No. 96-2582

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EVERETT HADIX, et al.,

Plaintiffs-Appellees

v.

PERRY M. JOHNSON, et al.,

Defendants-Appellants

and

UNITED STATES OF AMERICA,

Intervenor-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

FINAL BRIEF FOR THE UNITED STATES AS INTERVENOR-APPELLANT

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

The United States believes that oral argument is warranted in this appeal. The district court held unconstitutional a portion of an Act of Congress, i.e., the immediate termination provisions of the PLRA.

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STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

This suit was brought by plaintiffs-appellees, inmates of the State Prison of Southern Michigan, pursuant to 42 U.S.C. 1983, concerning the constitutionality of the conditions of their confinement. The district court's jurisdiction was based upon 28 U.S.C. 1343.

These appeals were taken from an order denying defendants-appellants' motion for termination of the prospective relief in a consent decree entered in that litigation, pursuant to the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321, §§ 801-810 (April 26, 1996, 18 U.S.C. 3626(b)(2)). This

Court has jurisdiction pursuant to 28 U.S.C. 1292(a)(1) of this interlocutory order continuing an injunction by refusing to dissolve or modify it in light of the PLRA.

STATEMENT OF THE ISSUES

1. Whether the PLRA's termination provisions and limitations on the equitable authority of district courts violate the separation of powers doctrine.

2. Whether the PLRA's termination provisions are rationally related to a legitimate government purpose.

3. Whether the PLRA's termination provisions deprive plaintiffs of a property right protected by the Fifth Amendment without due process of law.

STANDARD OF REVIEW

These appeals involve solely legal issues, which are subject to de novo review by this Court. Long v. Norris, 929 F.2d 1111 (6th Cir.), cert. denied sub nom. Jones v. Long, 502 U.S. 863 (1991).

STATEMENT OF THE CASE

A. Course Of Proceedings And Disposition Below.

1. Prior History.

In 1980, suit was filed by prisoners confined at the State Prison of Southern Michigan (SPSM) against various state officials of the Michigan Department of Corrections pursuant to 42 U.S.C. 1983, alleging that the conditions of their confinement violated the Constitution of the United States and state law. In 1985, the district court approved a consent decree designed to address those claims. Hadix v. Johnson, 947 F. Supp. 1100, 1101-

1102 (E.D. Mich. 1996) (Feikens, D.J.) (R. 199: Consent Decree, 96-2463 Apx. at pp. 127-176).

On January 18, 1984, the United States filed a complaint against the State of Michigan and certain of its officials under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997 et seq. (R. 2: Complaint, 96-2463 Apx. at pp. 110-126). United States v. Michigan, 680 F. Supp. 928, 935 (W.D. Mich. 1987) (Enslen, J.) (compilation of opinions). The United States' complaint alleged unconstitutional conditions, not only in the SPSM facility involved in the Hadix litigation, but also in the Michigan Reformatory and the Marquette Branch Prison. A proposed Consent Decree, accompanied by a "State Plan for Compliance," was filed simultaneously with the complaint. Prior to ruling on the motion to enter the Consent Decree, the court granted the Hadix plaintiffs the right to appear as amicus curiae.[1/] Michigan, 680 F. Supp. at 935-943. On July 13, 1984, the district court approved a Consent Decree dealing with five aspects of conditions of confinement: Medical and Mental Health Care; Fire Safety; Sanitation, Safety and Hygiene; Crowding and Protection from Harm; and Access to Courts and Legal Mail (R. 65: Michigan Consent Decree).

In 1992, the portions of the Hadix Decree involving medical and mental health care were transferred to the United States District Court for the Western District of Michigan (Judge

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[1/] The court denied the Hadix plaintiffs' motion to intervene pursuant to Rule 24(a). Michigan, 680 F. Supp. at 935-941; R. 63: Michigan Order dated June 25, 1984.

Enslen). Hadix v. Johnson, 792 F. Supp. 527 (E.D. Mich. 1992). The United States participates as amicus in the medical and mental health portion of the Hadix case that is before Judge Enslen. Jurisdiction over the part of the Hadix case concerning access to courts was likewise transferred to the Western District. Knop v. Johnson, 977 F.2d 996, 1014 (6th Cir. 1992), cert. denied sub nom. Knop v. McGinnis, 507 U.S. 973 (1993); see Hadix v. Johnson, 933 F. Supp. 1360 (E.D. Mich. 1996).

2. Motions Under The PLRA.

On June 10, 1996, the defendants filed motions pursuant to Section 802(b)(2) of the PLRA, 18 U.S.C. 3626(b)(2), in both district courts having jurisdiction over the Hadix Consent Decree, for immediate termination of that Decree and subsequent orders granting prospective relief (R. 715 & R. 1068: Defendants' Motion for "Immediate Termination" of the Consent Decree Pursuant to the Prison Litigation Reform Act, 96-2463 Apx. at pp. 390-401).[2/] The defendants asserted that, by operation of Section 802(e)(2) of the PLRA, 18 U.S.C. 3626(e)(2), all prospective relief in the Decree would be stayed automatically beginning on the 30th day after the filing of the motion for immediate termination and ending on the date "the court enters a final order ruling on the motion." 18 U.S.C. 3626(e)(2)(B). The United States intervened in the district courts, pursuant to 28 U.S.C. 2403, because the constitutionality of an Act of Congress

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[2/] On the following day, Michigan filed a motion for immediate termination of the Consent Decree and subsequent orders in United States v. Michigan (R. 2047: Michigan Motion).

was at issue (R. 1120: Motion Of The United States To Intervene, 96-2582 Apx. at pp. 7-10; R. 1123: Order Granting Motion To Intervene, 96-2582 Apx. at p. 11) .

On July 3, 1996, Judge Enslen issued decisions concerning defendants' motions to terminate the Michigan Decree and the portions of the Hadix Decree under his jurisdiction. Hadix v. Johnson, 933 F. Supp. 1362 (W.D. Mich.); R. 2056: Michigan Opinion. The court stated that there was "no possible way" that it could decide the motions to terminate before the automatic stay provision would take effect, given the "complexity of the issues presented" and the need for thorough briefing. Hadix, 933 F. Supp. at 1364; R. 2056: Michigan Opinion at 6. It held, therefore, that the automatic stay provision of the PLRA "usurped a role that is exclusively judicial," 933 F. Supp. at 1366; R. 2056: Michigan Opinion at 10, in violation of the doctrine of separation of powers. The court also held that the automatic stay provision violates the Due Process Clause of the Fifth Amendment by abrogating plaintiffs' vested property right in the Consent Decree without an opportunity for hearing. 933 F. Supp. at 1366-1369; R. 2056: Michigan Opinion at 16-17. Accordingly, it ruled that the automatic stay will not take effect pending its decision on the pending motions for immediate termination. 933 F. Supp. at 1369-1370; R. 2056: Michigan Opinion at 17-18.

Two days later, on July 5, 1996, Judge Feikens issued a similar opinion and order concerning the portions of the Hadix Decree under his jurisdiction. 933 F. Supp. at 1360. That decision incorporated Judge Enslen's opinion by reference, and

likewise concluded that the automatic stay provision is unconstitutional and should not take effect. 933 F. Supp. at 1361-1362.

The defendants appealed the orders of both district courts. In addition, they filed emergency motions in this Court seeking a stay of proceedings in all three cases, in both district courts, to the extent that those courts proposed to hold evidentiary hearings on the motions for immediate termination. They also sought relief, in the nature of mandamus, for an order requiring the district courts to rely solely on the existing record in ruling on the motions for immediate termination, or, alternatively, to have this Court rule on the motions for immediate termination directly. This Court denied the motions for mandamus, and denied stays of further proceedings in the Michigan case and in the portion of the Hadix litigation before Judge Enslen (R. 2093: Michigan Order, Sept. 17, 1996). In this case, i.e., the portion of the Hadix litigation before Judge Feikens, the Court issued a partial stay that relieved the defendants of their obligation, pending that appeal, to implement Phases 2 and 3 of the Breakup Plan for the SPSM complex (Hadix Order, Sept. 19, 1996, p. 3). The Court consolidated the three appeals for purposes of submission, and oral argument was heard on February 4, 1997.

On November 1, 1996, Judge Feikens issued the Opinion and Order that is the subject of this appeal. That order denied the defendants' motion for termination of the Hadix Decree and associated orders because of the court's conclusion that Sections

3626(b)(2) and (b)(3) of the PLRA violate separation of powers principles and are, therefore, unconstitutional. Hadix v. Johnson, 947 F. Supp. 1100 (E.D. Mich. 1996).

