"ATTACHMENT I"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:72-CT-3052-F

ROBERT (BOBBY) SMITH, et al.,
Plaintiffs,

v.

FRANKLIN FREEMAN, Secretary of the North Carolina Department of Correction,
Defendant

No. 3052 CIVIL
RALEIGH DIVISION

DONALD W. MORGAN, et al.,
Plaintiffs,

v.

FRANKLIN FREEMAN,
Defendant

No. 4277 CIVIL
RALEIGH DIVISION

JOHN HARRINGTON, et al.,
Plaintiffs

v.

FRANKLIN FREEMAN,
Defendant

No. 793 CIVIL
WASHINGTON DIVISION

ORDER

This matter is once again before the court on the defendant's motion to reconsider and amend judgment pursuant to Federal Rules of Civil Procedure 59(e) and 60(b)(6). Defendant again seeks to have the court immediately terminate the injunction to which defendant is subject and end the court's jurisdiction over these cases, this time pursuant to the Prison Litigation Reform Act, which amends 18 U.S.C. § 3626 For the

reasons that follow, the motion is DENIED.

The Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321, enacted April 26, 1996, rewrote 18 U.S.C. § 3626. That code section, now entitled "Appropriate remedies with respect to prison conditions," sets forth new requirements and conditions for the entry or continuation of prospective injunctive relief in any "civil action with respect to prison conditions." According to the PLRA, "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." 18 U.S.C. § 3626(g)(2) (emphasis added). The court finds that the PLRA, through the language of the clause emphasized, does apply to these cases.[1]

In his current motion, defendant focuses on the substantive requirements of 18 U.S.C. § 3626(b)(2) and (b)(3). These

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[1]The court has examined the arguments of intervenor North Carolina Prisoner Legal Services, Inc. (hereafter, "contractor") to the contrary, Contractor's Resp. to Def.'s Mot. at 5-7, as well as the idea that, in these cases, the lives of persons confined in prison have been affected not by the actions of government officials, but by their *inaction*. However, the court rejects these possible bases for a finding that the PLRA does not apply to these cases. Contractor ignores the clause of the definition emphasized above, and defendant's inaction here is no different than positive and harmful action, because defendant had a constitutional duty to act to provide persons in his custody with access to the courts. Compare the action/inaction distinction in tort law, as stated in W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 56, at 373 (5th ed. 1984); Restatement (Second) of Torts § 314 (1965).

sections read as follows:

(b) Termination of relief.

* * * * *

(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.

Defendant argues that the court's original Order requiring him to contract with Legal Services of North Carolina, Inc. does not recite the findings required by subsection (2), and so defendant is entitled to the immediate dissolution of the injunction. Further, says defendant, the court cannot save the injunction under subsection (3) because it cannot now make the written finding that "prospective relief remains necessary to correct a current or ongoing violation of the Federal right," since defendant has provided North Carolina inmates with constitutionally adequate access to the courts continuously for more than seven years.

The court need only address the first argument. The PLRA does not require that the court, in entering an injunction, use the magic words of the statute, 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). As plaintiffs and contractor point out, this court and the Fourth Circuit made these required findings in substance, if not in the precise form prescribed, years ago. (Pls.' Resp. to Def.'s Mot. at 5-7.) Moreover, the undersigned, in observation of the principles of federalism and in response to the recent decision of Lewis v. Casey, 116 S.Ct. 2174 (1996), has continued to assure that the injunction "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." See Order of January 8, 1997; Pls.' Resp. to Def.'s Mot. at 7-10.[3]

Finally, the court acknowledges that its heretofore proposed course of action in these cases, to impose an indexing system on

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[3]The court has reviewed all federal district court and circuit court cases dealing with the PLRA's amendments to 18 U.S.C. § 3626 but has found none where a court upheld an injunction entered before the passage of the PLRA on the basis that the injunction was accompanied by implicit findings that the prospective relief ordered therein was "narrowly drawn, extend[ed] no further than necessary to correct the violation of the Federal right, and [was] the least intrusive means necessary to correct the violation of the Federal right." Most of the cases deal not with injunctions, but with consent decrees that provided for relief substantially in excess of what the Constitution would require-- not the case here. However, in Smith v. Arkansas Dept. of Correction, 103 F.3d 637 (8th Cir. 1996), the Eighth Circuit upheld an injunction, which "[did] not go beyond the scope of the injury" but which was entered before the effective date of the PLRA, even after noting the requirements of the PLRA. Id. at 646-47. In that context, the court stated that the PLRA "merely codifies existing law and does not change the standards for determining whether to grant an injunction." Id. at 647 (dictum).

the 1997-98 contract to set the terms for the three subsequent contracts, and then revisit at the end of that time the question of the court's continued jurisdiction over these cases, is not appropriate in light of the PLRA. Defendant is entitled under the PLRA to move for a termination of the injunction one year from the date of this Order. 18 U.S.C. § 3626(b)(1)(A)(ii).

For now, however, defendant's motion to reconsider and amend judgment is DENIED. Plaintiffs' and contractor's motions to suspend the stay provision of 18 U.S.C. § 3626(e), or to strike that provision as unconstitutional, are DENIED AS MOOT.

SO ORDERED.

This 21st day of March, 1997.

James C. Fox

JAMES C. FOX
United States District Judge