UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARICOPA COUNTY SHERIFF'S OFFICE, JOE ARPAIO, the duly Elected Sheriff of Maricopa County, et al., Appellants. v. DAMIAN HART, et al. Appellees,	Ninth Circuit Docket No. 98-16995 Lower Court Docket No. CV-77-00479-EHC

ON APPEAL FROM AN ORDER OF
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

REPLY BRIEF OF APPELLANTS MARICOPA COUNTY (ARIZONA) BOARD OF SUPERVISORS AND MARICOPA COUNTY SHERIFF'S OFFICE

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ARGUMENT

Stripped of rhetoric, Plaintiffs' theory that the decree termination provisions of the Prison Litigation Reform Act, 18 U.S.C. § 3626(b) ("*PLRA*"), are unconstitutional on separation of powers grounds reduces to two unsupportable propositions. Each of these propositions has been uniformly rejected by every federal appellate decision -- other than the subsequently withdrawn panel decision in Taylor[1] -- which has addressed the PLRA's constitutionality.[2]

The first critical but unsupportable element of Plaintiffs' argument is the characterization of Section 3626(b)(3) as "illusory" and the corresponding assertion that the PLRA "simply tell[s] the courts to terminate all prison litigation consent decrees." Appellees' Brief at 16. See id., at 6-12. In fact, Section 3626(b)(3) expressly prohibits termination when continued relief is demonstrably necessary to correct a current and ongoing violation of a federal right. 18 U.S.C. § 3626(b)(3).

The second critical, and equally unsupportable, element of Plaintiffs' argument is the assertion that the relevant focus of analysis is the Eighth Amendment to the United States Constitution[3]

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[1] Taylor v. United States, 143 F.2d 1059 (9th Cir. 1998), opinion withdrawn, reh'g. en banc granted, 158 F.3d 1059 (9th Cir. 1998).

[2] Plaintiffs do not contend the PLRA is unconstitutional on any grounds other than the alleged incompatibility with separation of powers principles.

[3] Plaintiffs repeatedly assert that the Amended Judgment is based upon their Eighth Amendment rights. E.g., Appellees' Brief, at 20 and 23. Technically, this is not correct. The members of

-- a provision which the PLRA by its terms neither addresses nor purports to change. Relying upon this flawed assumption, Plaintiffs seek to distinguish otherwise dispositive precedent by arguing that the substantive law underlying the Amended Judgment in this case is constitutional rather than statutory. Appellees' Brief at 22-24. That assertion, however, ignores the statutes that confer jurisdiction on the federal courts to hear claims of the type asserted by Plaintiffs, that create the private rights of action upon which such claims necessarily depend, and that govern the issuance of injunctive relief in such cases. See Appellants' Opening Brief, at 19-21. Those procedural and remedial laws, which together govern and circumscribe the remedies available to Plaintiffs, are fully within the unquestioned power of Congress to alter or amend.

I. PLAINTIFFS' PREMISE THAT THE PLRA REQUIRES TERMINATION OF ALL EXISTING PRISON LITIGATION CONSENT DECREES HAS NO BASIS IN THE TEXT OF THE PLRA AND IS CONTRARY TO BOTH EXPERIENCE AND COMMON SENSE.

Plaintiffs' contention that the PLRA requires termination of all prison litigation consent decrees is unsupported by the text of the statute and directly contrary to the express language of Section 3626(b)(3). The PLRA's overarching goal is not to require

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the Plaintiff-Class are all pretrial detainees. The Eighth Amendment does not apply to pretrial detainees, in contrast to persons convicted of a crime. See, e.g., Redman v. County of San Diego, 942 F.2d 1435, 1440, n.7 (9th Cir. 1991); Roberts v. City of Troy, 773 F.2d 720, 723 (6th Cir. 1985). Of greater significance, however, is the fact that the PLRA impacts post-judgment remedial rights and prospective relief, not constitutional rights. This distinction is discussed more fully below.

termination of decrees that provide prospective relief affecting jail operations. Rather, the PLRA seeks to preserve the district court's ability to protect the rights of prisoners while imposing clearer standards and timetables for reassessment of prospective relief to avoid the perceived, unwarranted excesses of the past.