B. Statutory Background: The Prison Litigation Reform Act.

On April 26, 1996, the President signed into law the PLRA.[3/] Section 802 of the Act, which consists of amendments to 18 U.S.C. 3626, establishes standards for the entry and termination of prospective relief in civil actions concerning conditions in prisons, jails, and juvenile detention facilities.[4/] With regard to the entry of such relief, Section 3626(a)(1) provides:

> Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such 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. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

18 U.S.C. 3626(a)(1)(A).

Termination of relief is governed by several sections of the Act. In general, defendants are entitled to request the termination of prospective relief according to a time schedule set out in Section 3626(b)(1)(A), which provides:

[3/] A copy of the relevant portions of the Act is appended to this brief.

[4/] Section 802 of the PLRA does not apply to habeas corpus proceedings challenging "the fact or duration of confinement in prison." 18 U.S.C. 3626(g)(2).

> In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party * * * --
>
> (i) 2 years after the date the court granted or approved the prospective relief;
>
> (ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or
>
> (iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

Section 3626(b)(2), however, provides for the immediate termination of relief that was entered without the findings required by Section 3626(a)(1):

> In any civil action with respect to prison conditions, a defendant or intervener 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.

18 U.S.C. 3626(b)(2).

When termination is sought under either subsection (b)(1) or (b)(2), the standard applicable to the termination decision is set out in Section 3626(b)(3), which provides that relief shall not terminate

> if the court makes written findings based on the record that prospective relief remains necessary to correct a current or 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.

For purposes of all of these provisions, "prospective relief" includes injunctive relief accorded under a consent decree. See 18 U.S.C. 3626(g)(7), (g)(9). The Act contains a provision concerning retroactivity, which provides that "IN GENERAL" its amendments to 18 U.S.C. 3626 "shall apply with respect to all prospective relief whether such relief was originally granted or approved before, on, or after the date of the [PLRA's enactment]." Pub. L. No. 104-134, § 802(b). Finally, the Act contains a severability provision that preserves the remainder of the Act if any portion is held to be unconstitutional. See Pub. L. No. 104-134, § 810.

Taken together, these provisions reflect Congress's concern that relief in prison reform cases be narrowly tailored to address violations of federal rights. See H.R. Rep. No. 21, 104th Cong., 1st Sess. at 24 n.2, 26 (1995). As applicable to relief entered after the PLRA's effective date, the Act is designed to establish a uniform remedial structure, and to provide for periodic review of individual decrees to determine whether they remain necessary to remedy violations of federal rights. As applicable to decrees entered before the PLRA's passage, the Act seeks to ensure that continuing relief comports with present legal standards.

C. Facts.[5/]

On September 18, 1980, a class of prisoners incarcerated at the State Prison of Southern Michigan (SPSM) filed suit against various state officials charged with the operation of SPSM, pursuant to 42 U.S.C. 1983. Hadix v. Johnson, 694 F. Supp. 259, 262 (E.D. Mich. 1988). They asserted that the conditions of confinement at SPSM violated their rights under the First, Eighth, Ninth, and Fourteenth Amendments to the U.S. Constitution (R. 199: Hadix Consent Decree, Introduction, ¶ 3, p. 1, 96-2463 Apx. at p. 127). On May 13, 1985, the district court approved a consent decree designed "to assure the constitutionality of the conditions under which prisoners are incarcerated" at SPSM (R. 199: Hadix Decree at p. 1, 96-2463 Apx. at p. 127; R. 213: Order Accepting Consent Judgment, 96-2582 Apx. at pp. 5-6).

The Decree addressed sanitation, safety, and health; health care; fire safety; overcrowding and protection from harm; use of volunteers; access to courts; food service; management; operations; inmate legal mail; compliance; and inspection procedures (R. 199: Hadix Decree, 96-2463 Apx. at pp. 127-176). In addition, it provided that the areas of classification and due

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[5/] This brief factual statement is taken from the record of proceedings in Hadix. Before intervening in the district court, the United States had not participated in the portion of the Hadix litigation in the Eastern District of Michigan, and thus has no firsthand knowledge of the facts. Since the United States has intervened in the Hadix litigation solely for purposes of defending the constitutionality of the PLRA, we take no position on the merits of defendants-appellants' motions for immediate termination in that case.

process, and two issues concerning access to courts, would be submitted to the court for a hearing on the merits.[6/]

On July 1, 1988, the district court issued a decision finding that SPSM's library, legal assistance, and grievance programs failed to provide meaningful access to the courts as required by the Constitution. Hadix v. Johnson, 694 F. Supp. 259 (E.D. Mich. 1988). An appeal from that judgment was consolidated with an appeal of an order issued by Judge Enslen in Knop v. Johnson, 685 F. Supp. 636 (W.D. Mich. 1988), concerning not only SPSM, but also Michigan Reformatory, Marquette Branch Prison and a fourth facility not involved in either the Hadix or Michigan litigation.[7/] This Court affirmed in part and reversed in part, vacated the entire remedial order in Hadix and portions of the remedial order in Knop, and remanded both cases to the United States Court for the Western District of Michigan. Knop v. Johnson, 977 F.2d 996 (6th Cir. 1992), cert. denied sub nom. Knop v. McGinnis, 507 U.S. 973 (1993).

[6/] The classification issue was referred by stipulation for resolution in United States v. Michigan. Hadix v. Johnson, 943 F.2d 51 (6th Cir. 1991).

[7/] The procedural history of the Knop litigation is described in detail in this Court's decision in United States v. Michigan, 940 F.2d 143, 147 (1991). Briefly, Knop was a class action filed under 42 U.S.C. 1983 in June 1984, that challenged many of the same conditions in Michigan prisons as did the United States suit. The Knop class was granted amicus curiae status in the U.S. suit, but its motions to intervene were denied. However, in 1987, the district court changed their status to that of "litigating amicus curiae" with the full litigating rights of a party. In its 1991 decision, this Court reversed the district court's order and limited the Knop class to the traditional amicus curiae role. 940 F.2d at 163-167.

The portions of the Hadix Decree addressing medical and mental health care were also transferred to the Western District. Hadix, 792 F. Supp. 527 (E.D. Mich. 1992). As this Court has noted, because the provisions of the Hadix Consent Decree overlap somewhat with the provisions of the Consent Decree entered by Judge Enslen in United States v. State of Michigan, the United States has participated as amicus curiae in the medical and mental health portions of the Hadix litigation, and the Hadix plaintiffs have participated on those issues as amici curiae in the Michigan litigation. Hadix v. Johnson, 66 F.3d 325 (6th Cir. 1995)(Table) (Unpublished Disposition).

The Management section of the Hadix Decree required the Michigan Department of Corrections to proceed with a management and organization study of SPSM, described by the district court as "[a]n integral part of the settlement," to break-up the SPSM complex into "five autonomous units." Hadix, 694 F. Supp. at 262. Phase I of the "Break Up" plan has been implemented; implementation of Phases II and III were stayed by this Court's order of September 19, 1996.

D. The Decision Below.

The district court held that the immediate termination provisions of the PLRA, 18 U.S.C. 3626(b)(2) and (b)(3), violate separation of powers principles, and are, therefore, unconstitutional. Hadix, 947 F. Supp. at 1113. Tracing the Supreme Court's historic treatment of consent decrees to its "crystalliz[ation]" in Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992), the court held that the Supreme Court has

"resolved the conflict between the public and private rights involved in public reform litigation" by establishing two principles (947 F. Supp. at 1107):

> The public's right in maintaining control over its institutions is protected through modification of a consent decree when a change in circumstances so requires. The parties' right to rely on a court order is protected by the limitation precluding a court, or Congress, from stripping a consent decree down to the constitutional floor.

The court concluded that, in enacting the immediate termination provisions, which require that a consent decree be "pared down to the constitutional floor," "Congress has invaded one of the most vital constitutional powers of the judiciary" by "abrogating a court's power to enforce one of its orders." 947 F. Supp. at 1111.

The court concluded that the inclusion of subsection (b)(3) does not save subsection (b)(2) from violating the separation of powers doctrine. Although subsection (b)(3) permits a court to retain prospective relief in a decree if it finds that such relief "remains necessary to correct a current or 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," the district court held that the requirement that a court make findings of "past unlawful acts" as to a consent decree already entered by the court as a judgment, as a condition to continued enforcement of the decree, "represents an unjustifiable encroachment of the legislative and

executive branches into the domain of the judiciary." 947 F. Supp. at 1104.

