2001 WL 1506010
Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

Anatol KOZLOWSKI, et al., Plaintiffs,
v.
Thomas A. COUGHLIN III, et al., Defendants.
James SIMS, et al., Plaintiffs,
v.
Thomas A. COUGHLIN III, et al., Defendants.

Nos. 81 Civ. 5886(LMM), 81 Civ. 2355(LMM). | Nov. 26, 2001.

Opinion

MEMORANDUM AND ORDER

MCKENNA, J.

***1** Defendants in the above consolidated actions move pursuant to the Prison Litigation Reform Act of 1995 ("PLRA") to terminate the 1983 so-ordered "Stipulation of Settlement" in the above-captioned lawsuits (the "consent decree"), which governs visitation privileges at New York State Department of Correctional Services ("DOCS") facilities. For the reasons set forth below, the consent decree is terminated.[1]

BACKGROUND

State prison inmates and their would-be visitors brought an action in 1981 challenging the constitutionality of DOCS regulations pertaining to inmate visitation. On cross-motions for summary judgment, the district court consolidated the two separate challenges to the regulations, certified the classes of all present state prison inmates and their visitors, and held the regulations unconstitutional, finding that New York prisoners had a constitutionally protected liberty interest in receiving visitors of their choice. *Kozlowski v. Coughlin,* 539 F.Supp. 852 (S.D.N.Y.1982). The court held that this liberty interest was created through New York State judicial decision, administrative regulation, and departmental directive. *Id.* at 856.

As a result of this opinion, the parties negotiated procedures for visitation privileges, which are embodied in the consent decree, signed by the parties and so-ordered by the court in May 1983. The consent decree is currently embodied in 7 N.Y.C.R.R. §§ 200.1–200.5. The decree provides for procedures for revocation or suspension of visitation privileges. The longer the period of suspension of visitation privileges, determined by the severity of the misconduct, the greater the procedures enjoyed by the inmate and the visitor. *Kozlowski v. Couglin,* 711 F.Supp. 83, 85 (S.D.N.Y.1988). The consent decree specifies that the visiting privileges of a particular visitor may only be curtailed if the misconduct involved that specific visitor. *Id.*

In 1988, DOCS moved to modify the penalty portion of the consent decree. The district court granted defendants' motion in part, allowing for the cumulation of different acts of misconduct involving the same visitor and increasing the visitation suspensions for drug-related offenses. *Kozlowski,* 711 F.Supp. at 83. The Second Circuit affirmed the decision. *Kozlowski v. Couglin,* 871 F.2d 241 (2d Cir.1989).

The Prison Litigation Reform Act (P.L. 104–134) was enacted on April 26, 1996, amending 18 U.S.C. § 3626. The PLRA provides, *inter alia,* for the termination of prospective relief, meaning all relief other than compensatory money damages, including consent decrees, with respect to prison conditions. The relevant provision states:

> 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.

***2** 18 U.S.C. § 3626(b)(2).

In the absence of such findings:

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

> drawn and the least intrusive means to correct the violation.

18 U.S.C. § 3626(b)(3).

The PLRA also contains an automatic stay provision, which provides that a motion to terminate prospective relief will stay relief from thirty days after the filing of the motion through the date on which the court rules on the motion. 18 U.S.C. § 3626(e)(2) & (3).

DISCUSSION

1.

Plaintiffs contend that the PLRA does not apply to this case, relying on the language of 18 U.S.C. § 3626(g)(2) which defines "civil action with respect to prison conditions":

> [T]he 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.

Plaintiffs' first argument is that this case is outside of the scope of the PLRA because it does not *solely* concern the lives of persons confined in prisons. (Pl.'s Mem. of Law in Opp'n at 2.) This Court acknowledges that the purpose of the consent decree was to afford due process to both inmates and their visitors. *Kozlowski,* 711 F.Supp. at 89 (holding that the consent decree was "necessitated by our holding that inmates and their visitors have a protected liberty interest in maintaining visitation").

However, in context, the phrase "on the lives of persons confined in prison," does not modify "with respect to conditions of confinement," as plaintiffs suggest. (Pl.'s Mem. of Law in Opp'n at 3.) The Second Circuit recognized that the PLRA encompassed two separate categories of civil actions, "(1) those brought with respect to 'conditions of confinement,' and (2) those brought with respect to 'the effects of actions by government officials on the lives of persons confined in prison." ' *Nussle v. Willette,* 224 F.3d 95, 102 (2d Cir.2000). The fact that people other than inmates are affected by the consent decree does not remove it from the scope of the PLRA without clear language in the statute to this effect. The statute does not limit the PLRA's reach to civil actions brought *solely* for the benefit of prison inmates. Indeed, such a statute would have an extremely narrow scope, since many actions relating to prison conditions also have repercussions outside of the prison system.