The PLRA requires that prospective relief[4] in jail reform cases must be "narrowly drawn," that it "extend no further than necessary to correct the violation" of federal rights and that it be "the least intrusive means necessary to correct the violation." 18 U.S.C. § 3626(a)(1)(A). Consistent with the congressional policy of limiting relief to that which is actually necessary to correct violations of federal rights, the PLRA provides for periodic review of the need for any relief that is granted. In effect, Congress has created a rebuttable presumption that prospective relief relating to jail conditions ordinarily should not exceed two (2) years in duration, unless there is a demonstrable continuing need for such relief. See 18 U.S.C. § 3626(b).

The imposition of a timetable for reassessment and the establishment of specific standards and exit criteria is hardly tantamount to requiring termination in all cases, especially when the

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[4] "Relief" for purposes of the statute means "all relief in any form that may be granted or approved by the court," including relief granted in "consent decrees." 18 U.S.C. § 3626(g)(9). The term "prospective relief" means, for purposes of the statute, "all relief other than compensatory monetary damages." 18 U.S.C. § 3626(g)(7).

PLRA expressly precludes termination in appropriate circumstances. Section 3626(b)(3) provides quite clearly:

> Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

18 U.S.C. § 3626(b)(3) (emphasis supplied). Such language plainly does not usurp the judicial function of applying law to fact in a specific case. Nor does it deprive the federal courts of the power to continue relief that is demonstrably necessary to protect the federal rights of prisoners. Furthermore, it manifests a clear congressional intent to assure protection of the constitutional rights of prisoners.

Given the lucid language of Section 3626(b)(3), Plaintiffs' argument amounts to the assertion that the words "shall not terminate" in Section 3626(b)(3) actually mean "shall terminate" in all cases.

In an attempt to overcome this flaw in their argument, Plaintiffs resort to the unsupportable claim that Section 3626(b)(3) is somehow "illusory". That contention, in turn, ignores two centuries of federal judicial history as well as the language of the statute itself.

The PLRA mandates that the district court take into account current conditions at the jails and that assessment becomes part of the record. Benjamin v. Jacobson, 124 F.3d 162, 179 (2d Cir.

1997); Thompson v. Gomez, 993 F.Supp. 749, 756 (N.D. Cal. 1997); Jensen v. County of Lake, 958 F.Supp. 397, 406-07 (N.D. Ind. 1997). The Plaintiffs' assumption that federal judges will uniformly fail to exercise powers granted to them, uniformly preclude plaintiffs from presenting evidence which they may be authorized to present, and uniformly prohibit plaintiffs from conducting discovery to the extent necessary and permissible under the circumstances, is both illogical and contrary to experience. In fact, despite the relatively recent passage of the PLRA, district courts in appropriate cases have already allowed plaintiffs to supplement the record and have continued prospective relief found necessary under Section 3626(b)(3). See, e.g., Carty v. Farrelly, 957 F.Supp. 727, 733 (D.V.I. 1997).

Moreover, if any colorable argument did exist that could support Plaintiffs' strained construction of the statute, that argument should be rejected under the well-established principle that statutes must be construed consistently with the Constitution wherever possible. The Supreme Court, in Robertson v. Seattle Audubon Society, explained this important rule of statutory construction as follows:

> [H]aving determined that [the relevant statute] would be unconstitutional unless it modified previously existing law, the [lower appellate court] then became obliged to impose that "saving interpretation," (citation omitted) as long as it was a "possible" one. See NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 30, 57 S.Ct. 615, 621, 81 L.Ed. 893 (1937) ("As between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act.").

503 U.S. 429, 441, 112 S.Ct. 1407, 1414 (1992). Accord: Mount Graham Coalition v. Thomas, 89 F.3d 554, 557 (9th Cir. 1996) (if construing the statutory language to overturn past judgments would render it unconstitutional, the court is required to adopt a constitutional reading when such an interpretation is reasonable).

In sum, Plaintiffs' contention that the PLRA requires termination of jail reform consent decrees in all cases and thus improperly treads on the prerogative of a co-equal branch of government is without merit. Such a contention is contradicted by the express language of the statute and rests on the implicit (and baseless) assumption that federal judges will ignore the statute, the Constitution and relevant evidence. The PLRA embodies a congressional determination that judicial micro-management of jails and prisons under pre-PLRA law has too often gone beyond that which is reasonably necessary to protect the constitutional rights of inmates. Such remedies have too often unnecessarily burdened local governments without any formalized (and sometimes without any) meaningful review and reassessment of the genuine need for continuing judicial oversight. See Appellants' Opening Brief at 9, 13-16. Congress properly exercised its own prerogative, as a coordinate branch of government, when it mandated standards, reassessment timetables and exit criteria to guide the future course of judicial remedies in institutional reform litigation involving the operation of jails and prisons.

