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United States District Court, S.D. Texas.

David RUIZ, et al., Plaintiffs,
United States of America, Plaintiff–Intervenor,
v.
Wayne SCOTT, et al., Defendants.

No. CIV.A. H–78–987. | Sept. 25, 1996.

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INTRODUCTION

***1** The United States of America ("United States") respectfully submits its Response to Defendants' Motion to Vacate Final Judgment and Memorandum of Law With Respect to the Constitutionality of Certain Provisions of the Prison Litigation Reform Act of 1995 ("PLRA" or "Act").

The United States was not a party to the Final Judgment entered by this Court in 1992. Consequently, the United States takes no position on whether this Court should vacate the Final Judgment. The United States does have some continued concern over issues of medical and

mental health care in the Texas prison system, based on numerous complaints we have received in the last few years. The United States has not yet had an opportunity to substantiate these complaints and is in discussions with the State of Texas to gain access to the facilities accordingly. Nevertheless, given the longstanding nature of this litigation, the United States intends to pursue those concerns separately pursuant to its authority under the Civil Rights for Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 *et seq.,* and, if necessary, issue a new notice of investigation specifically tailored to investigate those medical and mental health issues.

Finally, because Plaintiffs have challenged the constitutionality of the Act in their Opposition to Defendants' Supplemental Motion to Vacate Final Judgment, the United States submits its Memorandum of Law With Respect to the Constitutionality of Certain Provisions of the Prison Litigation Reform Act.

STATUTORY BACKGROUND

On April 26, 1996, the President signed into law the Prison Litigation Reform Act of 1995 (PLRA). The Act was part of an appropriations bill for the operation of agencies not otherwise funded for the balance of the current fiscal year. Section 802 of the Act, which consists of amendments to 18 U.S.C. § 3626, establishes standards for the entry and termination of prospective relief in civil actions concerning conditions in prisons, jails, and juvenile detention facilities.[1] With regard to the entry of such relief, Section 3626(a)(1)(A) provides:

> Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The 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. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.[2]

***2** Termination of relief is governed by several sections of the Act. In general, defendants are entitled to request the termination of prospective relief according to a time schedule set out in Section 3626(b)(1)(A), which provides:

> In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener—
>
> (i) 2 years after the date the court granted or approved the prospective relief;
>
> (ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or
>
> (iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

Section 3626(b)(2), however, provides for the immediate termination of relief that was entered without the findings required by Section 3626(a)(1):

> 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.

When termination is sought under either subsection (b)(1) or (b)(2), the standard applicable to the termination decision is set out in Section 3626(b)(3), which provides that 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.

Procedures for motions to terminate prospective relief are set out in Section 3626(e):

> (1) Generally.—The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions.
>
> (2) Automatic Stay.—Any prospective relief subject to a pending motion shall be automatically stayed during

the period—

(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); [and]

3

(B) ending on the date the court enters a final order ruling on the motion.

For the purposes of all of these provisions, prospective relief includes injunctive relief accorded under a consent decree. *See*18 U.S.C. § 3626(g)(7), (g)(9).

The Act contains a provision concerning retroactivity, stating that "IN GENERAL" Section 3626"shall apply with respect to all prospective relief whether such relief was originally granted or approved before, on, or after the date of the enactment of this title." Pub.L. 104–134 § 802(b)(1).

***3** Finally, the Act contains a severability provision that preserves the remainder of its provisions in the event that any portion is held to be unconstitutional. Pub.L. No. 104–134, § 810, 110 Stat. 1321.

Taken together, the PLRA's provisions reflect Congress' concern that relief in prison reform cases be narrowly tailored to address violations of federal rights. *See*H.R.Rep. No. 21, 104th Congress, 1st Sess. (hereinafter H.R. Rep.) at 24 n. 2 (subsection (a)(1)); *id.* at 26 (subsection (b)(2)). As applicable to relief entered after the PLRA's effective date, the Act is designed to establish a uniform remedial structure, and to provide for periodic review of individual decrees to determine whether they remain necessary to remedy violations of federal rights. As applicable to decrees entered before the PLRA's passage, the Act seeks to ensure that continuing relief comports with present legal standards.

