UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

EVERETT HADIX, et. al.,

Plaintiffs,

v.

PERRY M. JOHNSON, et. al.,

Defendants.

No. 4:92-CV-110

HONORABLE RICHARD ENSLEN

/

Patricia Streeter (P30032)
Co-Counsel for Plaintiffs
221 N. Main Street, Suite 300
Ann Arbor, MI 48104
(734) 222-0088

Michael Barnhart (P10467)
Co-Counsel for Plaintiffs
615 Griswold, Suite 925
Detroit, MI 48226
(313) 964-6520

Elizabeth Alexander
Co-Counsel for Plaintiffs
The National Prison Project
915 15th Street, NW, 7th Floor
Washington, DC 20005
(202) 393-4930

Leo H. Friedman (P26319)
A. Peter Govorchin (P31161)
Counsel for Defendants
Michigan Department of Attorney General
Corrections Division
P.O. Box 30217
Lansing, MI 48909
(517) 335-7021

DEFENDANTS' EXPEDITED MOTION TO DISMISS THE COURT'S ATTEMPT TO EXERCISE JURISDICTION OVER FACILITIES NOT SUBJECT TO THE CONSENT DECREE AND/OR ISSUES AND FACILITIES PREVIOUSLY TERMINATED BY THE FEDERAL COURT

Defendants, by their counsel, pursuant to Fed. R. Civ. P. 12(b)(1) and 18 U.S.C. § 3626, seek dismissal of the Court's attempt to exercise jurisdiction over Michigan Department of Corrections (MDOC) facilities that are not subject to the *Hadix* Consent Decree and/or issues and facilities previously terminated by the federal court, and state as follows:

1. In 1980, Everett Hadix and other prisoners incarcerated at the State Prison of Southern Michigan, Central Complex ("SPSM-CC") brought a class action pursuant to 42 U.S.C.

§ 1983 in the United States District Court for the Eastern District of Michigan against various state officials charged with the operation of SPSM-CC. See *Hadix v. Johnson,* 367 F.3d 513, 515-517 (6th Cir. 2004).[1] The inmates asserted that their conditions of confinement violated their rights under the First, Eighth, Ninth, and Fourteenth Amendments. *Id.*

2. Five years later, on April 4, 1985, the parties entered into a comprehensive consent decree covering most aspects of health care; fire safety; sanitation; safety and hygiene; overcrowding and protection from harm; volunteers; food service; management; operations; access to courts; and mail. *Id.*

3. Though the state officials admitted no liability on the inmates' claims, the decree explicitly stated that it was intended by the parties to assure the constitutionality of the conditions under which prisoners are incarcerated at SPSM-CC. *Id.* Under the consent decree's terms, the state officials could apply for termination of the decree when they were in compliance with all decree provisions. *Id.* The district court retained jurisdiction to enforce the terms of the consent decree until compliance was achieved. *Id.*

4. In 1992, the District Court for the Eastern District transferred the medical and mental health components of the Consent Decree to this Court.[2] *Id.* The Sixth Circuit also transferred the access to courts portion of the case to this Court. *Knop v. Johnson,* 977 F.2d 996, (6th Cir. 1992).

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[1] The history of this case is stated in previous decisions of the Sixth Circuit Court of Appeals, see *Hadix v. Johnson,* 367 F.3d 513 (6th Cir. 2004); 230 F.3d 840 (6th Cir. 2000); 228 F.3d 662 (6th Cir. 2000); 144 F.3d 925 (6th Cir. 1998); 143 F.3d 246 (6th Cir. 1998); 133 F.3d 940 (6th Cir. 1998), and in previous decisions of the district court, see *Hadix v. Johnson,* 45 F. Supp. 2d 584 (E.D. Mich. 1999); 947 F. Supp. 1113 (E.D. Mich. 1996); 947 F. Supp. 1100 (E.D. Mich. 1996); 933 F. Supp. 1360 (E.D. Mich. 1996); 879 F. Supp. 743 (E.D. Mich. 1995); 896 F. Supp. 697 (E.D. Mich. 1995); 792 F. Supp. 527 (E.D. Mich. 1992); 740 F. Supp. 433 (E.D. Mich. 1990); 712 F. Supp. 550 (E.D. Mich. 1989); 694 F. Supp. 259 (E.D. Mich. 1988).

