UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

M. WAYNE BATES, ET AL

VERSUS

BRUCE N. LYNN, ET AL

CIVIL ACTION

NUMBER 89-65-B-1

NOTICE

Please take notice that the attached Magistrate Judge's Report has been filed with the Clerk of the U. S. District Court.

In accordance with 28 U.S.C. §636(b)(1), you have ten days after being served with the attached report to file written objections to the proposed findings of fact, conclusions of law, and recommendations set forth therein. Failure to file written objections to the proposed findings, conclusions and recommendations within ten days after being served will bar you, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court.

ABSOLUTELY NO EXTENSION OF TIME SHALL BE GRANTED TO FILE WRITTEN OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT.

Baton Rouge, Louisiana, August 31, 2000.

Stephen C. Riedlinger

STEPHEN C. RIEDLINGER
UNITED STATES MAGISTRATE JUDGE

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NUMBER 89-65-B-1

MAGISTRATE JUDGE'S REPORT

This matter is before the court on the motion of defendants Bruce N. Lynn and John P. Whitley to terminate the Consent Decree approved in this case. Record document number 195. Plaintiffs filed an opposition memorandum arguing that the provisions of the Prison Litigation Reform Act of 1995 (PLRA) upon which the defendants relied are unconstitutional. Because the plaintiffs challenged the constitutionality of the PLRA, the United States intervened and filed a memorandum supporting the constitutionality of the PLRA.

Plaintiffs filed suit in 1989 alleging violations of their constitutional rights under the Sixth and Fourteenth Amendments.[1] The parties engaged in discovery and thereafter settlement negotiations. These negotiations led to a Consent Decree which was approved by the court on April 22, 1991. Record document numbers 65 and 66. The terms of the Consent Decree required certain legal

[1] Although the court denied the plaintiffs' motion for class certification, it ordered that the case would be treated in the nature of a class action. Record document number 49.

and law-related services to be provided to the inmates at Louisiana State Penitentiary who were confined there under a death sentence. Importantly, the Consent Decree acknowledged that "the parties have agreed to the entry of this decree without trial, the taking of any evidence, adjudication, or the admission of liability by any party with respect to any claim or allegation made in this action."[2] Pursuant to the terms of the Consent Decree, the defendants undertook the performance of the obligations imposed thereby, and subsequently filed progress reports in the record.[3]

Defendants' motion to terminate relief is based on section 3626(b)(2) of the PLRA, which states as follows:

> In any civil action with respect to prison conditions, a defendant or intervenor shall be entitled 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.

Defendants argued that they are entitled to immediate termination of all prospective relief afforded to the plaintiffs under the Consent Decree because the Consent Decree was approved without any findings by the court which would satisfy the requirements of

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[2] Record document number 66, page 1.

[3] Defendants did not always promptly perform their Consent Decree obligations. Whether the defendants timely or properly complied with the terms of the Consent Decree is not relevant to their motion to terminate prospective relief.

section 3626(b)(2).[4]

Plaintiffs opposed the motion arguing that the termination provision of the PLRA upon which the defendants relied is unconstitutional on separation of powers grounds, deprives the courts of their inherent power and duty to enforce effective remedies in constitutional cases, unconstitutionally prescribes rules of decision in cases pending before the courts, and denies the plaintiffs their constitutional rights to Due Process and Equal Protection. As intervenor, the United States argued that the provisions of the PLRA called into question by the defendants'

[4] This section of the PLRA provides for the termination of "any prospective relief." Defendants have not identified what "prospective relief" the plaintiffs may still be entitled to obtain under the Consent Decree. The PLRA defines prospective relief as "all relief other than compensatory monetary damages." 18 U.S.C. §3626(g)(7). The term "relief" is defined to include all relief in any form, including a consent decree but not including a private settlement. 18 U.S.C. §3626(g)(9).

Because the Consent Decree did not provide for any compensatory monetary damages, all relief contained in it constitutes prospective relief, as that term is defined in the PLRA. However, as a practical matter, much of the relief required by the Consent Decree has been provided and cannot be, or would not be, withdrawn. For example, books purchased for the prison's law library would likely not be discarded or made unavailable to the plaintiffs, even if updated or replacement volumes are not obtained. Inmate counsel substitutes would likely not be required to ignore or refuse to apply training previously received pursuant to the Consent Decree. Defendants may choose to reduce the number of inmate counsel substitutes available to serve the needs of death-sentence inmates, but they may also determine it is not in their best interest to do so.

Nevertheless, for the purpose of this report and recommendation, the court concludes that all of the relief afforded to the plaintiffs pursuant to the Consent Decree constitutes prospective relief under the PLRA.

motion are all constitutional.

