal Criminal Code.

It can be easily understood that the language of the Thirteenth Amendment of the U.S. Constitution morally dehumanizes, degrades, and virtually strips a convicted person of human dignity. The socio-psychological mentality of those who administer penal laws and manage prisons attitude towards the prisoner has been one of superiority and complete disregard for the human being who has been imprisoned. This attitude of superiority, and in many areas, blatant racism, has caused riots and the death of prisoners, as was the case in New York at Attica prison,

September 11-13, 1971, in which 39 prisoners and 11 guards were killed by other prison authorities. The recurrence of such incidents has continued in many prisons across the United States. Just as it has been asserted that riots occur more frequently in prisons "… prisoners have no rights …" See, e.g., Fox, Why Prisoners Riot, 35 Fed. Probation 9, 10 (March 1971); see also; National Council on Crime and Delinquency, Peaceful Resolutions of Prison Conflict; Negotiations as a Means of Dealing with Prison Conflict IV (1973); Martinson, Collective Behavior at Attica, 36 Fed. Prob. 3 (Sept. 1972).

While conditions in prison have improved according to the industrial, technological and moral development of society, such improvements in prison have been slow and consistently based upon convicts' hard-fought struggles against barbaric work and living conditions and archaic penal laws which are an outgrowth of the Thirteenth Amendment. These gains are seen in terms of moral enhancement of the prisoners' confinement, attempting to preserve humanitarian virtues and dignity within the prisoner. In *Novak vs. Beto*, 453 F.2d at 672, Judge Tuttle stated in his dissent:

> "… I do not hesitate to assert the proposition that the only way law has progressed from the day of the rack, the screw and the wheel is the development of moral concepts, or, as stated by the Supreme Court in *Trop vs. Dulles*, the application of evolving standards of decency …"

But such improvements have fallen short of the mark, as moral concepts do not effectuate a change in Constitutional and Penal Law. Such laws would destroy all determinations to uphold prisoners as slaves of the State.

In examining the "moral concepts" and "evolving standards of decency," the courts have ruled on various Constitutional issues. Constitutional issues brought before the courts by prisoners have ranged from First Amendment violations to Fourteenth Amendment violations. While the courts continue to make contrary and many times contradictory rulings, the courts

have been consistent with their rulings in respect to keeping prisoners in involuntary servitude and slaves of the State. It is because of the Thirteenth Amendment and this moral-physical reality that forsakes the courts which will prevent prison authorities from regressing into horrifying and atrocious practices such as mass murder of prisoners (Attica 1971).

Such violations of Eighth Amendment rights and prisoners' struggles to preserve life and liberty have been ruled in many courts based upon numerous violations … The meaning and determination of cruel and unusual as expressed in *Weems vs. United States*, 217 U.S. 349; *Trop vs. Dulles*, 356 U.S. 86, must uphold the question of liberty as applicable to prisoners based upon the Fourteenth Amendment. The Eighth Amendment has been carried over into the Fourteenth Amendment in *Robinson vs. California*, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed. 2d 758, where a determination has been made that the *dignity of man* is the overriding value preserved by the Eighth Amendment clause. Although the treatment of prisoners to this date continues to be marred with racist brutality and murder, the conditions ensuing from violations of the Eighth Amendment have brought to the courts varied cases. See, e.g., *O'Brien vs. Moriarty*, 489 F.2d 941, 944 (1st Cir. 1974); *Johnson vs. Anderson*, 370 F.Supp. 1373, 1387 (D.Del. 1974); *Sellers vs. Beto*, 409 U.S. 968, 93 S.Ct. 279, 34 L.Ed. 2d 233: Punishment for prison infractions is many times more severe than the infraction; the prison authorities' superior attitude, life and death wielding power and consciously or unconsciously unbridled terror and contempt of prisoners threaten the prisoners' very existence. See, e.g., *Miller vs. Twomey*, 479 F.2d 701, 712-713 (7th Cir. 1973); *Morales vs. Schmidt*, 480 F.2d 1335 (1973); *Adam vs. Carlson*, 488 F.2d 619 (7th Cir. 1973) for undue punishment for offense; *Nelson vs. Heyne*, 491 F.2d 352 (7th Cir. 1974), for corporal punishment have been rejected; *Cruz vs. Beto*, 405 U.S. 319, 321, 92 S.Ct. 1079, 31