[2] On January 8, 2001, this Court entered its order terminating in all respects Section II.B (mental health care) of the Consent Decree.

5. The Consent Decree in this case provides:

> 1) This was an action brought pursuant to 42 U.S.C. § 1983 and other applicable statutes seeking declaratory and equitable relief with respect to the conditions of confinement at the Central Complex of the State Prison of Southern Michigan, including the Reception and Guidance Center (hereinafter referred to as SPSM-CC).
>
> 2) Plaintiffs are prisoners at the SPSM-CC and represent themselves and the class of all prisoners who are now or will be confined within said institution. Defendants are state officials charged under Michigan law with the operation of SPSM-CC. [R. 199, Consent Decree, Introduction, p. 1.]

6. At the time of the entry of the Consent Decree, April 1985, SPSM-CC consisted of cell blocks 3, 4, 5, 6, 8, 11, 12 and administrative segregation (which was the hospital). See, the January 8, 2002 Affidavit of Barbara Hladki, R. 1540, a copy of which is attached hereto as Attachment 1. 6-Block only consisted of galleries base through 3. The 4th gallery also known as "top 6," was part of the Reception and Guidance Center. 7-Block was then as it is now, the Reception and Guidance Center. *Id.* Cell Blocks 1 and 2 were the North Complex, and Cell Blocks 9, 10 and 16 were the South Complex. *Id.* 16-Block was demolished and is being replaced with a new housing unit. *Id.* A and B units, which are now part of the Reception and Guidance Center, did not exist at the time the Consent Decree was entered, and when they were first built they were part of the Parnall Correctional Facility. *Id.* C Unit did not exist at the time the Consent Decree was entered, and is now administered by the Egeler Correctional Facility. *Id.* The Duane Waters Hospital did not exist at the time the Consent Decree was entered. *Id.*

7. In April of 1996, Congress enacted the Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, 100 Stat. 1321-66 (1966). "Enacted in part in response to criticisms that federal courts had overstepped their supervisory authority in prison conditions cases, the PLRA was specifically intended to limit the use of court-enforced consent decree cases and to restrict 'the ability of Federal judges to affect the capacity and conditions of prisons and jails beyond

what is required by the Constitution and Federal law'." *Hadix*, 228 F.3d at 665; *Hadix*, 144 F.3d at 931.

8. After enactment of the PLRA, the defendants moved for termination of the Consent Decree in the Eastern District pursuant to 18 U.S.C. § 3626(b)(2). *Hadix*, 228 F.3d at 665-666. On November 1, 1996, the Eastern District denied defendants' motion to terminate the Consent Decree, ruling that the termination provisions of the PLRA were unconstitutional on separation-of-powers grounds. *Id.* at 666. On appeal, the Sixth Circuit reversed the Eastern District's judgment [*Hadix v Johnson*, 133 F.3d 940, 941 (6th Cir. 1998), *cert denied* 524 U.S. 952 (1998)]. *Id.* The Sixth Circuit remanded the case to the Eastern District for the consideration of the merits of the defendants' motion for termination. *Id.*

9. On March 18, 1999, the Eastern District issued its ruling on defendants' motion for termination, and focused its attention on whether there had been substantial compliance with the consent decree with regard to the facilities designated in the break-up plan [*Hadix v Johnson*, 45 F. Supp. 2d 584 (E.D. Mich. 1999)]. *Id.* at 666. The Eastern District unconditionally terminated certain portions of the consent decree, and conditionally terminated other provisions. *Id.* at 666-667. On October 5, 2000, the Sixth Circuit reversed the Eastern District's order terminating the Consent Decree because it failed to comply with the requirements of the PLRA, and remanded the case with strict instructions for the prompt resolution of the defendants' motion to terminate. *Hadix v Johnson*, 228 F.3d 662 (6th Cir. 2000).