The court found that the PLRA "applies law to the consent decree at issue here that was clearly not the law when it was entered into," 947 F. Supp. at 1109-1110, and, by doing so, violates the holding in Plaut v. Spendthrift Farm, Inc., 115 S. Ct. 1447 (1995), that Congress cannot "retroactively command[] the federal courts to reopen final judgments." 115 S. Ct. at 1453. The court rejected the argument that the holding in Plaut does not apply to prospective relief because it found that the PLRA attempts to alter not only the prospective relief of the decree, but also to rescind the "consent judgment itself." 947 F. Supp. at 1109. Although acknowledging that there is language in Plaut suggesting that "legislative action over consent decrees whose injunctive effect is ongoing" is authorized, the court held that this exception is a narrow one that would not accommodate a statute with as broad a scope as Sections 3626(b)(2) and (b)(3). 947 F. Supp. at 1110.

SUMMARY OF ARGUMENT

In Parts I A. & B., we argue that the PLRA's termination provisions do not violate the separation of powers principles articulated in Plaut v. Spendthrift Farm, Inc., 115 S. Ct. 1447 (1995). In Plaut, the Court held that Congress cannot reverse a final judgment in a suit for money damages. In contrast, this case involves application of the PLRA's termination provisions to prospective relief. In Plaut, the Court distinguished decisions approving statutes "that altered the prospective effect of

injunctions." 115 S. Ct. at 1459. Unlike a final money judgment, the issuance of a "final" prospective order does not represent "the last word of the judicial department with regard to a particular case or controversy." Plaut, 115 S. Ct. at 1457. A district court continues to play an active role in the interpretation, enforcement, supervision, and modification of its prospective orders. Unlike with a money judgment, a court always possesses the power to revisit continuing injunctive orders in light of the evolving factual or legal landscape, and to modify or terminate the relief accordingly. It does not offend separation of powers principles to require a court, when deciding whether to modify or terminate its prospective orders, to apply the current federal law -- the PLRA.

Part I C. demonstrates that the PLRA does not improperly prescribe "rules of decision," as prohibited by United States v. Klein, 80 U.S. (13 Wall.) 128 (1871). As explained by the Court in Plaut, whatever the precise scope of Klein, later decisions have made clear that its prohibition does not take hold when Congress amends "applicable law." Plaut, 115 S. Ct. at 1452. In enacting the PLRA, Congress has amended the applicable law to establish standards and procedural rules for the courts to apply when deciding whether to grant or terminate a prospective order regarding prison conditions. It makes no difference that the PLRA does not amend the substantive law upon which relief was sought here. In Plaut itself, the Court held that a change in the applicable statute of limitations was a change in the "applicable law" and, thus, did not implicate Klein. Likewise,

here, although Congress has not amended the underlying substantive rights, the PLRA "indisputably does set out substantive legal standards for the Judiciary to apply." Plaut, 115 S. Ct. at 1453.

In addition, as we argue in Part I D., the PLRA's limitations on the equity powers of the courts do not violate separation of powers principles. It is well-established that Congress has the authority to regulate the injunctive powers of the federal courts. In the PLRA, Congress has prescribed rules and standards for courts to follow when issuing prospective relief regarding prison conditions. Some of the PLRA's provisions formalize existing standards; others establish new requirements and procedures for the courts to apply. The PLRA's provisions regarding the entry and termination of prospective relief at issue here do not, however, unduly encroach upon the judiciary's core Article III powers. While the PLRA imposes standards and procedures to be followed by the courts, the courts retain the power to resolve the cases brought before them challenging prison conditions and to issue injunctive relief necessary to remedy any violation of federal law. Moreover, while the PLRA requires that the court examine existing prospective orders under the PLRA's standards, a court may always continue prospective relief that it finds necessary to remedy a constitutional violation.

Finally, in Part I E., we argue that the PLRA's revision of the standards governing modification of consent decrees does not violate Article III. The standard for modification of consent

decrees that was announced by the Supreme Court in Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992), is not compelled by constitutional principles. It may be overridden by Congress so long as Congress is otherwise acting, as it has in the PLRA, within the confines of its Article I authority.

In Part II, we argue that the immediate termination provisions of the PLRA do not violate equal protection principles. As an initial matter, there is no basis for the application of heightened scrutiny in this case because prisoners are not a suspect class, and the immediate termination provisions do not impinge upon a fundamental right. In particular, these provisions do not impair plaintiffs' right of access to the courts because prisoners continue to have an opportunity to establish current or ongoing violations of their constitutional rights.

Under the rational basis standard, a legislative classification must be upheld if there is any reasonable, conceivable state of facts that could provide a rational basis for the classification. Heller v. Doe, 509 U.S. 312, 320 (1993). The PLRA clearly satisfies that standard. In enacting the PLRA, Congress rationally sought to promote principles of federalism, security, and fiscal restraint in the context of prison conditions litigation.

In Part III, we argue that the immediate termination provisions do not violate plaintiffs' due process rights. Injunctive relief is always subject to possible modification or termination. Accordingly, injunctive decrees in prison

conditions suits are not protected "property" interests under the Due Process Clause, and the immediate termination provisions do not impair any interest protected by due process.

ARGUMENT

I

THE PLRA'S TERMINATION PROVISIONS DO NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE

Plaintiffs bring a variety of constitutional challenges to the termination provisions' constitutionality. As explained below, each should be rejected. See Plyler v. Moore, 100 F.3d 365, 370-375 (4th Cir. 1996) (rejecting the same constitutional challenges to the PLRA's termination provisions).

A. The Separation Of Powers Doctrine And The PLRA

The doctrine of separation of powers flows from the Constitution's division of the federal government into three branches. See Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 57-58 (1982). Under the constitutional division of power, the Legislature is to enact laws of general application and the courts are to decide particular cases arising under those laws, exercising their exclusive authority to "say what the law is" in particular cases. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803). "[I]t remains a basic principle of our constitutional scheme that one branch of the Government may not intrude upon the central prerogatives of another." Loving v. United States, 116 S. Ct. 1737, 1743 (1996) (citations omitted). For example, the separation of powers doctrine prevents Congress from assigning core Article III powers to non-Article III

entities. See Northern Pipeline Constr. Co., supra; CFTC v. Schor, 478 U.S. 833, 850-856 (1986). The separation of powers doctrine also prohibits Congress from itself assuming the role assigned by the Constitution to the Judicial Branch. Accordingly, it is established that Congress may not itself decide cases. See United States v. Klein, 80 U.S. (13 Wall.) 128 (1871). Although Congress may amend law applicable to pending cases, see Robertson v. Seattle Audubon Society, 503 U.S. 429 (1992), such amendments must "set out substantive legal standards for the Judiciary to apply." Plaut v. Spendthrift Farm, Inc., 115 S. Ct. 1447, 1453 (1995).

Although the doctrine of separation of powers is a "structural safeguard" that establishes "high walls" between the three branches of government, see Plaut, 115 S. Ct. at 1463, the Constitution itself creates an interrelationship and inter-dependence among the branches. Consistent with the structural safeguards erected by the Constitution, Congress possesses and exercises broad authority over federal court jurisdiction and procedure. Under the Constitution, it is the role of Congress to create and structure the inferior courts, and to establish the confines of the jurisdiction of those courts (within the outer limits set out in Article III). See U.S. Const. art. I, § 8, cl. 9; art. III, §§ 1-2. See also Lauf v. E.G. Shinner & Co., 303 U.S. 323, 330 (1938) ("[t]here can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States"). Moreover, Congress not only establishes the substantive federal law to be applied by the

federal judiciary, it has the constitutional authority to establish the procedural rules and evidentiary standards to apply in proceedings before the federal courts. See Hanna v. Plumer, 380 U.S. 460, 472 (1965) ("the constitutional provision for a federal court system (augmented by the Necessary and Proper Clause) carries with it congressional power to make rules governing the practice and pleading in those courts"); Sibbach v. Wilson & Co., 312 U.S. 1, 9 (1941) ("Congress has undoubted power to regulate the practice and procedure of federal courts").