ARGUMENT

I. *SECTIONS 3626(b)(2) AND (b)(3) OF THE PLRA DO NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE.*

Plaintiffs contend that the PLRA wrests too much authority from the federal judiciary and hence violates the separation of powers doctrine. This argument misperceives the role of Congress and the nature of the limitations imposed by the PLRA.

A. *The Separation of Powers Doctrine*

The doctrine of separation of powers flows from the Constitution's division of the federal government into three branches, each with enumerated powers. *See Northern Pipelines Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50, 57–58, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982). Under the Constitutional division of power, the Legislature is to enact laws of general application and the courts are to decide particular cases arising under those laws, exercising their exclusive authority to "say what the law is" in particular cases. *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803). "[I]t remains a basic principle of our constitutional scheme that one branch of the Government may not intrude upon the central prerogatives of another." *Loving v. United States,* 517 U.S. 748, ——, 116 S.Ct. 1737, 1743, 135 L.Ed.2d 36 (1996) (citations omitted). For example, the separation of powers doctrine prevents Congress from assigning core Article III powers to non-Article III entities. *See Northern Pipelines Constr. Co., supra; CFTC v. Schor,* 478 U.S. 833, 850–856, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986). The separation of powers doctrine also prohibits Congress from itself assuming the role assigned by the Constitution to the Judicial Branch. Accordingly, it is established that Congress may not itself decide cases. *United States v. Klein,* 80 U.S. (13 Wall.) 128, 20 L.Ed. 519 (1871). Although Congress may amend law applicable to pending cases, *see Robertson v. Seattle Audubon Society,* 503 U.S. 429, 112 S.Ct. 1407, 118 L.Ed.2d 73 (1992), such amendments must "set out substantive legal standards for the Judiciary to apply." *Plaut v. Spendthrift Farm, Inc.,* 514 U.S. 211, 115 S.Ct. 1447, 1453, 131 L.Ed.2d 328 (1995). At bottom, Congress' role is to enact the law, and it is the role of the courts to interpret the law and apply the law in the cases within their jurisdiction. Congress cannot exercise the judicial power of the United States, nor can it require "the federal courts to exercise 'the judicial Power of the United States,'U.S. Const., Art. III, § 1, in a manner repugnant to the text, structure and traditions of Article III."*See Plaut,* 115 S.Ct. at 1452.

***4** Although the doctrine of separation of powers is a "structural safeguard" that establishes "high walls" between the three constitutional branches of government, *see Plaut,* 115 S.Ct. at 1463, the Constitution itself creates an interrelationship and interdependence among the branches. Consistent with the structural safeguards erected by the Constitution, Congress possesses and exercises broad authority over federal court jurisdiction and procedure. Under the Constitution, it is the role of Congress to create and structure the inferior courts, and to establish the confines of the jurisdiction of those courts (within the outer limits set out in Article III). *See* U.S. Const. art. I, § 8, cl. 9; art. III, §§ 1–2. *See also Lauf v. E.G. Shinner & Co.,* 303 U.S. 323, 330, 58 S.Ct. 578, 82 L.Ed. 872 (1938) ("[t]here can be no question of the power of Congress thus to define and limit the jurisdiction

of the inferior courts of the United States"); *Lockerty v. Phillips,* 319 U.S. 182, 187, 63 S.Ct. 1019, 87 L.Ed. 1339 (1943). Moreover, Congress not only establishes the substantive federal law to be applied by the federal judiciary, it has the constitutional authority to establish the procedural and evidentiary rules to apply in the proceeding before the federal courts. As the Supreme Court has recognized, "the constitutional provision for a federal court system (augmented by the Necessary and Proper Clause) carries with it congressional power to make rules governing the practice and pleadings in those courts." *Hanna v. Plumer,* 380 U.S. 460, 472, 85 S.Ct. 1136, 14 L.Ed.2d 8 (1965). *See also Sibbach v. Wilson & Co.,* 312 U.S. 1, 9, 61 S.Ct. 422, 85 L.Ed. 479 (1941) ("Congress has undoubted power to regulate the practice and procedure of federal courts"). Congress also has the authority to define the nature of appeal rights available in federal cases and to establish rules governing when a court's judgment becomes final. *See Plaut,* 115 S.Ct. at 1457.