L.Ed. 2d. 263; in *Furman vs. Georgia*, 408 U.S. 238, 272-273, 92 S.Ct. 2796, 33 L.Ed. 2d 346 (1972), Justice Brennan, concurring, stated:

> "The true significance of these punishments is that they treat members of the human race as nonhumans, as objects to be toyed with and discarded. They are thus inconsistent with the fundamental premise of the (Cruel and Unusual Punishment) clause that even the vilest criminal remains a human being possessed of human dignity …"

A prisoner's allegation of beating and torture has been held to state a claim under the Civil Rights Act. See, e.g., *Siegel vs. Ragan*, 88 F.Supp. 996, 998 (N.D. Ill. 1949); *Gordon vs. Garrison*, 77 F.Supp. 477 (E.D. Ill. 1948). While *Talley vs. Stephens*, 247 F.Supp. 683 (E.D. Ark. 1965); *Jackson vs. Bishop*, 268 F.Supp 804 (E.D. Ark. 1967); *Courtney vs. Bishop*, 409 F.2d 1185 (8th Cir. 1969); *Holt vs. Sarver*, 300 F.Supp. 825 (E.D. Ark. 1969) provided provisions for injunctive relief for unconstitutional prison conditions and corporal punishment and torture, the courts upholding these rulings maintain a prisoner is a slave of the State whose liberties and dignity is controlled and dictated by the prison authorities, as stated by Justices Stevens and Brennan, dissenting:

> "… For if the inmate's protected liberty interest is no greater than the State chooses to allow, he is really little more than the slave described in the 19th century cases. I think it clear that even the inmate retains an unavailable interest in liberty …"

Meachum vs. Fano, 427 U.S. 215-233, 96 S.Ct. 2532, 49 L.Ed.2d. 451 (1976).

See also, e.g, *Morrissey vs. Brewer*, 408 U.S. 471, 482, 92 S.Ct. 2593, 2601, 3 L.Ed.2d. 484 (1971), where a parolee has limited liberty, Circuit Court Judge Lay stated:

> "… A first tenet of our government, religious, and ethical tradition is the intrinsic worth of every individual, no matter how degenerate. It is a radical departure from the tradition to subject a defined class of persons, even criminals, to a regime in which their right to liberty is determined by officials wholly unaccountable in the exercise of their power …"

As barbaric inhumane prison conditions and treatment continue under the precepts established by the Thirteenth Amendment, one of the most dehumanizing treatments prisoners must experience constantly is the strip search. A prisoner is stripped naked and must, before a prison guard, open their mouth and wag their tongues, run fingers through their hair, lift up their testicles (for males) or squat (for females), raise their feet to show their under bottom, and bend over and spread the cheeks of their buttocks, showing the anus to the prison guards. This treatment is prevalent throughout the U.S. penal system. Most recently, the Federal District Courts of the State of New York ruled in two separate cases that strip searches of this nature must be based upon prison officials' belief that the inmate is actually holding contraband on their person. See, e.g., *Hurly vs. Ward*, 448 F.Supp. 1227 (1978) and *Frazier vs. Ward*, 426 F.Supp. 1354 (1977). But New York prison officials blatantly disregard these Federal court rulings, as such constitutional violations continue.

Thus, it is determined the question of liberty and dignity of the prisoner is a toothless "moral concept" virtually inapplicable in terms of enforcing constitutional and penal guarantees against degradation and humiliation.

> The "… Federal Courts sit not to supervise prisons but to enforce the constitutional rights of all 'persons,' which includes prisoners …"

Cruz vs. Beto, 405 U.S. 319, 321, 92 S.Ct. 1079, 1081, 31 L.Ed. 2d 263 (1972)

The courts further elucidate the rights of prisoners in their written proclamations, such proclamations which consistently preserve the continued mode of inhumane treatment and barbaric prison conditions as the courts uphold in practice a "no hand doctrine" on the implementation of such court rulings. Therefore, the written proclamations in many cases are without the means to enforce rulings that intend to provide prisoners with liberty and dignity.

See, e.g., *Washington vs. Lee*, 263 F.Supp. 331 (M.D. Ala. 1966), *aff'd per curiam* 390 U.S. 333, 88 S.Ct. 994, 19 L.Ed.2d 1212 (1968), which states:

> "It is well established that prisoners do not lose all of their constitutional rights and that the Due Process and Equal Protection Clause of the Fourteenth Amendment follows them into prison and protects them there from unconstitutional actions on the part of prison authorities carried out under the color of law."