It is well established that, in carrying out these constitutional powers, Congress has the authority to regulate and restrict the injunctive powers of the federal courts. See, e.g., Yakus v. United States, 321 U.S. 414, 442 n.8 (1944) (setting out examples where Congress has restricted the power of federal courts to grant injunctions).[8/] The entire practice for the

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[8/] The seven examples cited by the Court in Yakus are:

> 1. Section 16 of the Judiciary Act of 1789, * * * 28 U.S.C. § 384, denying relief in equity where there is adequate remedy at law. 2. Section 5 of the Act of March 2, 1793, * * * 28 U.S.C. § 379, prohibiting injunction of state judicial proceedings. 3. Act of March 2, 1867, * * * 26 U.S.C. § 3653, prohibiting suits to enjoin collection or enforcement of federal taxes. 4. The Johnson Act of May 14, 1934, * * * 28 U.S.C. § 41 (1), restricting jurisdiction to enjoin orders of state bodies fixing utility rates. 5. Act of Aug. 21, 1937, * * * 28 U.S.C. § 41 (1), similarly restricting jurisdiction to enjoin collection or enforcement of state taxes. 6. Section 17 of the Act of June 18, 1910, * * * 28 U.S.C. §§ 380 and 380(a), requiring the convening of a three-judge court for the granting of temporary

(continued...)

issuance of an injunctive order by a federal court is subject to standards, procedures, and timing rules, and other limitations established through Congress's Article I powers. For example, the rules set forth by Congress: dictate the standards to be applied by a federal district court in issuing a temporary restraining order, and limit the duration of such orders to ten days, absent specified findings, Fed. R. Civ. P. 65(b); prohibit the issuance of an injunction absent the posting of adequate security, Fed. R. Civ. P. 65(c); require a court issuing injunctive relief to set forth the reasons for the issuance of the injunction and to describe the terms of the decree in reasonable detail, Fed. R. Civ. P. 65(d); mandate specific findings for the issuance of class-wide injunctive relief, Fed. R. Civ. P. 23(b)(2); provide that, unlike other forms of judgments, injunctive orders are not automatically stayed by the filing of an appeal, Fed. R. Civ. P. 62(a); and for original jurisdiction agency review cases, provide the standards and procedures to be applied by the courts of appeals in deciding whether to issue an interlocutory injunction, 28 U.S.C. 2349.

(...continued)

> injunctions in certain cases and allowing a temporary restraining order by one judge only to prevent irreparable injury. 7. The Norris-LaGuardia Act, * * * 29 U.S.C. §§ 101-15, regulating the issue of injunctions in labor disputes and prohibiting their issue "contrary to the public policy" declared in the Act.

321 U.S. at 442 n.8.

In enacting the PLRA, Congress has properly exercised its Article I authority to prescribe rules and standards for courts to follow when issuing prospective relief. In the PLRA, Congress has established standards for the courts to apply in deciding whether to grant or continue in effect a prospective order regarding prison conditions, and has required that a court make specific types of findings when issuing such relief. See 18 U.S.C. 3626(a)-(b). Congress also established timetables for periodic review of such prospective orders to determine whether they are still warranted under the standards articulated by the PLRA. See 18 U.S.C. 3626(b). Some of the PLRA's provisions formalize existing standards applied by the courts; others establish new requirements and procedures for the courts to apply. The PLRA's provisions regarding the entry and termination of prospective relief at issue here do not, however, unduly encroach upon the judiciary's core Article III powers. As demonstrated below, although the PLRA imposes standards and procedures to be followed by the courts, the courts retain the power to resolve the cases before them challenging prison conditions and to issue injunctive relief necessary to remedy any violation of federal law.

B. Requiring Courts To Apply The PLRA's Standards To Existing Decrees And Orders Does Not Violate Separation Of Powers Principles.

Plaintiffs' primary argument below was that the consent decree and associated relief are final judgments, and applying the PLRA's termination standard to a final judgment is contrary to the separation of powers principles announced in Plaut v.

Spendthrift Farm, Inc., supra. The Court of Appeals for the Fourth Circuit recently considered and correctly rejected that precise argument. See Plyler v. Moore, 100 F.3d at 370-372. As explained by the Fourth Circuit, the rationale of Plaut has no application to the PLRA provisions speaking to prospective orders. Plyler, 100 F.3d at 370-372. See also Benjamin v. Jacobson, 935 F. Supp. 332, 343-349 (S.D.N.Y. 1996) (same), appeal pending, No. 96-7957 (2d Cir.) (argued Nov. 15, 1996).

In Plaut v. Spendthrift Farm, Inc., supra, the Supreme Court overturned an effort by Congress to force courts to apply new law to existing final monetary judgments. At issue in Plaut was legislation that retroactively allowed plaintiffs in certain securities fraud suits to revive actions that had been previously dismissed as time barred as a result of the statute of limitations rule announced and applied by the Supreme Court in Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 501 U.S. 350 (1991). In Plaut, the Court held that the legislation represented an attempt by Congress to "set aside the final judgment of an Article III court by retroactive legislation," 115 S. Ct. at 1458, and thus violated separation of powers principles.

Plaut involved suits for monetary damages. In that context, the Court stated that "[h]aving achieved finality, * * * a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable to that very case was something other than what the

courts said it was." Plaut, 115 S. Ct. at 1457 (emphasis in original). The termination provisions of the PLRA do not violate the principles announced in Plaut because a prospective order issued by a court, whether in the form of a litigated judgment or a consent decree, does not similarly represent the "the last word of the judicial department with regard to a particular case or controversy." Plaut, 115 S. Ct. at 1457.

It is true that injunctive orders and consent decrees are "final" for certain purposes, see Rufo, 502 U.S. at 378; United States v. Michigan, 18 F.3d 348, 351 (6th Cir.), cert. denied, 115 S. Ct. 312 (1994), such as appeal rights. Unlike a final money judgment, however, the issuance of a "final" prospective order does not end the district court's role once the appeal rights of the parties are exhausted (or expire). A district court continues to play an active role in the interpretation, enforcement, and supervision of its prospective orders. Here, for example, the consent decree cannot be said to represent the "final word" of the judicial department in this case. Indeed, the entry of the decree here, like many consent decrees, marked the beginning of a long relationship between the district court and the parties, and under the terms of the decree, the district court maintains an active role in this case.

Moreover, as the district court noted, it retained the authority to modify or terminate its prospective orders to accommodate changes in the facts or legal principles supporting the decree. Unlike with a money judgment, a court always possesses the power -- indeed the obligation -- to revisit

continuing injunctive orders in light of the evolving factual or legal landscape, and to modify or terminate the relief accordingly. See Plaut v. Spendthrift Farm, Inc., 1 F.3d 1487, 1495 (6th Cir. 1993), aff'd, 115 S. Ct. 1447 (1995). The district court here, like all courts overseeing and administering consent decrees, retained the authority and duty to modify the decree to accommodate unanticipated changes in fact or law. See Rufo, 502 U.S. at 383-385, 388-393 (setting forth the common law standards for modification of a consent decree); Sweeton v. Brown, 27 F.3d 1162, 1166-1167 (6th Cir. 1994)(en banc), cert. denied, 115 S. Ct. 1118 (1995)(applying Rufo in context of change in law).[9/] See also System Federation No. 91 v. Wright, 364 U.S. 642, 650-651 (1961). Obviously, then, the consent decree here is quite different from a final money judgment like that at issue in Plaut, and was never intended to represent "the last word of the judicial department with regard to a particular case or controversy." Plaut, 115 S. Ct. at 1457. The prospective order here is a live matter, and the district court plays an active role in monitoring, enforcing and deciding whether to modify or terminate its decree. In that context, it does not offend constitutional separation of powers principles to require a court, when addressing this live case, to apply the currently

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[9/] In Rufo, the Supreme Court explained that a lenient standard for modification applied to details of consent decrees "unrelated to remedying the underlying constitutional violation." 502 U.S. 383-384 n.7. The moving party needed only provide a "reasonable basis" to support the modification of the decree in regard to such matters. 502 U.S. at 383-384 n.7.

applicable federal law -- the PLRA. See Plyler, 100 F.3d at 371-372.