Second, plaintiffs argue that this case does not concern "conditions" of confinement. (Pl.'s Mem. of Law in Opp'n at 4.) Plaintiffs cite *Nussel* for the proposition that the term "conditions":

> ***3** denotes 'attendant circumstances' or 'an existing state of affairs'—as exemplified by such ordinary phrases as 'living conditions,' 'playing conditions'... In light of this definition of 'conditions' the use of the term 'prison conditions' in [the PLRA] would appear to refer to "circumstances affecting everyone in the area affected by them" rather than "single or momentary matter[s]."

224 F.3d at 101 (rejecting defendants' assertion that claim of excessive force by corrections officers was "with respect to prison conditions").

According to plaintiffs, this case is about "single or momentary matter[s]"—the individual decisions whether to grant or deny a permit to visit an inmate and how much process to allow. (Pl.'s Mem. of Law in Opp'n at 6.) However, the consent decree evolved out of a class action which addressed the regular circumstances of visitation, events that occur within the prison's visiting rooms every day and affect all inmates and their visitors. The consent decree governs system-wide visitation policies initiated by high level DOC officials rather than the arbitrary actions of individual officials. Furthermore, in *Kentucky Dept. of Corrections v. Thompson,* the Supreme Court describes the class action at issue in that case as "challenging conditions of confinement," and notes that the resulting consent decree contained "provisions governing a broad range of prison conditions," including visitation policy. 490 U.S. 454, 456 (1989). Therefore, the consent decree fits squarely under the rubric of a proceeding brought with respect to "conditions" of confinement.

In addition, the *Kozlowski* proceedings arise with respect to "the effects of actions by government officials on the lives of persons confined in prison." 18 U.S.C. § 3626(g)(2). Initiated by both inmates and visitors, the *Kozlowski* lawsuit was brought to challenge the constitutionality of the DOC visitation guidelines, particularly Directive 4403. *Kozlowski,* 539 F.Supp. at 853. As the Second Circuit noted in *Nussel,* the term "governmental officials" is understood to refer to administrative and policymaking officials rather than corrections officers. 224 F.3d at 104. Actions by these officials in promulgating guidelines restricting or permitting visitation affect inmates' lives. As discussed above, although these officials' actions also affect the

lives of visitors to the prison, this does not remove the consent decree from the reach of the PLRA.

2.

Plaintiffs also argue that even if the Language of the PLRA encompasses the consent decree, the decree should not be terminated because plaintiffs retain a state-created liberty interest in visitation, and the *Kozlowski* court found that the consent decree is narrowly drawn and is the least intrusive means to correct the constitutional violation. (Pl.'s Mem. in Opp'n at 7–22.) The termination clause states that relief shall be terminated immediately:

> 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.

***4** 18 U.S.C. § 3626(b)(2).

In addition, even if the court granting relief did not make such a finding, a court asked to terminate relief may find that prospective relief remains necessary:

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

18 U.S.C. § 3626(b)(3).

Congress intended through the PLRA to limit the role of federal courts in the operation of the prison system.[2] The PLRA's sponsors criticized "judicial orders entered under Federal law [which] have effectively turned control of the prison system away from elected officials accountable to the taxpayer, and over to the courts." 141 Cong. Rec. S14419 (daily ed. Sept. 27, 1995) (remarks of Sen. Abraham). Under the PLRA, relief is to be limited to the constitutional minimum. H.R.Rep. No. 104–378, at 166 (1995). The PLRA limits the scope of consent decrees, because it provides that prospective relief shall terminate unless the relief "extends no further than necessary to correct the violation of the Federal right ." 18 U.S.C. § 3626(b)(2). As another court in this district has already noted, "[f]or purposes of the PLRA's prospective relief provisions, 'federal rights' are limited to those rights created by federal law." *Benjamin v. Kerik,* 102 F.Supp.2d 157, 173 (S.D.N.Y.2000) (quoting *Thompson v. Gomez,* 993 F.Supp. 749, 754 (N.D.Cal.1997), *rev'd on other grounds, Gilmore v. California,* 220 F.3d 987 (9th Cir.2000)). State-created rights, whether created by judicial decision or legislative action, extend beyond what the United States Constitution mandates. "[T]he term 'federal right' in the PLRA's termination provisions does not include any rights conferred by consent decrees that provide relief greater than that required by federal law." *Id.* at 173–74 (quoting *Thompson,* 993 F.Supp. at 754, citing *Plyler v. Moore,* 100 F.3d 365, 370 (4th Cir.1996)).