In the case of *Sobell vs. Reed*, 327 F.Supp. 1294, 1303 (S.D.N.Y. 1971), the court states:

> "… inmates possess constitutional rights, especially under the First Amendment, to the fullest extent consistent with prison discipline and security …"

In the case of *Procunier vs. Martinez*, 416 U.S. 396, 413, 94 S.Ct. 1800, 1811, 40 L.Ed. 2d 224, 240 (1974), the court states:

> "… The limitations of First Amendment freedoms must be no greater than necessary or essential to the protection of the particular government interest involved …"

Hence, it is uncontestable and indisputable that the courts' inconsistent, paradoxical, and contradictory rulings virtually preserve the mode of prison conditions that are in the end offensive and unconstitutional caricatures of the law. In the case of *Coffin vs. Reichard*, 143 F.2d, 443, 445 (6th Cir. 1944), the court stated:

> "…A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law.…"

Also see, e.g., *Price vs. Johnson*, 334 U.S. 266, 285, 68 S.Ct. 1049, 1060, 92 L.Ed. 1356 (1948); *Cruz vs. Beto*, 405 U.S. 319, 321, 92 S.Ct. 1079, 1081, 31 L.Ed. 2d 263 (1972), in which the court stated:

> "… Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system …"

Today's rulings appear to be an enhancement of those of the past, but closer examination of the intent and application for all practical purposes remains the same. As stated in *Jackson vs.*

Goodwin, 400 F.2d, 529, 532 (5th Cir. 1968), quoting *Ruffin vs. Commonwealth*, 62 Va. (21 Gratt) 790, 792 (1871):

> "… He (the prisoner) as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which law in its humanity accords to him. He is for the time being the slave of the State …"

In all actuality, can it be denied that slavery in America has never been abolished, but rather institutionalized? Undoubtedly, the courts and the Constitution uphold and support this proposition.

In other areas where the court has been challenged on the extent of the Thirteenth Amendment, it has attempted to "split hairs" in respect to defining what constitutes slavery, involuntary servitude, and uncompensated labor. In *Taylor vs. Georgia*, 315 U.S. 25, 62 S.Ct. 415, 86 L.Ed. 615 (1942), the court established that peonage is a form of involuntary servitude within *the meaning of* the Thirteenth Amendment, while in *Heflin vs*. *Sanford*, 142 F.2d 798 (5th Cir. 1944) the court stated it is not uncompensated service, but involuntary servitude, which is prohibited by the Thirteenth Amendment.

Thereby, involuntary servitude for prisoners is a common lot of forced labor, upon which minimum compensation (less than minimum standard wage) or no compensation does not undermine the criteria from which involuntary servitude is defined, as prisoners are considered and treated as slaves of the State.

Hence, it is learned that in certain prisons, prisoners receive nominal wages for their labor. Such wages in many areas amount to no more than pennies a day; such "slave wages" cannot be considered compensation, nor are such "wage slaves" considered employees of the State. See, e.g.,: Fla. Stat. § 447.203(3)(f) (Supp. 1976), which states:

> "… 'Public employee' means any person employed by a public employer except: Those persons who have been convicted of a crime and are inmates confined to institutions within the states … nor shall such be considered as an employee of the

> state … nor shall such prisoner come within any other provision of the Workmen's Compensation Act …" Also see Cal. Penal Code §§ 2700, 2766, 2791 (West Cum. Supp. 1970) (amended 1976).

Forced labor of prisoners is essential for the maintenance and operation of prisons, while affording the State and Federal government with substantial wealth, contributing to its treasury. But for prisoners, such labor for the most part is worthless in terms of developing a usable skill or trade. This is especially true in prisons where farm work is the major industry. In *Holt vs. Sarver*, 309 F.Supp. 362 (1970), the court stated:

> "… What skills they may acquire in connection with their field work are of very little, if any, value to them when they return to the free world …" (p. 370)

In this same regard, if prisoners' compensation for labor amounts to pennies a day, if that, and such labor in the end does not afford the prisoner with a skill or trade, what is the compulsion for prisoner labor? In the case of *Courtney vs. Bishop*, 409 F.2d 1185 (8th Cir. 1969), if a prisoner does not work, they are confined in segregation and locked in their cells 23 hours a day. Thus, the Eighth and Fourteenth Amendments are violated in upholding the precepts of the Thirteenth Amendment, under the discretion of prison authorities and color of law. Contrary to the case of *Jackson vs. Bishop*, 404 F.2d 571, 580 (8th Cir. 1968), Blackman J., quoted in *Rozecki vs. Gaughan*, 459 F.2d 6 (1st Cir. 1972):

> "… Human considerations and constitutional requirements are not, in this day, to be measured or limited by dollar considerations …"

In this case, the dollars were made for the State and Federal government by slaves of the State—prisoners.