In Plaut itself, the Court explained that its ruling regarding a final monetary judgment was distinguishable from decisions approving statutes "that altered the prospective effect of injunctions entered by Article III courts." 115 S. Ct. at 1459 (citing Pennsylvania v. Wheeling & Belmont Bridge Co., 59 U.S. (18 How.) 421 (1855)). See also Mount Graham Coalition v. Thomas, 89 F.3d 554, 556-557 (9th Cir. 1996) ("Plaut was careful * * * to point out that cases like * * * Wheeling & Belmont Bridge Co. * * * in which congressional legislation 'altered the prospective effect of injunctions entered by Article III courts' were different"). In Wheeling & Belmont Bridge Co., the Court had earlier declared that a bridge across the Ohio River unlawfully impeded navigation, and ordered that the bridge be raised or removed. Soon after the injunction issued, an Act of Congress declared the bridge to be a "lawful structure," designated the bridge as a United States post-road, and authorized the bridge's owners to maintain it at the same height. See Wheeling & Belmont Bridge Co., 59 U.S. at 429. The Supreme Court upheld the legislation, against a separation of powers challenge, as a lawful exercise of congressional power, and held that the legislation mandated termination of the court's prior injunctive order. In so holding, the Court drew an explicit distinction between the prospective relief and monetary awards. The Court held that although the prospective relief previously entered in a final judgment must be vacated in light of the new

legislation, the court costs awarded to the plaintiff could not be affected by the subsequent change in the law. 59 U.S. at 436.

The rule of Wheeling & Belmont Bridge Co. is that, where Congress validly alters the law, courts have a responsibility to prospectively modify an injunctive order to take into account the changed legal circumstances. See Mount Graham Coalition, 89 F.3d at 556-557. That rule was reaffirmed in Landgraf v. USI Film Products, 511 U.S. 244 (1994), where the Court explained, "[w]hen the intervening statute authorizes or affects the propriety of prospective relief," a court must apply the newly-enacted law and the "application of the new provision [to a prospective order] is not [considered] retroactive." 511 U.S. at 273-274.

The district court's opinion in this case never distinguishes Wheeling & Belmont Bridge Co. (indeed never mentions it), but the rule articulated by the Supreme Court more than 140 years ago in that case is directly applicable here. As "[a] judgment providing for injunctive relief * * * [the decree here] remains subject to subsequent changes in the law." Plyler, 100 F.3d at 371. Hence, it does not offend separation of powers principles to require a court to apply the PLRA's standards when reviewing and examining this prospective order. 100 F.3d at 371-372. The fact that the statutory change applicable here involves a restriction on the remedial powers of the courts rather than a change in the underlying substantive law that was a predicate for relief, as in Wheeling & Belmont Bridge Co., is of no moment. As discussed above, the authority of Congress to regulate and restrict the injunctive powers of the federal courts is well-

established. There is no question that the district court maintains jurisdiction to determine whether to modify or terminate its prospective orders here. The question is what legal standards and timetables should the court apply when rendering those decisions today. Given that Congress has authority to prescribe the standards and timetables established by the PLRA, it is the duty of a court to apply the law enacted by Congress to the prospective orders before it. See Plyler 100 F.3d at 371-372; Benjamin, 925 F. Supp. at 343-349.

C. The PLRA Termination Provisions Do Not Prescribe Impermissible Rules Of Decision

As recently explained by the Fourth Circuit in Plyler v. Moore, 100 F.3d at 372, the termination provisions of the PLRA, Sections 3626(b)(2) and (b)(3), do not impermissibly "prescribe rules of decision to the Judicial Department * * * in cases pending before it." Plaut, 115 S. Ct. at 1452 (citing United States v. Klein, 80 U.S. at 146). The Supreme Court's decision in United States v. Klein is plainly distinguishable.

In Klein, the President pardoned, among others, V.F. Wilson for giving aid and comfort to officers of the rebel confederacy during the Civil War on the condition that he take an oath of allegiance. Wilson took the oath of allegiance and, thereafter, passed away. Wilson's estate sued the United States under a federal statute permitting loyal citizens to obtain compensation from the U.S. Treasury for cotton seized or destroyed during the war. The Court of Claims ruled in the estate's favor. United States v. Klein, 80 U.S. at 130-133. While the case was on

appeal to the Supreme Court, Congress passed a new statute mandating that presidential pardons could not be considered as evidence of loyalty, rather that such pardons were conclusive evidence of disloyalty. 80 U.S. at 133-134, 143-144. The Supreme Court struck down the new statute. The Court held that Congress could not compel courts to discount the legal or evidentiary effect of a presidential pardon and impose a rule of decision in a pending case. 80 U.S. at 146-148.

"Klein has been interpreted to hold that Congress may not prescribe a rule of decision for the courts to follow without any independent exercise of their judicial powers." Benjamin, 935 F. Supp. at 349. Thus, Congress may not usurp the judicial function and dictate the outcome of a specific case or cases. 935 F. Supp. at 349. Congress may, however, always amend the applicable law and require the courts to apply the amended law to a case before it. See Robertson, 503 U.S. at 441. As explained by the Supreme Court in Plaut, "[w]hatever the precise scope of Klein, * * * later decisions have made clear that its prohibition does not take hold when Congress 'amend[s] applicable law.'" Plaut, 115 S. Ct. at 1452 (quoting Robertson, 503 U.S. at 441).

In enacting the PLRA, Congress has done just that. Congress has properly invoked its legislative authority to establish standards and procedural rules for the courts to apply when deciding whether to grant or continue in effect a prospective order regarding prison conditions. Congress has enacted standards, leaving to the courts the judicial function of determining "what the law is," Marbury v. Madison, 5 U.S. at 177,

and of applying that law to the facts of each case. As in Robertson, Congress has "replaced the [original] legal standards * * * without directing particular applications under either the old or the new standards." 503 U.S. at 437.

While Section 3626(b)(2) "requires a district court to terminate prospective relief that was approved in the absence of a finding that the relief is no greater than necessary to correct the violation of a federal right, it does not purport to state how much relief is more than necessary." Plyler, 100 F.3d at 372. See also Benjamin, 935 F. Supp. at 350. Moreover, under Section 3626(b)(3), even in the absence of such findings in an existing prospective order, a court may continue a prospective order if it finds that the relief is "necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and * * * is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. 3626(b)(3). As the Fourth Circuit held in Plyler:

> In short, [the PLRA termination provisions provide] only the standard to which the district court must adhere, not the result they must reach.

100 F.3d at 372. Thus, Congress has not imposed an arbitrary outcome or an improper "rule of decision." See Plaut, 115 S. Ct. at 1452.

Plaintiffs argued below that Congress violates the rule set forth in Klein, unless it amends the underlying substantive law upon which relief was sought in their complaint -- here the

Eighth Amendment. That argument is refuted by the Supreme Court's decision in Plaut. In Plaut, the Court held that Klein has no application where Congress amends the applicable law. Plaut, 115 S. Ct. at 1452. The Court then held that the amendment before it in Plaut did not implicate Klein because it "indisputably * * * set out substantive legal standards" for the courts to apply. 115 S. Ct. at 1453. The amendment at issue in Plaut altered the statute of limitations for federal securities fraud cases and attempted to apply the new limitations period to cases that had already been dismissed as time barred. It did not alter the underlying substantive standards for securities fraud. Yet, the Court held that it was a change in the "substantive legal standards," and, hence, did not implicate Klein. Here, while Congress has not amended the underlying substantive rights upon which plaintiffs sought relief in their complaint, it has changed applicable law that is within its power to change. Thus, likewise, the PLRA "indisputably does set out substantive legal standards for the Judiciary to apply," 115 S. Ct. at 1453. Because the PLRA "compel[s] changes in law, not findings or results under old law," Robertson, 503 U.S. at 438, it does not violate the separation of powers principles established in Klein. See Plyler, 100 F.3d at 372; Benjamin, 935 F. Supp. at 350.

D. The PLRA's Limitations On The Equity Powers Of The Courts Do Not Violate Separation Of Powers Principles

Plaintiffs also argued below that the PLRA violates the separation of powers doctrine by improperly circumscribing the power of the federal courts to enter equitable relief to remedy

constitutional violations in the prison setting. We agree with plaintiffs that, having granted the inferior courts jurisdiction over constitutional and statutory challenges to prison conditions, Congress may not deprive the courts of the ability to actually and effectively decide those challenges. Plaut v. Spendthrift Farm, Inc., 115 S. Ct. at 1453 (the Article III power is "not merely to rule on cases, but to decide them") (emphasis in original). The power to decide constitutional claims and render equitable relief to remedy a constitutional violation by an executive official is one of the core federal judicial powers. See, e.g., Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952). Here, however, contrary to plaintiffs' assertion, Congress has not deprived the courts of the authority to decide constitutional challenges to prison conditions. As the PLRA's plain language demonstrates, courts continue to have the authority to decide constitutional challenges and to grant or continue equitable relief to remedy any constitutional violation found.