The Supreme Court has held that there is no federally created liberty interest in visitation, therefore this consent decree extends beyond what the federal Constitution requires. *Kentucky,* 490 U.S. at 460. In *Kentucky,* the Supreme Court considered whether inmates had a liberty interest in receiving certain visitors and held that they did not. *Id.* at 455. Although the parties did not brief the issue, the Court concluded, "Respondents do not argue—nor can it seriously be contended, in light of our prior cases—that an inmate's interest in unfettered visitation is guaranteed directly by the Due Process Clause." *Id.* at 460. In addition, the Court stated, "The denial of prison access to a particular visitor 'is well within the terms of confinement ordinarily contemplated by a prison sentence' and therefore is not independently protected by the Due Process Clause." *Id.* at 461 (quoting *Hewitt v. Helms,* 459 U.S. 460, 468 (1983)). Prior to the *Kentucky* decision, *Block v. Rutherford* held that pre-trial detainees and prisoners do not have a constitutional due process right to visitation. 468 U.S. 575 (1984).

***5** The *Kozlowski* court's 1982 decision, the basis for the consent decree, held that prison visitation was a liberty interest created by the state, subject to the protections of the Due Process Clause of the Fourteenth Amendment. *Kozlowski,* 539 F.Supp. at 855. The court based its decision on *Cooper v. Morin,* 49 N.Y.S.2d 168 (1979), DOCS regulation 7 N.Y.C.R.R. § 301.8 (1975), which no longer exists, and 7 N.Y.C.R.R. § 301.6(a), currently cited as 7 N.Y.C.R.R. § 302.2(j)(1). In *Cooper,* the New York Court of Appeals held that contact visitation is not required by the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment. 49 N.Y.S.2d at 75–76. Rather, the court based its holding on the due process clause of the state constitution. *Id.* at 76. Similarly, states can create constitutionally protected liberty interests by enacting statutes that use mandatory language in establishing procedures for prison administration. *Hewitt,* 459 U .S. at 471–72. Because the

liberty interest underlying the consent decree is based entirely on substantive state law, it requires prospective relief greater than is necessary to secure a federal right, and guarantees due process in excess of the requirements of federal law.

Contrary to plaintiffs' assertions, visitors do not have a liberty interest in visitation because they are not under confinement and a visitor has no constitutional or statutory right to visit a prison. N.Y. Correct. Law § 146 (McKinney 2001).

Because no federal right is at stake, the Court need not examine whether the *Kozlowski* court made findings that the relief was narrowly drawn and is the least intrusive means necessary to correct the violation of the federal right. Although plaintiffs argue that they are entitled to discovery in order to determine if there are additional violations of their federal rights, additional discovery is not appropriate because plaintiffs have no liberty interest in visitation.

CONCLUSION

For the reasons stated above, defendants' motion to terminate the 1983 consent decree is granted, and both cases are dismissed.

Footnotes

1 Plaintiffs and intervenors bring a motion for a judgment of contempt and other relief, resulting from what they allege to be defendants' repeated violations of the consent decree. Since the Court finds that the consent decree must be terminated pursuant to the PLRA, there is no need for the Court to address this motion.

2 E.g., H.R.Rep. No. 104–378, at 166 (1995) ("[The PLRA] amends 18 U.S.C. § 3626 to require that prison conditions remedies do not go beyond the measures necessary to remedy federal rights violations and that public safety and criminal justice needs are given appropriate weight in framing such remedies. Specifically, the section places limits on the type of prospective relief available to inmate litigants. The relief is generally limited to the minimum necessary to correct the violation of a federal right."); H.R.Rep. No. 104–21, at 24 n. 2 (1995) ("By requiring courts to grant or approve relief constituting the least intrusive means of curing an actual violation of a federal right, the provision stops judges from imposing remedies intended to effect an overall modernization of local prison systems or provide an overall improvement in prison conditions. The provision limits remedies to those necessary to remedy the proven violation of federal rights.").