Because prisoners are considered slaves of the State and *not* employees, they are *not* covered under the Occupational Safety and Health Act, although the courts have allowed prisoners to file claims against government officials for negligence in cases related to occupational health and safety code violations under the Tort Claims Act of Title 28 U.S.C. §§

1346, 2617. (See, e.g., *Winston vs. United States*, 305 F.2d 253 (2d Cir. 1962) and *Muniz vs. United States*, 305 F.2d 285 (2d Cir. 1962)). Many civil suits filed by prisoners have claimed negligence for safety and health code violations as a result of injury due to work assignment or where prison conditions have deteriorated to the point of being unfit for human habitation, as in the case of *Gates vs. Collier*, 501 F.2d 1291 (5th Cir. 1974), or in the case of *Adams vs. Pate*, 445 F.2d 619 (7th Cir. 1973), where the court observed: "… conditions so foul, so inhumane, and so violative of basic concepts of decency.…" Prisoners are still in many other cases considered civilly dead, and unable to vote, marry or enter contracts.

In narrowing the legal ramifications of this argument, it is determined the Thirteenth Amendment as written (language) provides a significant clause that is unsupportive of the Due Process and Equal Protection clause. The Thirteenth Amendment reads as follows: "Neither slavery nor involuntary servitude, except as punishment for crimes *whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction" (emphasis added).

This clause within the Thirteenth Amendment "… whereof the party shall have been *duly* convicted …" is contrary to what has been determined to be the foundation of the Due Process clause in respect to the exhaustion of legal remedies for those who had been convicted of a crime. In considering this contradictory language in the Constitution and the practical application and practice of the law, it is learned that many of those convicted were indeed *unduly* convicted. The Due Process clause renders the legal prospects for the exhaustion of legal remedies, from which the unduly convicted can be free of involuntary servitude. Therefore, it is *not* until a full disposition has been gained through the judicial process, the courts of appeal, and the Supreme

Court that such disposition fully determines whether a prisoner has been duly or unduly convicted.

Also, the double standard in the judicial process based upon racial and economic disparity allows some of the duly convicted to be released on bond pending the exhaustion of legal remedies, while many more of the less fortunate and unduly convicted are sent to prison and forced labor.

Thus, the clause in the Thirteenth Amendment does not preserve the Due Process and Equal Protection clause, as it commits the convicted, who are unable to gain an appeal bond, to involuntary servitude and slavery.

Lastly, the question of the existence of political prisoners in the United States penal system, who are treated as slaves of the State must be brought to the court's attention. Although the courts recognize the existence of political trials, as the following cases indicate: (*Spies vs. People*, 122 Ill. 1, 12 N.E. 865, 17 N.E. 898, involving the *Haymarket riot*; *In re: Deps*, 158 U.S. 564, 15 S.Ct. 900, 39 L.Ed. 1092, involving the *Pullman strike*; *Mooney vs. Holohan*, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791, involving the *Cooper strike* of 1917; *Commonwealth vs. Sacco*, 255 Mass. 369, 151 N.E. 839, 259 Mass. 128, 156 N.E. 57, 261 Mass. 12, 158 N.E. 167, involving the *Red Scare* of the 1920s; *Dennis vs. United States*, 341 U.S. 494, 71 S.Ct. 857, 95 L.Ed. 1137, involving an *agreement to teach Marxism*), the court does not assure that the political person who has been convicted of a political act is recognized as a political prisoner while incarcerated. Thereby, the political prisoner is treated like a slave, not afforded the human rights and dignity assured by international law.

III. THE THIRTEENTH AMENDMENT IS AGAINST INTERNATIONAL LAW

There are several aspects in which the Thirteenth Amendment conflicts with and is violative of international law.