The PLRA requires that prospective relief regarding prison conditions be "narrowly drawn," extend "no further than necessary to correct the violation of the Federal right," and be "the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. 3626(a)(1)(A), (b)(2), (b)(3). These limitations are fully consistent with the well-established limitations already imposed by the courts for issuing prospective relief in a litigated judgment. See Smith v. Arkansas Dep't of Correction, 103 F.3d 637, 647 (8th Cir. 1996). It is well

settled that in constitutional cases "the nature of the violation determines the scope of the remedy." Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 16 (1971). The "remedy must therefore be related to `the condition alleged to offend the Constitution.'" Milliken v. Bradley, 433 U.S. 267, 280 (1977) (citation omitted). See also McLendon v. Continental Can Co., 908 F.2d 1171, 1182 (3d Cir. 1990) ("[i]n granting injunctive relief, the court's remedy should be no broader than necessary to provide full relief to the aggrieved plaintiff"); Ruiz v. Estelle, 679 F.2d 1115, 1145 (5th Cir.) ("[r]eparative injunctive relief must be targeted at elimination of the unconstitutional conditions * * *. Therefore, a court can order only relief sufficient to correct the violation found"), vacated in part on other grounds, 688 F.2d 266 (1982), cert. denied, 460 U.S. 1042 (1983); Toussaint v. McCarthy, 801 F.2d 1080, 1087 (9th Cir. 1986) ("our goal is to cure only constitutional violations"), cert. denied, 481 U.S. 1069 (1987). Recently, in addressing equitable remedies that may be imposed for constitutional violations in the prison setting, the Supreme Court endorsed the basic rule that the remedy must be tailored to redress the constitutional wrong. See Lewis v. Casey, 116 S. Ct. 2174, 2179, 2183 (1996). In Lewis, the Supreme Court explained, "[t]he remedy [imposed] must of course be limited to the inadequacy that produced the injury-in-fact that the plaintiff has established." 116 S. Ct. at 2183. See also 116 S. Ct. at 2184 (systemwide relief cannot be granted unless the constitutional violation has "been shown to be systemwide").

Congress was well aware of the state of the law in this area when it enacted the PLRA. As noted in the House Judiciary Committee Report on the provisions that ultimately became the PLRA, the "dictates of the provision are not a departure from current jurisprudence concerning injunctive relief." H.R. Rep. No. 21, 104th Cong., 1st Sess. at 24 n.2 (1995). In enacting Section 3626(a)(1), Congress attempted to ensure that courts adhere to the standards governing the imposition of injunctive relief and directed that the standards were to be applied equally to both litigated and consent judgments. Moreover, by requiring courts to make particularized findings as to the necessity of prospective relief, the PLRA ensures that all future orders will comply with current remedial standards. While the statutory requirement that such findings appear on the record is a new feature of equity practice that has been introduced by the PLRA, the substance of what a court must find in fashioning relief for constitutional violations, however, is very much in keeping with pre-PLRA common law limitations on the scope of such relief in litigated judgments. See Smith v. Arkansas Dep't of Correction, 103 F.3d at 647.

As for consent decrees, the statutory requirement in Section 3626(a)(1) that courts find proof or admission of a constitutional or statutory violation before approving prospective relief regarding prison conditions is obviously a departure from pre-PLRA judicial practice. Congress has not, however, stripped federal courts of their authority under Article III to remedy constitutional violations. The court always retains the power to

provide all of the necessary prospective relief to remedy any constitutional wrong in the prison context. The PLRA's requirement that prospective relief in prison cases be accompanied by findings that the relief granted precisely addresses the defendant's unlawful conduct does not unduly impair the courts' performance of their Article III functions, or their ability to remedy constitutional violations, and it is well within Congress's authority.

Nor do the PLRA's provisions for periodic review of prospective relief, 18 U.S.C. 3626(b), unduly impair a court's equitable powers and ability to redress violations of federal rights. Irrespective of the PLRA, parties are free to seek relief from a prospective order or judgment at any time, and a court may grant a party relief from the prospective ruling where "it is no longer equitable" that the ruling have "prospective application." Fed. R. Civ. P. 60(b)(5).[10/] The PLRA provides a structured timetable for such requests, see 18 U.S.C. 3626(b)(1), and also provides that relief will be kept in place if it continues to meet the remedial criteria established by Section 3626(b)(3). In formalizing periodic review of prospective relief, in order to ensure that relief that does not satisfy the Act's legal standards can be modified or terminated, Congress has effected no radical reworking of the courts' powers. Rather, it

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[10/] Rule 60(b)(5) applies to both litigated decrees and consent decrees, such as the one issued in the present case. See Rufo v. Inmates of Suffolk County Jail, 502 U.S. at 378, 383-384 (explaining the application of Rule 60(b)(5) to consent decrees).

has exercised its prerogative to establish a remedial mechanism, and has left to the courts the task of applying that mechanism in particular cases. See Robertson, 503 U.S. at 441. As long as the mechanism chosen is not inadequate of remedying constitutional conduct, it withstands constitutional challenge.

Section 3626(b)(2) provides that where prospective relief regarding prison conditions is unsupported by prior findings required by the PLRA (that such "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"),[11] a movant is entitled to the immediate termination of that relief unless the court finds, under subsection (b)(3), that the relief currently satisfies the Act's remedial criteria. As with the provisions for periodic review, the immediate termination provisions do not deprive the courts of their core equitable power to redress constitutional violations. Sections 3626(b)(2) and (b)(3) do not require the termination or modification of relief that a court finds necessary, and narrowly drawn, to remedy constitutional or statutory violations. Rather, only those portions of a prior order that do not remain necessary to remedy such violations are

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[11] Of course, a court need not have anticipated and used the precise language of the PLRA for its prior findings to satisfy the standards set forth by Section 3626(b)(2). If a court previously made findings with respect to the challenged prospective relief that meet the substance of subsection (b)(2)'s requirements, then the relief is ineligible for "immediate termination" under (b)(2). The relief would, however, be subject to termination in the future under Section 3626(b)(1), at which point it would have to meet the standards of Section 3626(b)(3) in order to continue.

affected. If a court determines that an existing decree is too broadly drawn in view of current conditions, but that some measure of relief remains necessary, the Act does not prohibit the court from imposing new or revised relief that complies with narrow-tailoring requirements, while affording an effective remedy.

Pursuant to subsection (b)(3), a court must terminate its decree (if that decree was entered without the requisite findings) unless it finds, now, that prospective relief, inter alia, "remains necessary to correct a current or ongoing violation of the Federal right." A serious constitutional question would be raised if the PLRA were read to require a court to terminate relief upon a finding that unconstitutional conduct has halted, notwithstanding the court's additional finding that the violation has not been fully remedied, or that the defendant is poised to resume the unconstitutional conduct, because such a reading might interfere with the court's ability to effectively redress constitutional violations. A court's traditional equitable authority is not limited to ordering the cessation of unconstitutional conduct, but includes the power to restore the victims of that conduct "to the position they would have occupied in the absence of such conduct." Milliken v. Bradley, 418 U.S. 717, 746 (1974) (Milliken I). See also Missouri v. Jenkins, 115 S. Ct. 2038, 2048 (1995) (same).[12/] Indeed, courts have "not

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[12/] Milliken and Missouri v. Jenkins are school desegregation cases. The Supreme Court has admonished, however, that "a school desegregation case does not differ fundamentally from other cases (continued...)

merely the power but the duty to render a decree which will so far as possible eliminate the [unconstitutional] effects of the past as well as bar like [unconstitutionality] in the future." Louisiana v. United States, 380 U.S. 145, 154 (1965). Thus a better reading of the Act -- and one that clearly comports with Article III[13/] -- is that the "current or ongoing violation of the Federal right," for purposes of the Act, encompasses not only unlawful conduct actually in progress at the very moment the court rules, but also the failure to remedy the proximate effects of past unlawful acts and the present danger of imminent recurrence of a violation of the Constitution or federal statutory right.[14/] (The present danger of imminent recurrence of

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(...continued)
involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." Freeman v. Pitts, 503 U.S. at 487 (quoting Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15-16 (1971)). Courts in prison litigation cases have applied the remedial principles of school desegregation cases. See, e.g., Grubbs v. Bradley, 821 F. Supp. 496, 503 (M.D. Tenn. 1993) (prison conditions).