Plaintiffs' arguments that the provision of the PLRA at issue in this case unconstitutionally violates separation of powers principles and unconstitutionally proscribes rules of decision are now effectively foreclosed by the U. S. Supreme Court's decision in Miller v. French, ___ U.S. ___, 120 S.Ct. 2246 (2000). Although the constitutionality of the provision relied upon by the defendants here, section 3626(b)(2), was not challenged in Miller, the same separation of powers argument was relied upon in Miller to challenge the constitutionality of the automatic stay provision of the PLRA found in section 3626(e)(2). The Court's separation of powers analysis in Miller seems equally applicable in this case.

> By establishing new standards for the enforcement of prospective relief in §3626(b), Congress has altered the relevant underlying law. The PLRA has restricted courts' authority to issue and enforce prospective relief concerning prison conditions, requiring that such relief be supported by findings and precisely tailored to what is needed to remedy the violation of a federal right.... As Plaut [v. Spendthrift Farm, Inc., 514 U.S. 211, 115 S.Ct. 1147 (1995)] and [Pennsylvania v. Wheeling & Bellmont Bridge Co., 59 U.S. 421, 18 How. 421 (1856)] Wheeling Bridge II instruct, when Congress changes the law underlying a judgment awarding prospective relief, that relief is no longer enforceable to the extent it is inconsistent with the new law. Although the remedial injunction here is a "final judgment" for purposes of appeal, it is not the "last word of the judicial department." Plaut, 514 U.S. at 227, [115 S.Ct. at 1457]. The provision of prospective relief is subject to the continuing supervisory jurisdiction of the court, and therefore may be altered according to subsequent changes in the law. See, Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 388 [112 S.Ct. 748, 762] (1992). Prospective relief must be "modified if, as it later turns out, one or more of the obligations placed upon the

parties has become impermissible under federal law." Ibid. (Some internal citations omitted.)

The overwhelming number of the courts which have considered challenges to the constitutionality of section 3626(b)(2) have held that it may be applied to existing consent decrees. Gilmore v. People of the State of California, ___ F.3d ___ (9th Cir., Nos. 98-15160 and 98-15198, August 4, 2000), 2000 WL 1070235; Berwanger v. Cottey, 178 F.3d 834 (7th Cir. 1999); Imprisoned Citizens Union v. Ridge, 169 F.3d 178 (3d Cir. 1999); Hadix v. Johnson, 133 F.3d 940 (6th Cir. 1998); Inmates of Suffolk County Jail v. Rouse, 129 F.3d 649 (1st Cir. 1997); Dougan v. Singletary, 129 F.3d 1424 (11th Cir. 1997), cert. denied, 524 U.S. 956, 118 S.Ct. 2375 (1998); Gavin v. Branstad, 122 F.3d 1081 (8th Cir. 1997), cert. denied, 524 U.S. 955, 118 S.Ct. 2394 (1998).[5] All of these decisions have been considered. Their analysis is convincing, as explained by the Eleventh Circuit in Dougan.

> The consent decrees that the PLRA requires courts to review under the statute's more stringent standards are not final judgments for separation-of-powers purposes. As the Court explained in Plaut v. Spendthrift Farms, Inc., a true "final judgment" here means not an appealable judgment, but one that represents the "last word of the judicial department with regard to a particular case or controversy." [ ] Consent decrees are final judgments, [ ] but not the "last word of the judicial department." District courts retain

[5] A panel of the Ninth Circuit issued a decision on May 4, 1998, holding that section 3626(b)(2) is unconstitutional. On November 3, 1998, the Ninth Circuit ordered rehearing en banc. The Ninth Circuit subsequently decided that the case was moot. Taylor v. United States, 181 F.3d 1017 (9th Cir. 1999).

> jurisdiction over such decrees not only to ensure compliance, but also to amend them as significant changes in law and fact require. [ ] Plaut invalidated a statute that resurrected claims that had been dismissed with prejudice on statute-of-limitations grounds, a judgment that can be modified only under the most extraordinary circumstances; §3626(b)(2)'s effect on comparatively adaptable consent decrees is distinguishable. The PLRA's termination provision thus does not undermine the finality of a final judgment in the separation-of-powers sense. [ ] The provision accordingly does not violate the separation-of-powers doctrine as contended. [ ] (Footnotes omitted.)[6]