Specifically, the Thirteenth Amendment, which is the forerunner of the Fourteenth Amendment, and interrelated based upon the historical intent of each congressional proclamation, are legally and politically violative of international charters to which the United States is a party. Since the adoption of the Thirteenth Amendment into law on December 18, 1865, the intent was to free Africans from chattel slavery (and institutionalized penal servitude); it also made immigrants of kidnapped victims of slavery who had been stripped of original name, culture, and language. Prior to the ratification of the Fourteenth Amendment in 1868, which only 21 states ratified before 1870, Africans in America has become an autonomous sovereignty for over three years, by orders of General William Tecumseh Sherman and U.S. Secretary of War Edwin McMasters Stanton in late 1864 by Special Field Order No. 15, which set aside:

> "… the islands from Charleston South, the abandoned rice fields along the rivers from 30 miles back from the seas and the country bordering the St. John's River, Florida …"

for emancipated Africans in America.

> "… in the possession of which land the military authorities will afford them protection until such time as they can protect themselves or until Congress shall regulate their title …"

The Fourteenth Amendment stripped Africans of the possession and control of this territory, by committing such emancipated slaves to a kind of citizenship, a citizenship the African victims of slavery never asked for, voted upon, nor agreed with, which was noted to be separate and unequal protection under the law, or what has been termed "second-class citizenship". This "class" relationship has been maintained for centuries; today an overwhelming number of penal slaves are descendants of Africans who suffered chattel slavery.

This question of citizenship and slavery as it affects not only descendants of African chattel slavery, but also Native Americans, Puerto Ricans and other national minorities in

America, must be addressed, as they comprise 77% of the entire U.S. prison population, and less than 20% of the entire American population.

First, it must be established that African descendants, Native Americans and Puerto Ricans are afforded dual citizenship based on their national identity and heritage if they were born in the United States, according to the Fourteenth Amendment. The legal determinations of dual citizenship are based upon the following cases: *United States vs. James et al.*, 528 F.2d 999, *reh. denied*, 532 F.2d 1054 (5th Cir. 1976) provided dual citizenship of African descendants in America, which is consistent with *Williams vs. Lee*, 358 U.S. 217 (1959) in respect to Native Americans, and *Elks vs. Wilkins*, 112 U.S. 94, 5 S.Ct. 41, 28 L.Ed. 643 (1884), which held the Fourteenth Amendment did not make Native Americans on reservations, though born in the United States, into citizens; also see, e.g., *Balzac vs. People of Puerto Rico*, 258 U.S. 298 (1922), which preserves Puerto Rican national identity although a colony of the United States.

Based upon the injunctions of the Constitution, these nationalities are denied their national identity and heritage and are reprimanded by the Thirteenth and Fourteenth Amendments to conform to the standards of law enforced by the dominant culture of the U.S. government, who have historically been the enslavers and colonizers of these national minorities.

The United States is a member and party to the United Nations charter (Universal Declaration of Human Rights), a treaty which was approved by the U.S. Senate on July 28, 1945 and as such is part of the supreme law of the land. See, e.g., *Amaya vs*. *Stanolind Oil* & *Gas Co*., 158 F.2d 554, *cert*. *denied,* 331 U.S. 808, 67 S.Ct. 1191, 91 L.Ed. 1828 (1946); also see Article Six of the U.S. Constitution makes all treaties a part of the "Supreme Law of the Land".

It is incumbent to support the argument heretofore stated with such law which set precedent to that law which is violative of "moral concepts" and the "evolving standards of

decency" affecting those imprisoned. This consideration is brought before this court based upon the injunction that the courts have no right to annul or disregard provisions of treaties upon any notion of equity, general convenience, or substantial justice. See, e.g., *King Feature Syndicate vs. Valley Broadcasting Company*, 43 F.Supp. 137, *affirmed* 133 F.2d 127 (5th Cir. 1943). Thus, the courts must afford this complaint judicial acknowledgement of the International U.N. Charters to which the United States is a party …

Hence, Article 15 of the Universal Declaration of Human Rights enforces:

1. "Everyone has the right to a nationality
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality …"