10. On March 18, 1999, the Eastern District also transferred sections I.P., I.Q., and I.S. of the Consent Decree (regarding water temperatures, housing temperatures, and ventilation, respectively) pertaining to Facility B (formerly Cell Blocks 4 and 5, now the Southern Michigan Correctional Facility or JMF) to this Court. Eastern District R. 1342 (Attachment 2); *Hadix*, 367 F.3d at 515-517. The Eastern District further transferred to this Court Defendants' proposed

alternatives to Facility A (Cell Block 3 of the Egeler Correctional Facility or SMN). *Id*. The Eastern District determined that health care was implicated in these provisions at each of these facilities.

11. On December 2-3, 1999, this Court conducted hearings on the medical health care provisions of the Consent Decree and other issues transferred by the Eastern District. *Id.* Subsequently, on February 18, 2000, this Court issued its Order and Findings of Fact and Conclusions of Law. R. 1372, 1373. This Court determined that Plaintiffs sustained their burden by proving the existence of constitutional violations with regard to section II.A.3.6, II.A.4.a, II.A.5.a, II.A.7, and II.A.11, and that Plaintiffs failed to sustain their burden of proving the existence of constitutional violations as to the remaining health care provisions of the Consent Decree and terminated its jurisdiction over those provisions. Additionally, this court found that the temperature, ventilation and fire safety conditions at JMF, Egeler, and Administrative Segregation support a finding of constitutional violations. *Hadix*, 367 F.3d at 515-517. The February 18, 2000 Order was not final, as the Court reserved judgment on termination of other portions of the Consent Decree and the entry of any remedial order. *Id*.

12. In an Order dated February 18, 2000, this Court terminated Section I.P. of the Consent Decree as to JMF.

13. On July 12, 2000, the Eastern District transferred to this Court Plaintiffs' claims that conditions in Facility C (formerly Cell Blocks 11 and 12, now State Prison of Southern Michigan Central Complex or SMI) with regard to water, temperature and ventilation (Sections I.P., I.Q., and I.S., respectively) endanger the health of prisoners. Eastern District R. 1421 (Attachment 3); *Id*.

14. On November 15, 2000, the Eastern District transferred to this Court Plaintiffs' claims that conditions in Facility D (8-Block of the Parnall Correctional Facility or SMT) with

regard to temperature and ventilation (Sections I.Q. and I.S., respectively), and the fire safety issues which are the same as to those concerning Facility A previously transferred. Eastern District R. 1432 (Attachment 4); *Id*.

15. On June 27, 2001, the Eastern District issued its Order of Termination. Eastern District R. 1442 (Attachment 5). The Eastern District's Order of Termination provided in pertinent part:

> With the exception of those portions of the Consent Decree transferred to the Western District [orders dated June 5, 1992; March 18, 1999; July 12, 2000; and November 15, 2000] . . . the Court hereby TERMINATES its jurisdiction over all sections of the Consent Decree and implementing orders remaining before this Court.

16. As set forth above, the only issues transferred to this Court were:

a. June 5, 1992 Order – medical and mental health care;

b. March 18, 1999 Order – water temperatures, housing temperatures, and ventilation at JMF and Defendants' proposed alternatives to SMN;[3]

c. July 12, 2000 Order – water temperatures, housing temperatures, and ventilation at SMI;[4]

d. November 15, 2000 Order – housing temperatures, ventilation, and fire safety at 8-Block of SMT.[5]

17. On May 6-8, 2002, this Court conducted hearings on the remaining medical health care provisions of the Consent Decree and other issues transferred by the Eastern District.

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[3] On April 8, 2002, pursuant to a stipulation of the parties, this Court terminated its jurisdiction over water temperatures of the Consent Decree as to all *Hadix* facilities. R. 1608.

[4] On June 17, 2003, this Court issued its Order terminating jurisdiction over SMI. R. 1714.

[5] On May 3, 2002, pursuant to a stipulation of the parties, this Court terminated its jurisdiction over ventilation as to SMN, SMI, and SMT. R. 1621.