II. THE PLRA'S AMENDMENT OF THE LAW GOVERNING FUTURE MODIFICATION OR TERMINATION OF JAIL REFORM CONSENT DECREES COMPORTS WITH SEPARATION OF POWERS PRINCIPLES AND IS CONSTITUTIONAL.

Plaintiffs acknowledge that under Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421 (1856) ("*Wheeling*") and its progeny, congressional modification of applicable law that compels termination of an executory injunction does not violate separation of powers principles. Plaintiffs also recognize, as they must, that Plaut v. Spendthrift Farms, Inc., 514 U.S. 211, 115 S.Ct. 1447 (1995) ("*Plaut*") expressly reaffirmed the principle that Congress may constitutionally alter the "prospective effect of injunctions entered by Article III courts." 514 U.S. at 232, 115 S.Ct. at 1459. See Appellees' Brief, at 14-16.

Plaintiffs' observation that Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 384, 112 S.Ct. 748, 760 (1992) holds that consent decrees are final judgments simply does not support their position in this case. Plaintiffs meld Rufo with Plaut and purport to see in those cases a rule against "unconstitutional infringement on an Article III Court final order (Plaut/Rufo)". See Appellees' Brief, at 16. Nothing in Rufo or Plaut supports such a theory. Rufo did not involve, even remotely, separation of powers issues of the type at issue here.

The true significance of Rufo is that pre-PLRA consent decrees, though "final," may be reopened and modified in appropriate circumstances. Injunctive decrees are always subject to modification or termination in light of a "significant change in

either factual conditions or the law." Rufo, 502 U.S. at 384, 112 S.Ct. at 760. The Court in Rufo explicitly recognized the critical importance of a flexible modification standard, even under pre-PLRA law, for consent decrees entered in institutional reform class action litigation -- both because of the likelihood of significant changes during the life of the decree and because of the impact such decrees have on the sound and efficient operation of public institutions. Id. at 380-81, 112 S.Ct. at 758-59. Rufo therefore confirms that the standards and decree reassessment and exit criteria established by the PLRA are fundamentally consistent with the policies underlying pre-PLRA law. While the PLRA standards reflect heightened sensitivity to the negative impact judicial micro-management may have on public institutions, the PLRA represents "fine-tuning" of established principles rather than a radical departure from the past.

Moreover, whether a consent decree is technically "final" does not help to resolve the issue here. The case law leaves little doubt that even "final" prospective decrees can be modified by Congress consistent with the Constitution. See, e.g., Mount Graham Coalition v. Thomas, 89 F.3d 554, 557 (9th Cir. 1996).

In particular, this Court's decision in Mount Graham Coalition is instructive and compels the conclusion that the PLRA's decree termination provisions are constitutional. Mount Graham Coalition involved a dispute over placement of a large telescope facility on a mountain within a National Forest. When opponents claimed that

the Endangered Species Act ("*ESA*") and the National Environmental Policy Act ("*NEPA*") barred the project, Congress legislated approval of a telescope location known as "RPA 3," directed the Secretary of Agriculture to approve the location, and declared that the requirements of ESA and NEPA were satisfied with respect to RPA 3. Id. at 556. Ultimately, however, another site, known as "ALT 2," was selected for the telescope. The district court found that ALT 2 was not within the site Congress had approved and enjoined work at the ALT 2 site until all ESA and NEPA requirements were satisfied. Id. The Ninth Circuit affirmed the injunction.

After that decision had become final, Congress enacted additional legislation that declared ALT 2 to be authorized and approved. Id. When the district court dissolved the injunction based on the congressional approval of ALT 2, the telescope's opponents appealed, contending (as Plaintiffs do here) that Congress had impermissibly overturned a final judgment of an Article III court in violation of separation of powers principles.