Plaintiffs argued that the termination provision of section 3626(b) strips the courts of their inherent power and duty to enforce effective remedies in constitutional cases. Neither the defendants nor the United States dispute that the courts have the duty to enforce effective remedies in constitutional cases, and must have the power to do so. The simple fact is that the PLRA does not deprive the courts of either the duty or the power to enforce effective remedies for constitutional violations. The PLRA simply requires that prospective relief extend no further than necessary to correct the violation of a federal right and that it be narrowly drawn and the least intrusive means to correct the violation. While it is true that in the past consent decrees did not require the court to actually find that a constitutional violation had occurred, nor require that a defendant admit to a constitutional violation, the PLRA does not strip the courts of their authority to remedy a constitutional violation. It requires the courts to first find that a constitutional violation occurred,

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[6] Dougan, 129 F.3d at 1426.

and then to carefully tailor the remedy to fit the violation. This is consistent with the well-established limitations already imposed on the courts for issuing prospective relief in cases litigated to judgment. See, Lewis v. Casey, 518 U.S. 343, 358, 116 S.Ct. 2174, 2179, 2183 (1996); Milliken v. Bradley, 433 U.S. 267, 280, 97 S.Ct. 2749, 2757 (1977); Swan v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1, 16, 91 S.Ct. 1267, 1276 (1971); Gilmore, at ___; Smith v. Arkansas Department of Corrections, 103 F.3d 637, 645-46 (8th Cir. 1996); Ruiz v. Estelle, 679 F.2d 1115, 1145, vacated in part on other grounds, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042, 103 S.Ct. 1438 (1983).

As a component of their argument that the PLRA strips the courts of their inherent power and duty to enforce effective remedies in constitutional cases, the plaintiffs also argued that the PLRA imposes burdens on plaintiffs to make a repeated showing of constitutional violations in order to maintain ongoing prospective relief. When this factor is considered along with the PLRA's automatic stay provision, plaintiffs asserted, the effect is to abolish the court's ability to effectively enforce constitutional rights.

The merits of this argument need not be resolved in order to decide the defendants' motion. There has been no requirement in this case that the plaintiffs repeatedly prove the existence of a separate and independent or an ongoing constitutional violation in order to maintain any prospective relief properly awarded to them

in accordance with the PLRA.

Next, the plaintiffs argued that the termination provisions of the PLRA are unconstitutional because the Congress cannot proscribe for the courts rules of decision. But as the intervenor argued, and the Supreme Court stated in Miller, this prohibition does not apply when Congress amends the applicable law. Miller, ___ U.S. at ___, 120 S.Ct. at 2258-59. The PLRA provides a standard which the court must apply in order to determine whether prospective relief may be continued. Plyler v. Moore, 100 F.3d 365, 372 (4th Cir. 1996), cert. denied, 520 U.S. 1277, 117 S.Ct. 2460 (1997). The PLRA does not direct the courts to reach a particular decision.

Furthermore, a strict reading of section 3626(b)(2) reveals that it requires only the termination of prospective relief afforded by a consent decree; it does not require the court to vacate the consent decree which provides for such relief. Gilmore, at ___. If a showing required by the PLRA is made, then the district court is bound to maintain or modify the relief necessary to correct a current or ongoing constitutional violation. Id.[7]

Lastly, the plaintiffs argued that the termination provisions

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[7] Where a consent decree awards only prospective relief, the distinction between requiring a court to terminate prospective relief if certain conditions are not met, and ordering the court to terminate the consent decree itself may become blurred. Gilmore, at ___; Benjamin v. Jacobson, 172 F.3d 144, 179-80 (2d Cir. 1999) (en banc), (Calabresi, J., concurring). Yet, maintaining the distinction is important. The Congress can enact a law which changes the standard for modifying a consent decree, but it cannot order the court to terminate a consent decree outright without abridging the inherent powers of the courts to decide cases properly before them. See, Gilmore, at ___.

of the PLRA deny them Due Process and violate their right to Equal Protection. Neither argument is persuasive.[8] Plaintiffs do not have a vested right in the continued enforcement of the Consent Decree. Plyler, 100 F.3d at 374-75. Unlike a money judgment, the Consent Decree is subject to modification, even termination, to the extent equity requires. Thus, it creates no vested rights. Inmates of Suffolk County Jail v. Rouse, 129 F.3d at 658.

Plaintiffs also argued that the termination provisions of PLRA exceed the extent to which the federal government can enact legislation that has a detrimental effect on a preexisting contract. This argument is premised on the assertion that the Consent Decree is a contract as well as court decree. Assuming that the Consent Decree is a contract, because the federal government is not a party to it judicial scrutiny of legislation affecting the Consent Decree is minimal. National Railroad Passenger Corp. v. Atchison, Topeka & Sante Fe Railway Co., 470 U.S. 451, 472, 105 S.Ct. 1441, 1456 (1985). Thus, the plaintiffs must overcome a presumption of constitutionality and establish that the Congress has acted in an arbitrary and irrational way. Id.; Inmates of Suffolk County Jail v. Rouse, 129 F.3d at 658-59.