B. ***The PLRA's Limitations On The Equity Powers Of The Courts Do Not Violate Separation Of Powers Principles.***

The PLRA does not violate the separation of powers doctrine by improperly circumscribing the power of the federal courts to enter equitable relief to remedy constitutional violations in the prison setting. We agree that, having granted the inferior courts jurisdiction over constitutional and statutory challenges to prison conditions, Congress may not deprive the courts of the ability to decide those challenges. *Plaut,* 115 S.Ct. at 1457 (the Article III power is "not merely to rule on cases, but to *decide* them") (emphasis in original). The power to decide constitutional claims and render equitable relief to remedy a constitutional violation by an executive official is one of the core federal judicial powers. *See Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952).

***5** Here, however, Congress has not deprived the courts of the authority to decide constitutional challenges to prison conditions. As applied to litigated judgments, the PLRA's criteria for the imposition and continuation of prospective relief codify well-established standards articulated by the Supreme Court regarding the scope of remedies that lower federal courts may order or approve as a remedy for constitutional violations.[3] Accordingly, the Act clearly does not impinge on the remedial authority that courts must possess under Article III in order to redress constitutional violations.

1. It is well-settled in constitutional cases that "the nature of the violation determines the scope of the remedy." *Swann v. Charlotte–Mecklenburg Board of Education,* 402 U.S. 1, 16, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971). The "remedy must therefore be related to 'the *condition* alleged to offend the constitution." ' *Milliken v. Bradley,* 433 U.S. 267, 280, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977) (citation omitted). *See also McLendon v. Continental Can Co.,* 908 F.2d 1171, 1182 (3d Cir.1990) ("In granting injunctive relief, the court's remedy should be no broader than necessary to provide full relief to the aggrieved plaintiff"); *Ruiz v. Estelle,* 679 F.2d 1115, 1145 (5th Cir.1982) ("Reparative injunctive relief must be targeted at elimination of the unconstitutional conditions ... Therefore, a court can order only relief sufficient to correct the violation found"), *vacated in part on other grounds,*688 F.2d 266 (1982), *cert. denied,*460 U.S. 1042, 103 S.Ct. 1438, 75 L.Ed.2d 795 (1983); *Toussaint v. McCarthy,* 801 F.2d 1080, 1087 (9th Cir.1986) ("our goal is to cure only constitutional violations"), *cert. denied,*481 U.S. 1069 (1987). Recently, in addressing equitable remedies that may be imposed for constitutional violations in the prison setting, the Supreme Court endorsed the basic rule that the remedy must be tailored to redress the constitutional wrong. *See Lewis v. Casey,* 518 U.S. 343, ——, 116 S.Ct. 2174, 2183, 135 L.Ed.2d 606 (1996). In *Lewis,* the Supreme Court explained, "[t]he remedy [imposed] must of course be limited to the inadequacy that produced the injury-in-fact that the plaintiff has established." *Id. See also id.* at 2184 (systemwide relief cannot be granted unless the constitutional violation has "been shown to be systemwide").

***6** Congress was well aware of the state of the law in this area when it enacted the PLRA. As noted in the House Judiciary Committee Report on the provisions that ultimately became the PLRA, the "dictates of the provision are not a departure from current jurisprudence concerning injunctive relief." H.R. Rep. 21, 104th Cong., 1st Sess. 24 n. 2 (1995) (discussing remedial provision of the Violent Crime Control and Law Enforcement Act of 1995, H.R. 667) (citing *McLendon,* 905 F.2d at 1182; *Milliken,* 433 U.S. 267, 97 S.Ct. 2749, 53 L.Ed.2d 745; *Toussaint,* 801 F.2d at 1086). It was Congress' perception that courts had frequently strayed in practice from these principles. *See id.* at 24 n. 2. In enacting Section 3626(a)(1), Congress attempted to ensure that courts adhere to the standards governing the imposition of injunctive relief and to require express findings in accordance with those standards.

