UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES BENJAMIN, et al.,

Plaintiffs,

v.

MICHAEL P. JACOBSON, et al.,

Defendants.

75 Civ. 3073 (HB)

SUPPLEMENTAL MEMORANDUM OF LAW OF THE UNITED STATES OF AMERICA WITH RESPECT TO CERTAIN PROVISIONS OF THE PRISON LITIGATION REFORM ACT

In an Opinion and Order dated July 23, 1996 ("Opinion"), the Court upheld several provisions of the Prison Litigation Reform Act ("PLRA") as constitutional and vacated the Consent Decrees in these cases pursuant to 18 U.S.C. § 3626(b)(2). Relying in part on their interpretation of certain portions of the July 10, 1996 Memorandum of Law of the United States of America with Respect to the Constitutionality of Certain Provisions of the Prison Litigation Reform Act ("United States' Memorandum"), which was filed previously in this action, Plaintiffs now request, in addition to other relief, the alteration or amendment of the Opinion under Fed. R. Civ. P. 59(e). The United States respectfully submits this supplemental memorandum in order to respond to the Plaintiffs' interpretation of our initial memorandum, and to clarify our position with respect to certain provisions of the PLRA.

In seeking reconsideration of the Opinion, Plaintiffs rely in part, see Plaintiffs' Memorandum at 4, on the statement in the United States' Memorandum that ". . . Section 3626(b)(3)'s

reference to a 'violation of the Federal right' should be read to encompass recent violations of a federal court order (whether that order began as a consent decree or as a litigated judgment)." United States' Memorandum at 17 (footnote omitted).[1] Plaintiffs interpret this statement to mean that a violation of a consent decree that was not based on an admitted or proven violation of a constitutional right represents a "current or ongoing violation of the Federal right" for purposes of Section 3626(b)(3). Plaintiffs' Memorandum at 4. That is not the interpretation that the United States intended. It is an incorrect reading of the statute, and is not required to avoid an unconstitutional result.

The United States does not construe Section 3626(b)(3) to require a court to terminate relief where a past constitutional violation has not yet been remedied. As we previously stated, that reading -- which has not been adopted by this Court -- would pose a serious constitutional question. United States' Memorandum at 17. Accordingly, the United States reads the term "current or ongoing violation of the Federal right" to encompass the failure to remedy past constitutional violations.

Under this reading of Section 3626(b)(3), the failure to comply with a consent decree that had been entered upon a finding of proof or admission of a constitutional violation could be evidence of the existence of a "current or ongoing violation of the

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[1] In addition, in their July 30, 1996 letter to the Court, Plaintiffs explicitly request the Court to construe this provision of the PLRA in determining whether to certify this matter for appeal.

Federal right," if that conduct represents a failure to take action that the court found necessary to remedy the violation.[1] By contrast, however, failure to comply with a consent decree that was entered without such findings would not constitute a "current or ongoing violation of the Federal right" (although that conduct would provide grounds for the exercise of the contempt power of the federal courts, which the PLRA does not purport to affect). Any other reading would be inconsistent with the intent of the PLRA, which was enacted to insure that courts only redress constitutional or statutory violations.

This reading of Section 3626(b)(3) does not violate separation of powers principles. As this Court has recognized, Congress has not stripped federal courts of their authority under Article III to remedy constitutional violations, but has simply directed courts to find that such violations exist prior to exercising their remedial power. See Opinion at 36-38. To be sure, the explicit statutory requirement that courts make those findings is a new feature of equity practice that has been introduced by the PLRA. Nevertheless, the substance of what a court must find in fashioning or maintaining relief for constitutional violations is very much in keeping with pre-PLRA limitations on the scope of such relief.

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[1] Even if a court finds a "current or ongoing violation of the Federal right" under this construction of Section 3626(b)(3), the provision still would require the court 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). In short, a court may have to modify an order or decree going forward to ensure that it satisfies the PLRA standards.

For these reasons, the United States disagrees with the reading of the PLRA adopted by the district court in Gates v. Gomez, No. S-87-1636 LKK (E.D. Cal. July 22, 1996), on which the Plaintiffs also rely here. Plaintiffs' Memorandum at 4.[3] In Gates, the court denied a motion to terminate relief under Section 3626(b)(2) on the grounds that noncompliance with a pre-PLRA consent decree -- entered without a finding that the decree was appropriately tailored to remedy any violation of federal law -- was itself a "current or ongoing violation of the Federal right." Id. Adoption of the Gates reasoning would effectively read out of the PLRA the requirement that a constitutional or statutory violation undergird the continuation of prospective relief. That result is plainly contrary to the intent of the statute.

Finally, Plaintiffs contend that an allegation of a constitutional violation may suffice to justify the initial entry of prospective relief under the PLRA. Plaintiffs' Memorandum at 4-5. In our previous filing, the United States suggested that the Act could be construed to permit the entry of a consent decree under Section 3626(a)(1) without proof or confession of a violation of the Constitution or a federal statute. See United States' Memorandum at 9 n.5. This issue is not presented in this case, which involves a motion to terminate an existing decree, not a motion for entry of a new decree. On further consideration, however, we believe that this Court correctly concluded that, under

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[3] Plaintiffs' counsel provided the Court with a copy of Gates under cover of a July 24, 1996 letter.

the language of the Act and the relevant legislative history, Section 3626(a)(1) would require courts to find proof or admission of a constitutional or statutory violation before approving relief under the PLRA. See Opinion at 36.

Dated: New York, New York

August 1, 1996

Respectfully submitted,

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