



PC-IA-002-001

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U.S. ATTORNEY  
DES MOINES, IOWA

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

BRUCE HAZEN, et al.,  
Plaintiff,  
INMATES OF NAACP, BCG, and  
PROJECT HARMONY,  
Movants,  
vs.  
MICHAEL REAGEN, et al.,  
Defendants.

NO. 4-75-CV-80201

ORDER

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DAVID G. DEE,  
Plaintiff,  
vs.  
LOU V. BREWER, et al.,  
Defendants.

NO. 4-77-CV-80102

FILED  
DES MOINES, IOWA  
DEC 29 AM 7:33  
CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

These two cases resulted in decrees that have required state officials operating the Iowa State Penitentiary in Fort Madison (ISP) to conduct activities in a prescribed manner to protect the rights of the inmates. The decrees were entered by Honorable William C. Stuart, and I now am the district judge who regularly monitors motions and applications filed in the cases. In both cases, this court has retained jurisdiction to enter such orders as may be necessary to enforce the terms of the decrees.

On April 25, 1996, the President signed into law the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321 (1996). Included in this legislation is a provision that terminates prospective relief ordered in certain consent decrees like those now before the court.

Defendants in these two cases have moved under the PLRA to terminate immediately the prospective relief provided the

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plaintiffs in the decrees. Plaintiffs resist the motions and challenge the constitutionality of the provisions of the PLRA that provide for termination of relief.

The United States of America has intervened and filed briefs in these cases, and the matter has been submitted on the papers of record for a decision on defendants' motions.

The court deems a ruling in a similar case to be controlling in these cases. One decree still in force to rectify unlawful conditions at ISP is Gavin v. Ray, Civil No. 4-78-CV-70062. District Judge Harold D. Viator, ruling on a motion to terminate prospective relief filed in that case, decided on September 18, 1996, that the provision for immediate termination of that decree violated the constitutional principle of separation of powers.


I have compared the issues, the briefs, and the theories presented here and in Gavin. The issue of separation of powers is indistinguishable in these cases from Gavin. The arguments presented by counsel are essentially the same. Judge Viator's reasoning is sound. Judges of this court have usually followed decisions of other district judges in cases with facts and applicable law that are not readily distinguishable.

For the reasons set forth by Honorable Harold D. Viator in Gavin v. Ray, Civil No. 4-78-CV-70062 (S.D. Iowa Sept. 18, 1996), the court denies the defendants' motion for termination of relief in these two cases.

I consider this ruling a final decision on the merits of this issue. If this decision is deemed interlocutory, however, I certify that the foregoing ruling on the constitutionality of 18 United States Code section 3626(b)(2) involves a controlling question of law as to which there is substantial ground for difference of an opinion. An immediate appeal from this decision may materially advance the ultimate termination of this litigation.

IT IS SO ORDERED.

Dated this 29th day of November, 1996.

  
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CHARLES R. WOLLE, JUDGE  
UNITED STATES DISTRICT COURT