By requiring courts to make particularized findings as to the necessity of prospective relief, the PLRA ensures that all future orders will comply with current remedial standards. The statutory requirement that courts make those findings explicitly on the record is a new feature of equity practice that has been introduced by the PLRA. However, the substance of what a court must find in

fashioning relief for constitutional violations is very much in keeping with pre-PLRA limitations on the scope of such relief.

The imposition of such a procedural mechanism is clearly within Congress's authority. While Congress may not alter the substantive requirements of the Constitution, it does have authority to designate alternative mechanisms for the remediation of constitutional violations. *Cf. Seminole Tribe of Florida v. Florida,* 116 S.Ct. 1132–1134 (1996) (*Ex parte Young* nonstatutory review precluded where Congress has established a statutory scheme for review under the Indian Gaming Regulatory Act). As long as those mechanisms are adequate to remedy unconstitutional conduct, they need not replicate the relief that would be available in a suit brought directly under the Constitution. *See Carlson v. Green,* 446 U.S. 14, 18–19, 100 S.Ct. 1468, 64 L.Ed.2d 15 (1980) (right of action will not be implied under *Bivens v. Six Unknown Names Agents,* 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), "when defendants show that Congress has provided an alternative remedy which it explicitly declared to be a substitute for recovery directly under the Constitution and viewed as equally effective").[4] The PLRA's requirement that prospective relief in prison cases be accompanied by findings that the relief granted precisely addresses the defendant's unlawful conduct does not unduly impair the courts' performance of their Article III functions, or their ability to remedy constitutional violations, and it is well within Congress's authority.

***7** 2. Nor do the Act's provisions for periodic review of prospective relief, 18 U.S.C. § 3626(b)(1), (b)(3), contravene separation of powers principles. Irrespective of the PLRA, parties are free to seek relief from a prospective order or judgment at any time, and a court may grant a party relief from the prospective ruling "where it is no longer equitable" that the ruling have "prospective application." Fed.R.Civ.P. 60(b)(5). Rule 60(b)(5) applies to both litigated decrees and consent decrees, such as the one issued in the present case. *See Rufo v. Inmates of Suffolk County Jail,* 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992) (explaining the application of Rule 60(b)(5) to consent decrees). *See also Alexander v. Britt,* 89 F.3d 194 (4th Cir.1996). The PLRA provides a structured timetable for such requests, *see*18 U.S.C. § 3626(b)(1) (party or intervener may seek termination of prospective relief two years after the date the court granted or approved that relief, or one year after court enters order denying termination of relief), and provides that relief will be kept in place if it continues to meet the remedial criteria established by Section 3626(b)(3). In formalizing periodic review of prospective relief, in order to ensure that relief that does not satisfy the Act's legal standards can be modified or terminated, Congress has effected no radical reworking of the courts' powers. Rather, it has exercised its prerogative to establish a remedial mechanism, and has left to the courts the task of applying that mechanism in particular cases. *See Robertson,* 503 U.S. at 437–41.

Section 3626(b)(2) provides that where prospective relief regarding prison conditions is entered without making the findings required by the PLRA (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"), a movant is entitled to the immediate termination of that relief unless the court finds that the relief currently satisfies the Act's remedial criteria. As with the provisions for periodic review, the immediate termination provision merely reaffirms courts' duty to respect the rule that prospective relief should not be imposed unless it is required to remedy a constitutional or federal statutory violation. *See generally Board of Educ. v. Dowell,* 498 U.S. 237, 111 S.Ct. 630, 112 L.Ed.2d 715 (1991) (litigated decree), and *Freeman v. Pitts,* 503 U.S. 467, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992) (consent decree). Although pre-PLRA consent decrees regarding prison conditions often contained detailed relief beyond that which could entered by a court in a litigated decree, *see Rufo,* 502 U.S. at 389, there was always a requirement that consent decrees "relate to an alleged violation of federal law." *Alexander,* 89 F.3d at 200.[5]