This proclamation preserves the ruling of the United States Federal courts in respect to the dual citizenship-nationality based upon the aforementioned cases. But the character and practice of the United States in upholding the principles embodied in Article 15 in the Declaration of Human Rights has been to deny the descendants of African slavery, Native Americans, Puerto Ricans and other national minorities their heritage and culture, thus depriving them of their nationality. This is more true in respect to prisoners, upon which the U.S. penal system determines a prisoner is limited as to "liberty"—such liberty as the retaining of national identity. Subsequently, these national minorities are forced into servitude upon entering prison. In many cases the person was unduly convicted and/or had not exhausted the judicial remedies afforded by law. Since these national minorities comprise 77% of the entire prison population and less than 20% of the American population, the question must be raised as to why the unequal proportion of national minorities' imprisonment. In Points I and II of this complaint, it is affirmed such conditions are based upon the historical foundation of the Thirteenth Amendment. Verily, the practice of the judicial process to effectuate the overwhelming 77% of national minorities' imprisonment is wholly discriminative and serves to perpetuate a condition which is

genocidal to the given national minority. This discrimination, which is prohibited by the Fourteenth Amendment; see, e.g., *Board of Managers of the Arkansas Training School for Boys at Wrightsville vs. George*, 377 F.2d 228, 232 (8th Cir. 1967); *Cooper vs. Pate*, 378 U.S. 546, 84 S.Ct. 1733, 12 L.Ed. 2d 1030 (1964); *Lee vs. Tahash*, 352 F.2d 970 (8th Cir. 1965); further indicates the intent of the judicial process to preserve a condition of slavery on a particular 'class' or national minority. The genocidal aspect of this discrimination by the United States penal system is defined according to the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, 1948, which states:

> "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such;
> A. Killing members of the group;
> B. Causing serious bodily or mental harm to members of the group;
> C. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> D. Imposing measures intended to prevent births within the group …"

The genocidal implications of racial discrimination as practiced in the judicial process and U.S. penal system plays a causal role in the destruction of a 'class' or national minority. Giving consideration to the 40% unemployment rate and statistical record that 1 of every 5 Black males, whose crime would be either robbery, burglary or drug-related offenses, totally based upon economic deprivation, will experience prison, the 77% prison population of national minorities gives credence to the charge of genocide, and further depicts the Thirteenth Amendment as being violative of International Law.

> The U.N. Slavery Convention (League of Nations) of 1926 defined slavery as:
>
> "The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" Article 1, (1), and further states:
>
> "The High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty, or tutelage, as far as they have not already taken steps:
> A: To prevent and suppress the slave trade;

B: To bring about, progressively and as soon as possible, the complete abolition of slavery in all forms" Article (2)

The Universal Declaration of Human Rights states:

"No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." Article (4)

While the International Covenant on Civil and Political Rights (1966) states:

1. "No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited.
2. No one shall be held in servitude." Article (8)

Freedom from slavery is the right of every individual, including prisoners. The Universal Declaration of Human Rights proclaims:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status …" Article (2)

This human right is so important that even in time of a public emergency with threatens the life of the nation, the United States may not derogate from its responsibility to ensure freedom from slavery. The Convention on Civil and Political Rights, Article (4)(2) guarantees freedom from slavery in this manner, along with other non-derogable rights, such as freedom from torture and freedom from arbitrary deprivation of life, as does Article 5 of the Declaration of Human Rights, which states:

"No one shall be subjected to torture—or to cruel, inhumane or degrading treatment or torture."

In spite of these clear international prohibitions on slavery, and in spite of a universal abhorrence of the practice of slavery, the State and Federal government of the United States are not only failing to protect all citizens from slavery, but are actually engaged in imposing slavery and slave-like practices on prisoners detained in prison.

As noted in Points I and II of this complaint, most United States prisoners are required to work. But it is not forced labor itself that makes slaves of prisoners, according to International Standards. The International Covenant on Civil and Political Rights explicitly permits hard labor as punishment imposed by a competent court for a crime (Article 8(3)(B)); it also specifies that prohibited forced labor does not include

> "any work or service … normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from detention …" (Article 8(3)(C)(I))

Similarly, one of the U.N. Standard Minimum Rules for the Treatment of Prisoners, is that:

1. "Prison labor must not be of an afflictive nature.
2. All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.
3. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.
4. So far as possible, the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.
5. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
6. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform." (Article 71(1-6))

However, permitted forced labor does not necessarily imply that prisoners may be uncompensated for their work and otherwise treated as property (slaves) of the State. In fact, the International Covenant on Economic, Social and Cultural Rights (1966) recognizes the right of everyone to:

> "… Fair wages and equal remuneration for work of equal value, without distinction of any kind …"

The U.N. Standard Minimum Rules for the Treatment of Prisoners specify that:

1. "There shall be a system of equitable remuneration of the work of prisoners.