Relying on Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528, 105 S.Ct. 1005 (1985), the plaintiffs attempt to have this court employ heightened scrutiny to the termination provisions

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[8] Gilmore, at ___ ("No circuit court has found the PLRA to violate due process or the Equal Protection Clause.... We decline to stray from these precedents.")

of the PLRA by aligning the interests of both the state and federal governments. This attempt has been rebuffed previously. "There is, however, no basis in Garcia or elsewhere to suggest that federal legislation which benefits state governments is tantamount to self-dealing and thus subject to heightened scrutiny." Inmates of Suffolk County Jail v. Rouse, 129 F.3d at 659. Having failed to impose the burden of heightened scrutiny, the plaintiffs also failed to demonstrate that the termination provisions of the PLRA represent arbitrary or irrational legislation by the Congress.

The termination provision at issue here is neither arbitrary nor irrational. The Congress has determined that in certain kinds of prisoner cases, prospective injunctive relief will not be available unless the court finds, or the defendant admits, a violation of a federal right. The termination provision found in section 3626(b)(2) provides a reasonable mechanism for the defendants to obtain termination of a Consent Decree when the requirements of the PLRA are not met.

Plaintiffs' Equal Protection arguments fair no better. It is well established that prison inmates are not a suspect class, and the plaintiffs do not contend otherwise. They do argue that the PLRA burdens a fundamental right, and for that reason is subject to strict scrutiny. The fundamental right which they assert is burdened by the PLRA is the right of access to the courts. While neither the defendants nor the intervenor contest that the plaintiffs do not have a right of access to the courts, that right

of access "guarantees no particular methodology but rather the conferral of a capability--the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts." Lewis v. Casey, 518 U.S. at 356, 116 S.Ct. at 2182. Nonetheless, section 3626(b)(2) does not unconstitutionally impair that capability. As noted in Gavin, "nothing in this section of the law affects access to the courts; nothing divests prisoners of '"a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts."'" Gavin, 122 F.3d at 1090, quoting, Lewis, ___ U.S. at ___, 116 S.Ct. at 2180, quoting, Bounds v. Smith, 430 U.S. 817, 825, 97 S.Ct. 1491, 1496 (1977).

> The only right the prisoners will lose under the immediate termination provisions of the PLRA is the right to enforce those terms of the consent decree that are not necessary to protect their constitutional rights. The right to enforce a consent decree that goes beyond the bounds of constitutional necessity is not equivalent to the right to bring constitutional grievances to the attention of the courts. As the Fourth Circuit has stated, '[s]imply put, the Inmates have confused the right of access to the courts with the scope of available substantive relief.'

Gavin, 122 F.3d at 1090, quoting, Plyler, 100 F.3d at 373.

Because neither a suspect classification or a fundamental right is at issue, the termination provisions are subject to only rational basis review. Plaintiffs do not seriously argue that the termination provisions do not withstand rational basis review. Again, as noted by the court in Gavin, the termination provisions are rationally related to the prison litigation reforms enacted by

the PLRA. Id.

The findings required by the PLRA to support the continuation of the prospective relief afforded to the plaintiffs by the Consent Decree cannot possibly be made based on the current record. Although the parties filed pretrial stipulations, record document number 35, in which they agreed to a substantial number of facts, they also agreed that formal discovery is required to develop the facts of the case. As noted previously, the prospective relief approved in the Consent Decree was not supported by findings of a constitutional violation. Nor did the court determine at the time the Consent Decree was approved that the prospective relief was narrowly tailored within the meaning of section 3626(b)(2). Based on a review of the current record, the court cannot find that the prospective relief proved in the Consent Decree is necessary to correct a current or ongoing violation of the plaintiffs' constitutional rights. Yet, the plaintiffs have not requested an opportunity to offer evidence to establish such a violation.[9]

RECOMMENDATION

It is the recommendation of the magistrate judge that the motion of defendants Bruce N. Lynn and John P. Whitley to terminate the Consent Decree previously issued in this case be granted, but

[9] Gilmore, at ___ (When requested by plaintiffs, the court is obliged to take evidence on current circumstances with respect to remedies for current or ongoing violation).

limited to the termination of the prospective relief provided to the plaintiffs by the Consent Decree.

Baton Rouge, Louisiana, August 31, 2000.

STEPHEN C. RIEDLINGER
UNITED STATES MAGISTRATE JUDGE