Subsequently, on October 29, 2002, this Court issued its Order and Injunction and Findings of Fact and Conclusions of Law. R. 1658, 1659. The Court determined that the existing system of health care continues to violate Sections II.A.3.6, II.A.4.a, II.A.5.a, II.A.7, and II.A.11 of the Consent Decree and the Eighth Amendment. *Hadix, supra*, 367 F.3d at 517. The Court further found that Defendants' failure to protect prisoners from heat-related illnesses and the risk of injury from smoke and fire for prisoners with disabilities and chronic diseases resulted in violations of the Consent Decree and Constitution. *Id.*

18. This Court ordered the parties to further brief the issue of whether there is any alternative to compartmentalization, consistent with Section VIII of the Consent Decree, as a remedy for the fire safety problems and risks. *Id*. After briefing, on February 25, 2003, this Court issued its Injunction ordering compartmentalization of the facilities as the fire safety remedy. R. 1696. The Injunction applied only to SMN and SMT.

19. On March 4, 2003, Defendants filed their Notice of Appeal with the Sixth Circuit.

20. On December 23, 2003, Defendants submitted their filing entitled "State Prison of Southern Michigan Fire Safety and Egress Report for Egeler Cell Blocks 1, 2, 3, & 7 and Parnall Cell Block 8." ("Plan") R. 1739. Defendants further indicated that subject to certain conditions they would voluntarily proceed with that portion of the Plan which concerned:

a. Expansion of the fire protection system to provide fire protection throughout each cell block;

b. Removal of the transformers and other electrical equipment that are no longer in use in the basement;

c. Increasing the guardrail height at the open side of the walkway at each tier of elevated cells; and

d. Removal of the unenclosed storage areas and laundry facilities and construction of a 1-hour rated wall around the laundry facility at the Parnall Correctional Facility.

21. On February 2, 2004, this Court issued its Order preliminarily approving Defendants' fire safety plan pending further hearing. R. 1751.

22. On March 25, 2004, the Sixth Circuit granted Defendants' request for a stay of this Court's February 25, 2003 Injunction. Subsequently, on May 6, 2004, the Sixth Circuit issued its Opinion affirming in part and reversing in part this Court's injunctive order. *Hadix v. Johnson*, 367 F.3d 513 (6th Cir. 2004). In reversing and remanding the alleged fire safety constitutional violations, the Sixth Circuit stated in part:

> In this case, the district court failed to identify the point at which certain fire safety deficiencies ceased being mere deficiencies and, instead, became constitutional violations. As noted above, this Court was informed at oral argument that Defendants have taken steps to remedy some of the problems noted by the district court, such as removing the dry transformers from the basement and installing additional sprinklers. It is unclear to us whether those remedies are sufficient to cure the constitutional violations at the Hadix facilities.
>
> We understand that the judicial supervision over prison conditions is a daunting task. We cannot, however, accept the approach taken by the district court in this case, namely, providing a laundry list of all the things that were wrong in the *Hadix* facilities, declaring a constitutional violation, and ordering a highly expensive, and potentially ineffective, solution. . . . Accordingly, we remand this case for a more detailed analysis of how the current conditions in the *Hadix* facilities continue to be deprivations denying "the minimal civilized measure of life's necessities" rather than potentially minor deviations that may satisfy the equivalency provisions of the LSC. Also, we remand for a more detailed analysis of why the steps taken by the prison officials, which the lower court may disagree with, constitute "deliberate indifference," rather than a mere difference of opinion. [*Id.* at 529-530]

23. On July 29, 2004, Defendants' counsel advised the Court, Court Monitor, and the Plaintiffs that pursuant to Defendants' Plan, "MDOC maintenance staff have removed the six transformers and four oil switches from the basement of Parnall's 8-Block." Attachment 6.

24. On August 5, 2004, this Court issued its Order which provided in part that the parties should file simultaneous briefs on the process which should be used to resolve the fire safety remand from the Sixth Circuit. R. 1771.