***8** 3. Although the PLRA termination provisions, sections 3626(b)(2) and (b)(3), require a court to reexamine the prospective relief ordered, they do not impermissibly restrict courts' inherent authority to remedy constitutional violations within their jurisdiction. Those sections provide for the continuation of existing prospective relief only where such relief is (1) necessary and narrowly drawn to remedy a current or ongoing violation of a federal right; (2) no more extensive than necessary to correct the violation; and (3) the least intrusive means available to correct the violation. As explained above, these standards track existing limits under Article III on the remedial authority of the judiciary. Furthermore, courts retain their traditional authority to modify the continuing effect of prior injunctive orders to accommodate changes in the legal and factual landscape. *See Pennsylvania v. Wheeling & Belmont Bridge Co.,* 59 U.S. (18 How.) 421, 15 L.Ed. 435 (1855); *Rufo v. Inmates of Suffolk County Jail, supra.* Thus, the Act's termination provisions reaffirm and reemphasize the importance of existing limitations on the judiciary with regard to ongoing equitable relief in constitutional cases regarding prison conditions.

Applying those limitations, Sections 3626(b)(2) and (b)(3) do not require the termination or modification of relief that a court finds necessary and narrowly drawn to remedy continuing constitutional violations. Rather, only

those portions of a prior order that do not remain necessary to remedy such violations are affected. If a court determines that an existing decree is too broadly drawn in view of current conditions, but that *some* measure of relief remains necessary, the Act does not prohibit the court from imposing new or revised relief that complies with narrow-tailoring requirements, while affording an effective remedy.[6]

A court's traditional equitable authority is not limited to ordering the cessation of unconstitutional conduct, but includes the power to restore the victims of that conduct "to the position they would have occupied in the absence of such conduct." *Milliken v. Bradley,* 418 U.S. 717, 746, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974). *See also Missouri v. Jenkins,* 515 U.S. 70, 115 S.Ct. 2038, 2048, 132 L.Ed.2d 63 (1995) (same). Indeed, courts have "not merely the power but the duty to render a decree which will so far as possible eliminate the [unconstitutional] effects of the past as well as bar like [unconstitutionality] in the future." *Louisiana v. United States,* 380 U.S. 145, 154, 85 S.Ct. 817, 13 L.Ed.2d 709 (1965). Accordingly, in determining whether a remedial order or decree in an institutional reform case should be vacated, courts look to whether: (1) the defendant's unconstitutional conduct has ceased; (2) the defendant has made good-faith efforts under the decree to eliminate the adverse effects of that conduct; and (3) there is no significant likelihood that unlawful conduct will soon recur. *Freeman v. Pitts,* 503 U.S. at 490–99; *Board of Educ. v. Dowell,* 498 U.S. at 249–50; *Columbus Bd. of Educ. v. Penick,* 443 U.S. 449, 461 (1979).[7] *Cf. Alexander,* 89 F.3d at 200 (questioning whether these standards should apply to a consent decree that provides a timetable to bring the state into compliance with federal law).

***9** Pursuant to Sections (b)(2) and (b)(3), a court must terminate its decree absent a finding that prospective relief, *inter alia,*"remains necessary to correct a current or ongoing violation of the Federal right." An unduly narrow reading of those provisions might require a court to terminate relief where past unconstitutional conduct has temporarily halted but has not yet been remedied, or even where the court finds that the defendant is poised to resume its unconstitutional conduct. Such a reading would pose the serious question whether Congress may limit the courts' remedial authority to effectively redress unconstitutional conduct. A better reading of the Act—and one which clearly comports with Article III—is that the "current or ongoing violation of the Federal right," for purposes of the Act, encompasses not only unlawful conduct that is actually in progress at the very moment the court rules, but also failure to remedy the proximate effects of past unlawful acts. Under the proper reading, the present danger of imminent recurrence of a proven or admitted constitutional or statutory violation plainly points to the existence of a "current or ongoing violation of the Federal right" because it demonstrates a failure to remedy the violation. This reading of the Act comports with the accepted understanding of what constitutes an "ongoing" constitutional violation, and respects the courts' inherent authority to remedy constitutional violations. *See Freeman,* 503 U.S. at 486–89; *Porter v. Warner Holding Co.,* 328 U.S. 395, 398, 66 S.Ct. 1086, 90 L.Ed. 1332 (1946) ("Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied").[8]