[13/] "[W]here a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [the courts'] duty is to adopt the latter." United States ex. rel. the Attorney General v. Delaware & Hudson Co., 213 U.S. 366, 408 (1909).

[14/] Under the PLRA, once a court finds a "current or ongoing violation of the Federal right," the court must go on to ensure that continued prospective relief "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). Thus, even after finding that some relief is necessary, because there exists a "current or ongoing violation," as that term is construed above, a court may have to modify an order or decree
(continued...)

a found or admitted constitutional or statutory violation plainly points to the existence of a "current or ongoing violation of the Federal right" because it demonstrates a failure to remedy the violation.).[15/] This reading of the Act comports with the accepted understanding of what constitutes an "ongoing" constitutional violation, and respects the courts' inherent authority to remedy constitutional violations. See Freeman v. Pitts, 503 U.S. 467, 486-489 (1992). See also Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946) ("Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied.").

(...continued)
going forward to ensure that its scope satisfies the PLRA standards.

[15/] Where a court has found the existence of a constitutional or statutory violation and ruled certain action necessary to remedy that violation (either under the PLRA or prior to the new statute's enactment), noncompliance with a previous remedial order or decree may represent a failure to remedy the violation and hence a "current or ongoing violation of the Federal right." However, it is important to note that violation of a consent decree does not constitute a "current or ongoing violation of the Federal right" so as to justify continuing the injunctive relief, if the decree is not based on an admitted or proven violation of a constitutional right. To regard a violation of such a decree as justification for continuation of relief would be at odds with the intent of the PLRA, which was enacted to ensure that courts redress only constitutional or statutory violations. See Plyler, 100 F.3d at 370 (both subsections (b)(2) and (b)(3) use the term "Federal right" to refer to the underlying or current violation of rights afforded by the Constitution or federal statute, not rights conferred by a consent decree).

E. The PLRA Termination Provisions' Revision Of The Standards Governing Modification Of Consent Decrees Does Not Violate Article III

The district court found that "[t]he PLRA's requirement that a court make new findings for a consent decree, already ordered, represents an unjustifiable encroachment of the legislative and executive branches into the domain of the judiciary." Hadix, 947 F. Supp. at 1104. The district court erred.

As the district court stated, in Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992), the Supreme Court held that consent decrees in institutional reform litigation should be modified under a somewhat more relaxed standard than other kinds of consent decrees. The Court noted the importance of the "ability of a district court to modify a decree in response to changed circumstances," and held that, in ruling on a motion to modify made pursuant to Fed. R. Civ. P. 60(b), district courts should alter decrees to reflect unanticipated "significant change[s] either in factual conditions or in law." Rufo, 502 U.S. at 384. The Court emphasized, however, that "[a] proposed modification should not strive to rewrite a consent decree so that it conforms to the constitutional floor," and cautioned that changes should be "tailored to resolve the problems created by the change in circumstances." 502 U.S. at 391.

It is undeniable that the PLRA's termination provisions modify the Rufo standard. But nothing in Rufo suggests that its holding was constitutional in stature. Rather, Rufo's standard was established by the Court as a gloss on Fed. R. Civ. P. 60(b), which states in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. . . ."

The equitable power to modify a judgment, codified in Rule 60(b) and elaborated in Rufo, is one aspect of that "inherent authority" possessed by "[c]ourts invested with the judicial power of the United States * * * to protect their proceedings and judgments in the course of discharging their traditional responsibilities." Degen v. United States, 116 S. Ct. 1777, 1780 (1996). But where Congress speaks clearly to abrogate a prior judicially developed standard, "the exercise of the inherent power of lower federal courts can be limited by statute and rule." Chambers v. NASCO, Inc., 501 U.S. 32, 47 (1991). Congress has spoken clearly in the PLRA, and its will governs. As demonstrated above, the PLRA's standard for imposition and continuation of prospective relief lies well within the powers of Congress, and infringes no Article III authority of the judicial branch. The mere fact that the standard Congress has chosen is not identical in every respect to prior equity practice should pose no additional obstacle to its constitutionality. As the Supreme Court cautioned just last year, "The extent of [inherent authority] must be delimited with care, for there is a danger of overreaching when one branch of the Government, without benefit

of cooperation or correction from the others, undertakes to define its own authority." Degen, 116 S. Ct. at 1780.

II

SECTIONS 3626(b)(2) AND (b)(3) OF THE PLRA DO NOT VIOLATE PLAINTIFFS' EQUAL PROTECTION RIGHTS

Sections 3626(b)(2) and (b)(3) of the PLRA also pass muster under the equal protection guarantees of the Fifth and Fourteenth Amendments. Legislation is presumed to be valid, and will be sustained against an equal protection challenge "if the classification drawn by the statute is rationally related to a legitimate state interest," and the statute does not classify individuals by race, alienage, national origin, gender, or illegitimacy, or impinge upon a fundamental right. See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440-441 (1985). See also City of New Orleans v. Dukes, 427 U.S. 297, 303 (1976). There is no basis for heightened scrutiny in examining the PLRA's termination provisions. See Plyler, 100 F.3d at 373; Benjamin, 935 F. Supp. at 352-353.

The PLRA does not target a suspect class. It is well established that inmates are not members of a suspect class supporting heightened equal protection scrutiny.[16/] Nor do the PLRA provisions at issue substantially burden a fundamental right. Plyler, 100 F.3d at 373. The right of access to the courts cited by plaintiffs "assures that no person will be denied

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[16/] See Scher v. Chief Postal Inspector, 973 F.2d 682, 683-684 (8th Cir. 1992); Moss v. Clark, 886 F.2d 686, 689-690 (4th Cir. 1989); Pryor v. Brennan, 914 F.2d 921, 923 (7th Cir. 1990); Zipkin v. Heckler, 790 F.2d 16, 18 (2d Cir. 1986) ("incarcerated felons are not a suspect classification").

the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights." Wolff v. McDonnell, 418 U.S. 539, 579 (1974). That access right "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, 116 S. Ct. at 2182. That capability is not unconstitutionally impaired, however, by Sections 3626(b)(2) or (b)(3). "The provisions granting immediate termination of prospective relief in the PLRA do not implicate th[e] right of initial access to commence a lawsuit." Benjamin, 935 F. Supp. at 352. Moreover, prisoners continue to have an opportunity to establish current or ongoing violations of their constitutional rights, see Plyler, 100 F.3d at 373, as well as failure to remedy past violations.

Under the rational basis standard, a legislative classification "must be upheld * * * if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Heller v. Doe, 509 U.S. 312, 320 (1993) (citation omitted). The "'burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it' * * * whether or not the basis has a foundation in the record." 509 U.S. at 320-321 (citation omitted). See also Plyler, 100 F.3d at 373-374. Sections 3626(b)(2) and (b)(3) clearly satisfy that deferential standard.

In enacting the PLRA's remedial and termination provisions, Congress sought to promote principles of federalism, security,

and fiscal restraint in the unique context of detentional and correctional institutions. Section 3626(b)(2) "is an eminently rational means of accomplishing" Congress' legitimate interest "in preserving state sovereignty by protecting states from overzealous supervision by the federal courts in the area of prison conditions litigation." Plyler, 100 F.3d at 374. The PLRA "addresses the problem of overbearing court supervision by forbidding courts to intrude to any degree greater than that required by federal law." 100 F.2d at 374. "Congress could also have wanted to create a uniform national standard for consent and litigated judgments based on a belief that consent judgments, even though agreed to initially, imposed severe burdens on states and local governments and that these burdens exceeded what was constitutionally required." Benjamin, 935 F. Supp. at 354. "Congress was concerned that federal courts had maintained jurisdiction over consent decrees that provided relief beyond what the constitution required. In an effort to combat this, Congress mandated that defendants have the right to seek judicial review of the consent decrees that had been entered without any finding of an actual violation of a federal right and any consideration of whether the relief granted was narrowly tailored to address that violation." 935 F. Supp. at 355. Those objectives are unquestionably legitimate ones, and the challenged provisions are a rational method by which to achieve them. See Plyler, 100 F.3d at 374; Benjamin, 935 F. Supp. at 934-936.

Finally, because Congress found both frequent abuses and heightened dangers in the context of prison conditions litiga-

tion, see H.R. Rep. No. 21 at 24 & n.2, its decision to legislate in that area is distinguishable from statutes that single out disfavored groups based on a punitive or discriminatory animus. Cf. James v. Strange, 407 U.S. 128, 142 (1972); Romer v. Evans, 116 S. Ct. 1620 (1996).