25. On August 17, September 7, and September 17, 2004, Defendants' counsel advised the Court, Court Monitor, and the Plaintiffs that pursuant to Defendants' Plan the transformers and all electrical equipment had been removed from the basement in Egeler Cell Blocks 1, 2, 3, and 7, and Parnall Cell Block 8. Attachment 7.

26. On September 28, 2004, this Court issued its Scheduling Order (R. 1775), which provided for the filing of a detailed schedule for fire safety improvements planned; discovery, site visits by the experts; and an evidentiary hearing. Subsequently, on October 14, 2004, Defendants filed their Schedule for Fire Safety Improvements. R. 1785.

27. On October 12, 2004 and December 1, 2004, Defendants' counsel advised the Court, Court Monitor, and Plaintiffs that pursuant to Defendants' Plan, the MDOC completed the removal of the unenclosed storage areas and laundry facilities and had increased the guardrail height in Egeler Cell Blocks 1, 2, 3, and 7 and Parnall Cell Block 8. Attachment 8.

28. Despite the fact the Eastern District had transferred only limited specific issues pertaining to limited specific facilities to this Court and terminated all other provisions of the Consent Decree not transferred, Plaintiffs and this Court have ignored this jurisdictional subject matter defect. On October 30, 2004 and February 4, 2005, Plaintiffs submitted their Interrogatories and Request for Production of Documents. In many instances, Plaintiffs seek information regarding the "chow halls and kitchens serving the Egeler and Parnall facilities;" "the laundry, industries and the power plant at which Parnall prisoners work;" "9 and 10 blocks of the Parnall Facility;" "power plant, laundries, food preparation and service area and MSI (Michigan State Industries);" "SPSM laundry." Plaintiffs' October 30, 2004 Interrogatories ¶¶

29-30, 34; and February 4, 2005 Interrogatories ¶¶ 15, 16, 30-32, 34 (Attachment 9). None of these facilities or issues were transferred to this Court, and all were covered by the Eastern District's June 27, 2001 Order of Termination.

29. The SMT laundry building is a one-story building separate from the housing units. The MSI factory within SMT is also separate from the housing units. The power plant building is separate from the housing units. The SMN chow hall and kitchen is a single story building, separate from the housing units.

30. JMF is not subject to this Court's February 25, 2003 Injunction. *Hadix*, 367 F.3d at 517. The JMF housing units have been completely rebuilt, and they are no longer part of the fire safety issue in this litigation.[6] More importantly, this "issue" was never transferred to this Court from the Eastern District and was terminated by the Eastern District's June 27, 2001 Order of Termination. Even assuming that the MSI factory at JMF (textiles, print shop, optical) was covered by the Consent Decree, jurisdiction over these facilities was terminated on June 27, 2001. Finally, there is no laundry building in JMF, nor do any JMF prisoners work in the power plant, SMT laundry, or the SMI MSI building. The kitchen and chow hall at JMF is a single-story building separate from the housing units, and jurisdiction over them was never transferred to this Court and was terminated on June 27, 2001.

31. Cell Blocks 9 and 10 of the Parnall Correctional Facility are non-*Hadix* facilities. See, April 18, 2002 Opinion (R. 1612) ("Plaintiffs apparently agree that Blocks 9 and 10 of

[6] "Our reading of the record indicates that Defendants consented to compartmentalization as a remedy not for fire safety concerns, but for the concerns over violent attacks that were taking place in the prison complex. The concerns about personal safety of the prisoners stemming from the potential outbreak of violence have been remedied and are not subject of the current appeal. Accordingly, the district court erred when it proceeded on the assumption that Defendants had agreed on an earlier occasion to compartmentalization of the facilities to remedy fire safety violations." *Hadix*, 367 F.3d at 519.

Parnall are non-*Hadix* facilities . . . ."). More importantly, this Court has never had jurisdiction over these facilities, and was not provided the same by any order from the Eastern District.