In affirming termination of the injunction, the Ninth Circuit left no doubt that, when Congress legislates termination of an executory injunction, the impact is prospective and the principles of Wheeling (not Plaut) control:

> Plaut invalidated an attempt of Congress to revive claims that had been dismissed as untimely in earlier, final judicial decisions. The Supreme Court held that, "[b]y retroactively commanding the federal courts to reopen final judgments, Congress has violated [the] fundamental principle" that the judiciary is established to render dispositive judgments. [Plaut, 514 U.S. at 219], 115 S.Ct. at 1453.

> Plaut was careful, however, to point out that cases like Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421, 15 L.Ed. 435 (1855), in which congressional legislation "altered the prospective effect of injunctions entered by Article III courts" were different. "These cases distinguish themselves; nothing in our holding today calls them into question." Plaut, [514 U.S. at 232], 115 S.Ct. at 1459.
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> [T]his case falls squarely within Wheeling Bridge, in which a bridge had been declared to be a nuisance to navigation and had been ordered removed by an Article III court. Congress intervened with legislation declaring the bridge to be a lawful road passage, and its exercise of that power was upheld and the bridge was spared by the courts. The Supreme Court acknowledged that if there had been a damages award, it would have been beyond the power of Congress to modify, but because the decree was prospective, Congress's statute could be given effect.

Mount Graham Coalition, 89 F.3d at 556-57 (emphasis supplied).

The concurring opinion in the Mount Graham Coalition case underscored the inapplicability of Plaut when Congress modifies prospective relief and acknowledged the broad but permissible extent of the congressional intrusion into the telescope litigation:

> A more explicit intervention of Congress into a judicial proceeding would be difficult to imagine. The ESA and NEPA are not amended. How a biological species should be defined is not changed. No new rules are prescribed for the balancing of environmental harms against the acquisition of new knowledge. The more particular terms of the Arizona-Idaho Conservation Act (AICA) are not altered.
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> The legislative interpretation of AICA substitutes Congress's reading of AICA for that made by this court. In both parts of the statute Congress intervenes to destroy what appeared to be a final judgment of this court.

* * *

> No new facts have been created. Congress simply has said that the Ninth Circuit has misinterpreted the law.

Mount Graham Coalition, 89 F.3d at 558-559 (concurring opinion, emphasis supplied). Despite this extreme intrusion into the judicial process after entry of a final decree, the concurrence agreed, "there is no question that Congress has the power to change the law so as to deprive the injunction of further effect." Id. at 559.

Other cases cited by Plaintiffs provide scant support for their position. Robertson v. Seattle Audubon Society, 503 U.S. 429, 112 S.Ct. 1407 (1992) held that the statute in question did not violate separation of powers principles because it modified existing law and, like the PLRA, did not direct specific findings or results under the prior law. United States v. Yacoubian, 24 F.3d 1 (9th Cir. 1994) upheld nullification of a final order as the result of an amendment to a statute that altered certain deportation rules.

Plaintiffs attempt to distinguish cases, such as Mount Graham, Robertson and Yacoubian, which upheld legislation that directly or indirectly compelled modification or termination of prospective injunctive decrees, on the ground that the "underlying substantive law" in those cases was statutory, while here it is purportedly "constitutional." See Appellees' Brief, at 16-24. Plaintiffs' analysis is fundamentally flawed. No persuasive reason exists why prospectively changing or terminating final injunctive relief based

upon a substantive right emanating from the Constitution is somehow different, for purposes of separation of powers principles, from prospectively changing or terminating final injunctive relief based upon a substantive right emanating from a statute (or, for that matter, common law). It is true, of course, that Congress has the power to change statutes but lacks the power to legislate constitutional change. Recognition of this fact, however, is of no significance where, as here, the law being altered or amended is the statutory law that allows the Plaintiffs into courts to seek injunctive relief in the first place. See Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 99 S.Ct. 1905 (1979) (district court jurisdiction over civil actions for deprivation of rights secured by the Constitution requires a specific statutory grant of jurisdiction); Baker v. McCollan, 443 U.S. 137, 144 n.3, 99 S.Ct. 2689, 2694 n.3 (1979) (42 U.S.C. § 1983 provides a method of vindicating federal rights); Mitchum v. Foster, 407 U.S. 225, 92 S.Ct. 2151 (1972) (42 U.S.C. § 1983, enacted to enforce the Fourteenth Amendment, authorizes federal courts to issue injunctions as one means of redressing constitutional violations under color of state law). Stated differently, the PLRA affects "remedies" and "prospective relief;" it does not impact any underlying constitutional right.

