

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Case No. 02-cv-01239-MSK-PAC

MARK JORDAN,

Plaintiff,

-v-

MICHAEL V. PUGH; J. YORK;  
R.E. DERR; B SELLERS; and  
STANLEY ROWLETT,

Defendants.

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**PLAINTIFF’S MOTION FOR FINDING PURSUANT TO 18 U.S.C. § 3626(a)(1)**

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Plaintiff, by his attorneys, the Student Law Student Office of the University of Denver Sturm College of Law, pursuant to Rule 59(e) requests that this Court grant this Motion for Finding Pursuant to 18 U.S.C. § 3626(a)(1), and states in support the following:

1. On August 9, 2007, this Court issued a *Memorandum Opinion and Order* granting prospective relief to the Plaintiff. *See* Docket 354; *see also* Docket 355, *Judgment* and 2007 WL 2288189.
2. In considering the granting of prospective relief in a civil case involving prison conditions, a 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.”

18 U.S.C. § 3626(a)(1). This statute goes on to state that in granting prospective relief “[t]he court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.” *Id.*

3. It is Plaintiff’s position that while these determinations are implicit in the Court’s opinion, the Court’s *Memorandum Opinion and Order* does not explicitly contain the findings required by 18 U.S.C. § 3626(a)(1).

4. If the § 3626(a)(1) finding is not included in the decision, the result could be an

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).

5. Pursuant to Rule 59(e), this Court should grant this motion “to correct manifest errors of law ....” *Adams v. Reliance Standard Life Ins. Co.*, 225 F.3d 1179, 1186 n.5 (10<sup>th</sup> Cir. 2000); *see also Brumark Corp. v. Samison Res. Corp.*, 57 F.3d 941, 948 (10<sup>th</sup> Cir. 1995) (noting that the requirements for motions for reconsideration are “an intervening change in the controlling law, the availability of new evidence, or the need to correct clear error *or prevent manifest injustice*”) (emphasis added).

6. Plaintiff is requesting that this Court make the § 3626(a)(1) findings and place those findings in its *Memorandum Opinion and Order*.

7. Defendants will not be unduly prejudiced by the granting of this motion.

WHEREFORE, for the reasons stated above, Plaintiff respectfully requests that this Court grant this motion and modify its August 9, 2007, *Memorandum Opinion and Order* to include the

findings required by 18 U.S.C. § 3626(a)(1).

D.COLO.L.CIV.R. 7.1(A) CERTIFICATION

Pursuant to D.C. Colo. L.Civ.R 7.1, the undersigned counsel has conferred with Defendants' counsel regarding this motion. Defendants' counsel stated that they oppose this motion.

Dated: August 23, 2007

Respectfully submitted,

STUDENT LAW OFFICE

s/ Daniel E. Manville

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**CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on August 23, 2007, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will serve a copy of the foregoing on the following: Marcy Elizabeth Cook and Michael Johnson, Attorneys for the Defendants, United States Attorney's Office, 1225 Seventeenth St., Ste. 700, Denver, Colorado 80202.

/s/ Daniel E. Manville

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Daniel E. Manville