32. As a matter of law, jurisdiction over the aforementioned non-*Hadix* facilities and/or *Hadix* facilities and issues that were not transferred to this Court and were terminated by the Eastern District, is not vested with this Court and has never been vested with this Court. There is no existing order to the contrary.

33. As noted by the Sixth Circuit, a consent decree has both contractual and judicial aspects. *United States v. Michigan*, 940 F.2d 143, 150 (6th Cir. 1991); *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983); *See also*, *United States v. ITT Continental Baking Co.*, 420 U.S. 223, 228 (1975).

34. When construing a consent decree, as when construing other contracts, a court may rely on the usual aids to construction, including "the circumstances surrounding the formation of the consent order, any technical meaning words used may have had to the parties, and any other documents expressly incorporated in the decree." *ITT Continental Baking*, 420 U.S. at 238. Nonetheless, the words contained within the four corners of the document itself determine the scope of a consent decree. *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 574 (1984); *United States v. Armour and Co.*, 402 U.S. 673, 681-682 (1971) ("scope of a consent decree must by discerned within its four corners, and not by reference to what might have been written had Plaintiff established his factual claims and legal theories in litigation."). The decree "should be construed to preserve the position for which the parties bargained." *Vogel v. City of Cincinnati*, 959 F.2d 594, 598 (6th Cir.) *cert. denied*, 506 U.S. 827 (1992). This Court has improperly attempted to expand its jurisdiction.

35. Section 802(a)(1) of the PLRA directs that prospective relief in prison cases "shall extend no further than necessary to correct the violation of the Federal right of a particular

plaintiff or plaintiffs." 18 U.S.C. § 3626 (a)(1). Correspondingly, § 802(b)(2) of the PLRA entitles the defendant "to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626 (b)(2). Such prospective relief, however, "shall not terminate if the court makes written findings based on the record that prospective relief remains necessary, narrowly drawn, and the least intrusive means to correct a current and ongoing violation of the Federal right." 18 U.S.C. § 3626(b)(3).

36. As set forth above, on June 27, 2001, the Eastern District issued its Order of Termination (Attachment 5), terminating "its jurisdiction over all portions of the Consent Decree and implementing orders" with the exception of these limited and specific portions of the Consent Decree transferred to the Western District.

37. "'Terminate' means 'to put an end to' or 'to end'. *Black's Law Dictionary* at 1471". *Inmates of Suffolk County Jail v Rouse*, 129 F.3d 649, 662 (1st Cir. 1997) ("terminating a consent decree strips it of future potency"). *Id.* "Terminating the consent decree ends its future injunctive effect." *Imprisoned Citizens Union v Shapp*, 11 F. Supp. 2d 586, 610 (E.D. Pa. 1998).

38. Despite the clear and explicit language the Consent Decree, the Eastern District's orders of transfer to this Court, and the Eastern District's Order of Termination, Plaintiffs, with this Court's implicit and/or explicit concurrence, have attempted to exercise jurisdiction over facilities not subject to the Consent Decree and/or issues and facilities previously terminated by the Eastern District.

39. On February 24, 2005, Defendants' counsel sought concurrence from Plaintiffs' counsel and this motion will be opposed.

Conclusion

For the aforementioned reasons, Defendants request that their Motion to Dismiss the Court's attempt to exercise jurisdiction over facilities not subject to the Consent Decree and/or issues and facilities previously terminated by the Federal Court be granted.

Respectfully submitted,

Michael A. Cox
Attorney General

s/Leo H. Friedman (P26319)
A. Peter Govorchin (P31161)
Assistant Attorneys General
Corrections Division
(517) 335-7021

Dated: February 28, 2005

Friedman/Hadix/1992006833A WD/Pldgs/Exp Mot Dism Cts Attempt

Certificate of Service

I certify that on February 28, 2005, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system and I certify that Mary Zischke has mailed by U.S. Postal Service the e-filed documents with attachments to:

Patricia Streeter
Michael Barnhart
Elizabeth Alexander
F. Warren Benton, Ph.D.

Michael A. Cox
Attorney General

s/ Leo H. Friedman (P26319)
Assistant Attorney General
Corrections Division