Plaintiffs do not question the power of Congress to create and structure the lower federal courts, to establish the jurisdiction of those courts, to establish procedural rules and evidentiary

standards for those courts, or to regulate and restrict the injunctive powers of those courts. See Appellants' Opening Brief, at 19-20. Congress has unquestioned Article I power over the procedural and remedial laws governing Plaintiffs' right to be in court seeking injunctive remedies for alleged constitutional violations. It is illogical for Plaintiffs to acknowledge that under Wheeling and its progeny Congress could, consistent with separation of power principles, legislate changes in "substantive" statutory law that would terminate a final decree granting prospective relief while simultaneously contending that Congress cannot, consistent with those same principles, legislate changes in procedural or remedial laws that would terminate a final decree granting prospective relief merely because the "underlying substantive right" arises from the Constitution.

The cases on which Plaintiffs rely for this purported distinction are wholly inapposite. For example, Northern Pipe Line Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct. 2858 (1982) simply does not support such a distinction. Northern Pipe Line involved the question of whether Congress could constitutionally create a system of non-Article III bankruptcy courts. The case did not in any sense address the question of whether or when Congress may enact legislation that results in modification or termination of final consent decrees containing prospective remedies. City of Boerne v. Flores, 521 U.S. 507, 117 S.Ct. 2157 (1997) involved the question of whether Congress could by statute

prescribe the substantive meaning of a constitutional provision (the Free Exercise Clause of the First Amendment) or whether separation of powers principles reserved that function to the judiciary. The case did not even remotely involve issues relevant to the PLRA, because the PLRA does not establish substantive constitutional principles or attempt to construe any constitutional provision. To the contrary, the PLRA leaves to the courts the question of whether injunctive relief is necessary to protect the constitutional rights of prisoners.

III. RELIANCE BY PLAINTIFFS ON UNITED STATES v. KLEIN IS MISPLACED.

The Plaintiffs also briefly suggest that the PLRA is invalid under United States v. Klein, 80 U.S. (13 Wall) 128, 70 L.Ed. 519 (1871). See Appellees' Brief, at 24-26. The crux of Plaintiffs' theory is the contention that Congress, by enacting the PLRA, directed the outcome of a specific class of cases -- class action, institutional reform cases involving the federal rights of prisoners and pretrial detainees. Of course, the PLRA contains no such directive. See Section I, supra.

The Klein case involved an action by the Estate of V. F. Wilson against the United States, seeking compensation for cotton seized or destroyed during the Civil War under a statute permitting loyal citizens to recover such compensation. V. F. Wilson had received a Presidential pardon for giving aid and comfort to the Confederacy. The lower court ruled in favor of Wilson's Estate, deeming the Presidential pardon to be evidence that Wilson passed

the loyalty test. While the case was on appeal, Congress enacted a new statute directing that Presidential pardons could not be considered evidence of loyalty but instead were conclusive evidence of disloyalty. Id. at 133-39, 143-44. The Supreme Court struck down the new statute and held that Congress (consistent with separation of powers principles) could not compel courts to discount the legal and evidentiary effect of a Presidential pardon and impose a rule of decision in a pending case. Id. at 146-48. The significance of Klein outside of the unique circumstances of that case (which involved attempted legislative encroachment on the executive power of pardon, as well as on the judicial power to decide a case in a particular way) is suspect. Decided during the turbulent post-Civil War era, the import of Klein is far from clear.

In any event, the PLRA is not the kind of congressional encroachment upon the powers of the judicial branch that concerned the Court in Klein. In Klein, Congress attempted to seize for itself the judicial role of drawing inferences from a particular type of evidence (a presidential pardon). The statute purported to tell the courts how to weigh and balance, and what inferences to draw from, that evidence in specific cases. A more intrusive interference with the core functions of the judiciary is difficult to imagine. The PLRA, in contrast, leaves to the courts the core judicial functions of finding facts based upon particularized evidence and applying the applicable legal standards to those

facts. The PLRA further preserves the courts' power to remedy violations of the constitutional rights of prisoners.