III

SECTIONS 3626(b)(2) AND (b)(3) DO NOT VIOLATE PLAINTIFFS' DUE PROCESS RIGHTS

Sections 3626(b)(2) and (b)(3) of the PLRA plainly do not violate plaintiffs' due process rights under the Fourteenth Amendment. Prospective relief, including relief provided under a consent decree, is subject to modification or termination to accommodate changes in pertinent law or fact, or where there are other equitable considerations supporting modification. As a result, prospective orders in prison conditions suits are clearly not protected "property" interests under the Due Process Clause. See Board of Regents v. Roth, 408 U.S. 564, 576-578 (1972).

For the same reason, plaintiffs do not have any vested rights in the prospective relief afforded under the prospective relief ordered here. See Plyler, 100 F.3d at 374-375; Benjamin, 935 F. Supp. at 356. But see Hadix v. Johnson, 933 F. Supp. 1362 (W.D. Mich. 1996). A final money judgment entered by a court creates a "vested right" and a constitutionally protected property interest. See McCullough v. Virginia, 172 U.S. 102, 123-124 (1898). But a prospective decree or order, which is always subject to modification based upon subsequent legislative enactments, changed facts, or other equitable considerations,

creates no such vested right. See United States v. Locke, 471 U.S. 84, 104 (1985). See also Fleming v. Rhodes, 331 U.S. 100, 107 (1947).

Nor do Sections 3626(b)(2) and (b)(3) deprive parties of prior judgments without an opportunity to be heard. To the contrary, existing relief is preserved where a court finds on the record that the relief meets applicable remedial standards. No greater process is due in this context.

CONCLUSION

For the foregoing reasons, the district court's judgment should be reversed.

Respectfully submitted,

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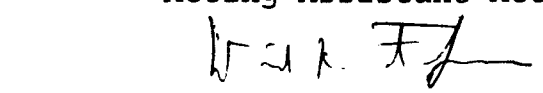

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STATUTORY ADDENDUM

18 USCA 3626
18 U.S.C.A. s 3626

UNITED STATES CODE ANNOTATED
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART II--CRIMINAL PROCEDURE
CHAPTER 229 [FN1]--POSTSENTENCE ADMINISTRATION
SUBCHAPTER C--IMPRISONMENT

Current through P.L. 104-333, approved 11-12-96

s 3626. Appropriate remedies with respect to prison conditions

(a) Requirements for relief.--

(1) Prospective relief.--(A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such 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. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.

(B) The court shall not order any prospective relief that requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State or local law, unless--

(i) Federal law permits such relief to be ordered in violation of State or local law;

(ii) the relief is necessary to correct the violation of a Federal right; and

(iii) no other relief will correct the violation of the Federal right.

(C) Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.

(2) Preliminary injunctive relief.--In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the

date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90- day period.

(3) Prisoner release order.--(A) In any civil action with respect to prison conditions, no prisoner release order shall be entered unless--

(i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and

(ii) the defendant has had a reasonable amount of time to comply with the previous court orders.

(B) In any civil action in Federal court with respect to prison conditions, a prisoner release order shall be entered only by a three-judge court in accordance with section 2284 of title 28, if the requirements of subparagraph (E) have been met.

(C) A party seeking a prisoner release order in Federal court shall file with any request for such relief, a request for a three-judge court and materials sufficient to demonstrate that the requirements of subparagraph (A) have been met.

(D) If the requirements under subparagraph (A) have been met, a Federal judge before whom a civil action with respect to prison conditions is pending who believes that a prison release order should be considered may sua sponte request the convening of a three-judge court to determine whether a prisoner release order should be entered.

(E) The three-judge court shall enter a prisoner release order only if the court finds by clear and convincing evidence that--

(i) crowding is the primary cause of the violation of a Federal right; and

(ii) no other relief will remedy the violation of the Federal right.

(F) Any State or local official or unit of government whose jurisdiction or function includes the appropriation of funds for the construction, operation, or maintenance of program facilities, or the prosecution or custody of persons who may be released from, or not admitted to, a prison as a result of a prisoner release order shall have standing to oppose the imposition or continuation in effect of such relief and to seek termination of such relief, and shall have the right to intervene in any proceeding relating to such relief.

(b) Termination of relief.--

(1) Termination of prospective relief.--(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener--

(i) 2 years after the date the court granted or approved the prospective relief;

(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or

(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

(2) Immediate termination of prospective relief.--In any civil action with respect to prison conditions, a defendant or intervener 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.

(3) Limitation.--Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current or 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.

(4) Termination or modification of relief.--Nothing in this section shall prevent any party or intervener from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.

(c) Settlements.--

(1) Consent decrees.--In any civil action with respect to prison conditions, the court shall not enter or approve a consent decree unless it complies with the limitations on relief set forth in subsection (a).

(2) Private settlement agreements.--(A) Nothing in this section shall preclude parties from entering into a private settlement agreement that does not comply with the limitations on relief set forth in subsection (a), if the terms of that agreement are not subject to court enforcement other than the reinstatement of the civil proceeding that the agreement settled.

(B) Nothing in this section shall preclude any party claiming that a private settlement agreement has been breached from seeking in State court any remedy available under State law.

(d) State law remedies.--The limitations on remedies in this section shall not apply to relief entered by a State court based solely upon claims arising under State law.

(e) Procedure for motions affecting prospective relief.--

(1) Generally.--The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions.

(2) Automatic stay.--Any prospective relief subject to a pending motion shall be automatically stayed during the period--

(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or

(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and

(B) ending on the date the court enters a final order ruling on the motion.

(f) Special masters.--

(1) In general.--(A) In any civil action in a Federal court with respect to prison conditions, the court may appoint a special master who shall be disinterested and objective and who will give due regard to the public safety, to conduct hearings on the record and prepare proposed findings of fact.

(B) The court shall appoint a special master under this subsection during the remedial phase of the action only upon a finding that the remedial phase will be sufficiently complex to warrant the appointment.

(2) Appointment.--(A) If the court determines that the appointment of a special master is necessary, the court shall request that the defendant institution and the plaintiff each submit a list of not more than 5 persons to serve as a special master.

(B) Each party shall have the opportunity to remove up to 3 persons from the opposing party's list.

(C) The court shall select the master from the persons remaining on the list after the operation of subparagraph (B).

(3) Interlocutory appeal.--Any party shall have the right to an interlocutory appeal of the judge's selection of the special master under this subsection, on the ground of partiality.

(4) Compensation.--The compensation to be allowed to a special master under this section shall be based on an hourly rate not greater than the hourly rate established under section 3006A for payment of court-appointed counsel, plus costs reasonably incurred by the special master. Such compensation and costs shall be paid with funds appropriated to the Judiciary.

(5) Regular review of appointment.--In any civil action with respect to prison conditions in which a special master is appointed under this subsection, the court shall review the appointment of the special master every 6 months to determine whether the services of the special master continue to be required under paragraph (1). In no event shall the appointment of a special master extend beyond the termination of the relief.

(6) Limitations on powers and duties.--A special master appointed under this subsection--

(A) may be authorized by a court to conduct hearings and prepare proposed findings of fact, which shall be made on the record;

(B) shall not make any findings or communications ex parte;

(C) may be authorized by a court to assist in the development of remedial plans; and

(D) may be removed at any time, but shall be relieved of the appointment upon the termination of relief.

(g) Definitions.--As used in this section--

(1) the term "consent decree" means any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements;

(2) the term "civil action with respect to prison conditions" means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison, but does not include habeas corpus proceedings challenging the fact

or duration of confinement in prison;

(3) the term "prisoner" means any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program;

(4) the term "prisoner release order" includes any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison;

(5) the term "prison" means any Federal, State, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law;

(6) the term "private settlement agreement" means an agreement entered into among the parties that is not subject to judicial enforcement other than the reinstatement of the civil proceeding that the agreement settled;

(7) the term "prospective relief" means all relief other than compensatory monetary damages;

(8) the term "special master" means any person appointed by a Federal court pursuant to Rule 53 of the Federal Rules of Civil Procedure or pursuant to any inherent power of the court to exercise the powers of a master, regardless of the title or description given by the court; and

(9) the term "relief" means all relief in any form that may be granted or approved by the court, and includes consent decrees but does not include private settlement agreements.

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Final Brief For The United States As Intervenor-Appellant were served by first class mail, postage prepaid, on the following individuals and counsel of record:

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