2. Under the system, prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
3. The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over the prisoner on his release." Article 76(1-3)

The United States' failure to equitably compensate prisoners' labor is one way in which prisoners are treated as property (slaves) of the State; it is this treatment which causes many to consider the U.S. penal system as an institution of slavery and such prisoners as slaves; or in the words of the Slavery Convention:

> "… persons over whom some or all of the power attaching to ownership are exercised …"

The work and living conditions, as have been enunciated in Points I and II of this complaint, further substantiate violations of International Law. Where the dubious question of 'liberty' is undermined by prison officials in an effort to protect the particular government interest of imprisonment, the International Covenant of Civil and Political Rights, states:

> "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person …" (Article 10/1)

It is this "… respect for the inherent dignity of the human person …" that is questioned, since the Thirteenth Amendment dehumanizes and degrades the 'human person', rendering the convicted person a slave of the State.

The U.N. Declaration of the Protection of All Persons from Torture and other Cruel, Inhumane or Degrading Treatment or Punishment was adopted on December 9, 1975 by the U.N. General Assembly. The purpose of the Declaration is to condemn any act of torture or other cruel, inhumane or degrading treatment as: "… an offense to human dignity …" The Declaration clearly states:

> "The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is

> taken of the prohibition against torture and other cruel, inhumane or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons." (Article 5)
>
> It further states:
>
> "Any person who alleges that he has been subjected to torture or other cruel, inhumane or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned." (Article 8)

The Thirteenth Amendment, as it is practiced in the United States penal system, unquestionably violates this United Nations Declaration.

Another aspect in which International Law will serve to support the contention of this complaint is based upon the existence and treatment of political prisoners who are affected by the Thirteenth Amendment. The Convention Concerning the Abolition of Forced Labour (1957) states:

> "Each member of the International Labour Organization which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—
> (a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system;
> (b) As a method of mobilizing and using labour for purposes of economic development;
> (c) As a means of labour discipline;
> (d) As a punishment for having participated in strikes;
> (e) As a means of racial, social, national or religious discrimination." (Article 1)

Here the International Court has prohibited compulsory labor as a means of political coercion and punishment for being politically opposed to the governing institutions or policy of government.

This International Law is of special interest for U.S. political prisoners who have been imprisoned for criminal acts for expressing ideas contrary to the existing status quo ideology of

America being a country that provides equal opportunities to all nationalities. In actuality, the U.S. prevents such nationals from struggling for civil and human rights, as thousands of Native Americans, Puerto Ricans and Blacks (African descendants) have been imprisoned for politically fighting for their independence from U.S. colonial rule, or for sovereignty and nationhood from racist national oppression. This is also true for those political prisoners whose imprisonment is based upon attempts to end capitalist imperialism and institute a government based upon the ideals of socialism in America.

Furthermore, prisoners who have fought for penal reform, for the end of prison slavery and involuntary servitude, meet the criteria enunciated in the Convention Concerning the Abolition of Forced Labour.

These International Laws, to which the United States is a party, are equally supportive of the basic argument of this complaint, and present a determination which thoroughly exposes the extent of the constitutional violations and human rights deprivation prisoners in the U.S. penal system suffer under the practice and policy of the Thirteenth Amendment.

CONCLUSION

The Thirteenth Amendment, as presented in this complaint, totally negates "moral concepts" or "evolving standards of decency", which are said to be the foundation for penal reform. Where liberty is withdrawn or limited, human dignity must be guarded by the sword of law, ready to sever injustices that dehumanize and degrade the human person. To assure the sword of the law will fall in support of human dignity in this case, it would be most necessary for the judiciary to recognize the moral stigma the Thirteenth Amendment bears upon the entire United States Constitution.

This complaint brings to the court a historical, moral and legal argument contending the Thirteenth Amendment in form and practice is against other constitutional and human rights

guaranteed. That it must be repealed from the U.S. Constitution, as it upholds the criteria in which prisoners are forced into servitude as slaves of the state. The legal ramifications of this complaint wholly encompass the judicial process form which adjudication may preserve the mode of the Constitution.

Thereby, the standards of International Law enjoined upon this court assure both the judiciary and legislature the legal foundation for the repeal of the Thirteenth Amendment, which is a caricature of the U.S. Constitution.