Furthermore, Plaintiffs cannot (and do not attempt to) distinguish the decisions of the six circuit courts that uniformly uphold the PLRA as constitutional. Nothing in the PLRA gives the Plaintiffs any basis for contesting those courts' conclusions that the PLRA specifies standards the courts must apply but not the result the courts must reach; that the PLRA leaves the adjudicatory process (the courts' power to make findings and apply law to facts) intact; and that the PLRA leaves the ultimate resolution of prison condition cases to the judiciary. See, e.g., Hadix v. Johnson, 133 F.3d 940, 943 (6th Cir. 1998); Gavin v. Branstad, 122 F.3d 1081, 1089 (8th Cir. 1997), cert. denied, 118 S.Ct. 2374 (1998), reh'g. denied, 119 S.Ct. 285 (1998); Inmates of Suffolk County Jail v. Rouse, 129 F.3d 649, 658 (1st Cir. 1997), cert. denied, 118 S.Ct. 2366 (1998), reh'g. denied, 119 S.Ct. 14 (1998); and Pyler v. Moore, 100 F.3d 365, 372 (4th Cir. 1996), cert. denied, 520 U.S. 1277, 117 S.Ct. 2460 (1997).

Plaintiffs are also wrong when they assert that the PLRA does not amend applicable law, thereby attempting to avoid the impact of the Supreme Court's observation in Plaut that Klein's prohibitions do not apply when Congress "amends applicable law." Plaut, 514 U.S. at 218, 115 S.Ct. at 1452 (quoting Robertson, 503 U.S. 429, 441, 112 S.Ct. 1407, 1417 (1992). Their argument depends, once again, upon the mistaken assertion that the only "applicable law"

is the Eighth Amendment. That argument ignores the statutory law that establishes lower court jurisdiction, creates rights of action, determines when and how institutional reform consent decrees may be modified or terminated, and governs the standards, procedures and presumptions for terminating jail management consent decrees. See Section II, supra. It is that body of law -- not the Constitution -- that the PLRA "amends."

Finally, Plaintiffs have no explanation for the various post-Klein cases which establish beyond any doubt that congressional enactments are not constitutionally suspect under Klein merely because they change the law in a way that forseeably (or intentionally) changes the result in specific cases. See e.g., Robertson, 503 U.S. at 441, 112 S.Ct. at 1414 (legislation directed at two pending cases that changed the outcome of those cases does not violate Klein); Mount Graham Coalition, 89 F.3d at 557 (legislation that effectively directed dismissal of a previously entered final injunctive decree does not violate separation of powers principles under Klein).

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reject Plaintiffs' arguments, declare the PLRA's consent decree termination provision to be valid and constitutional, reverse the decision of the district court and remand for further proceedings on the motion to terminate the Amended Judgment in this case consistent with the provisions of the PLRA.

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CERTIFICATION PURSUANT TO CIRCUIT RULE 32(e)(3)

Pursuant to Ninth Circuit Rule 32(e)(3), I certify that the Reply Brief of Appellants Maricopa County (Arizona) Board Of Supervisors And Maricopa County Sheriff's Office is monospaced, has 10.5 characters per inch and contains 4,807 words.

DATED this 11th day of March, 1999.

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CERTIFICATE OF SERVICE

STATE OF ARIZONA)
) **ss.**
County of Maricopa)

ANDREW L. PRINGLE, being first duly sworn upon his oath, deposes and says:

On the 11th day of March, 1999, I caused to be mailed by U. S. Mail, First Class, postage prepaid, an original and fifteen (15) copies of the attached Reply Brief Of Appellants Maricopa County (Arizona) Board Of Supervisors and Maricopa County Sheriff's Office to the United States Court of Appeals, Ninth Circuit, P. O. Box 193939, San Francisco, CA 94119-3939, and caused two (2) copies to be mailed by U. S. Mail, postage prepaid to Theodore C. Jarvi, Esq., 4500 South Lakeshore, Suite 550, Tempe, Arizona 85282-7057, attorney for the Appellees.

Andrew L. Pringle
ANDREW L. PRINGLE

The foregoing instrument was acknowledged before me this 11th day of March, 1999, by **ANDREW L. PRINGLE.**

Carol J. Thorne
Notary Public

My Commission Expires:

May 19, 1999

OFFICIAL SEAL
CAROL J. THORNE
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires May 19, 1999

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