Finally, a resolution must be drawn in the success of this complaint where the Standard Minimum Rules for the Treatment of Prisoners, which was promulgated in 1955 at the First United Nations Congress on Crime Prevention and Offender Treatment, can be distributed to all U.S. prisoners, as a provision of the U.N. Economic and Social Council under (E/AC.57/23), Procedure 3, which states:

> "In order that the Standard Minimum Rules may succeed in their purpose of humanizing criminal justice, they should also be made available to all prisoners and to all persons under detention, in a manner and form that is understandable to those confined."

Violations of the Standard Minimum Rules may be brought before the United Nations according to Procedure 13, which states:

> "Allegation of serious, repeated and consistent violations of the Standard Minimum Rules shall be brought to the attention of the Secretary General with a recommendation that the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities examine the situation in accordance with the procedures of those bodies."

Written interventions have been submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities under "American Indian Prisoners in the United States and Canada" (E.CN.4/Sub.2/NGO/67) and under "Racism and Racial Discrimination in Prisons" (E/CN.4/Sub.2/NGO/75).

DECLARATORY AND INJUNCTIVE RELIEF

The court is authorized under F.R.Civ.P. 12(b)(6) to grant injunctive relief as Plaintiffs have made a clear showing of probable success on the merits of this action based upon the irreparable injury as depicted in this litigation, of which the balance of hardship is unequivocally on the Plaintiffs requesting preliminary relief. See, e.g., *Triebwasser and Katz vs. American Tel. and Tel. Co.*, 535 F.2d 1356, 1358 (2d Cir. 1976); also see, e.g., *Checker Motors Corp. vs. Chrysler Corp.*, 405 F.2d 319, 323 (2d Cir.), *cert. denied*, 394 U.S. 999, 89 S.Ct. 1595, 22 L.Ed.2d 777 (1969). Plaintiffs believe this litigation has been brought to the courts; the present condition of imprisonment and threatened injury resulting from this complaint must be granted such relief; *Laird vs. Tatum*, 408 U.S. 1, 15 (1972).

Hence, the purpose of a preliminary injunction is to move the status quo pending a final determination of the merits. *Union Management Corp. vs. Kopore Co.*, 366 F.2d 199, 204 (2d Cir. 1966). It is an extraordinary remedy, and will not be granted except upon a clear showing of probable success *and* possible irreparable injury to plaintiffs; *Clairol Inc. vs. Gillette Co.*, 389 F.2d 265 (2d Cir. 1969).

The violations complained of herein involve very basic rights, therefore the probability of having those rights vindicated after plenary trial on the merits is manifestly great. Equally manifested is the possibility of irreparable injury to plaintiffs as long as practices continue. Since the practice and policy is not an isolated incident, but rather a recurring practice, injunctive relief should be granted. *Inmates of Attica Correctional Facility et al. vs. Rockefeller, et al.*, 453 F.2d 455, 466-467, *supra.* See also *Agron vs. Montanye*, 392 F.Supp. 454 (W.D.N.Y. 1975); *Smoke vs. Fritz*, 320 F.Supp. 609 (S.D.N.Y. 1970).

Anticipating defendants' probable motion for Summary Judgment, plaintiffs cite *Haines vs. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed. 652 (1972), which held that the Courts must

construe prison inmates' complaints liberally. Also see *Lewis vs. State of New York*, 547 F.2d 4 (2d Cir. 1976) and *Morgan vs. La Valle*, 526 F.2d 221 (2d Cir. 1975). Based upon the above, in *Corly vs. Conboy*, 457 F.2d 251 (2d Cir. 1972), it alleges policies of just filing serves process for appropriate answer from the Courts.

Therefore, Plaintiffs in this action pray that the Court will thoroughly investigate the gross violations and contentions of this litigation.

WE DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT BASED UPON INFORMATION AND BELIEF.

Executed on: October 9, 1979

PLAINTIFF: /s/_____

Anthony Bottom #77A4283

PLAINTIFF: /s/_____

Charles Meriwether Jr. #77A4282

PLAINTIFF: //s/_____

Ralph Hall #72A0240

PRO SE

Green Haven Correctional Facility
Drawer B
Stormville, New York 12582

Sworn to before me this 9th
day of Oct. 1979

/s/ Kathryn M. Precious

Notary Public

[STAMP]

Kathryn M. Precious
Notary Public of New York
Dutchess Country No. 4525355
Commission Expires March 30, 1980