"Where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [the courts'] duty is to adopt the latter." *Attorney General v. Delaware & Hudson Co.,* 213 U.S. 366, 408, 29 S.Ct. 527, 53 L.Ed. 836 (1909). *See also Miller v. Johnson,* 515 U.S. 900, 115 S.Ct. 2475, 2492, 132 L.Ed.2d 762 (1995); *United States v. X–Citement Video, Inc.,* 513 U.S. 64, 115 S.Ct. 464, 472, 130 L.Ed.2d 372 (1994). This canon of statutory construction is based on respect for Congress, which is assumed to legislate in the light of constitutional limitations. *Rust v. Sullivan,* 500 U.S. 173, 191, 111 S.Ct. 1759, 114 L.Ed.2d 233 (1991). Accordingly, while "avoidance of a difficulty will not be pressed to the point of disingenuous evasion,"*George Moore Ice Cream Co. v. Rose,* 289 U.S. 373, 379, 53 S.Ct. 620, 77 L.Ed. 1265 (1933), plausible constructions that avoid a finding of unconstitutionality should be adopted.

***10** If Congress denied the judiciary the basic authority to remedy constitutional violations, it would raise serious constitutional questions. Similarly, in our view, a serious constitutional question would be raised if the PLRA was read to require a court to terminate relief upon a finding that unconstitutional conduct has halted, even if the court also finds that the violation has not been fully remedied, or that the defendant is poised to resume the unconstitutional conduct. Hence, the PLRA should be read to maintain the district court's core authority to remedy the proximate effects of past unlawful acts, and to issue prospective relief where there is the present danger of imminent recurrence of a violation of the Constitution or federal statutory right.

Under this reading of Section 3626(b)(3), courts applying the provision should inquire into the existence of a present violation of the Constitution or a federal statute, or, if the court finds that there was such a violation in the past, failure to remedy the violation or its effects, or the threat of recurrence of the violation. Where a court has found the existence of a constitutional or statutory

violation and ruled certain action necessary to remedy that violation (either under the PLRA or prior to the new statute's enactment), noncompliance with a previous remedial order or decree may represent a failure to remedy the violation and hence a "current and ongoing violation of the Federal right." However, failure to comply with an order or decree that is inconsistent with the requirements of the PLRA would not constitute a "current or ongoing violation of the Federal right."[9] To regard a violation of such an order or decree as a "current or ongoing violation of the Federal right," without reference to an underlying past or present constitutional or statutory violation, would be at odds with the intent of the PLRA, which was enacted to ensure that courts redress only constitutional or statutory violations.

This reading of Section 3626(b)(3) does not violate separation of powers principles. 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 Benjamin v. Jacobson,* No. 75–civ–3073, 935 F.Supp. 332, 1996 WL 413722 at *18–19 (S.D.N.Y. July 23, 1996). Under the PLRA, the courts "continue to define the scope of prisoners' constitutional rights, review the factual record, apply the judicially determined constitutional standards to the facts as they are found in the record and determine what relief is necessary to remedy the constitutional violations." *Id.* To be sure, the statutory requirement that courts make such findings explicitly on the record 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.[10]

C. *Requiring Courts To Apply The PLRA's Standards To Existing Decrees And Orders Does Not Violate Separation Of Powers Principles.*

***11** Plaintiffs argue that under *Plaut v. Spendthrift Farm, Inc.,* 514 U.S. 211, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1995), the PLRA violates the separation of powers doctrine if it is applied to invalidate a final judgment. Plaintiffs argue that this Court approved by order of December 11, 1992, the Final Judgment that currently governs this case. Consequently, vacating this Final Judgment under the PLRA violates the Constitution as Congress does not have the authority to alter a final judgment.

Plaintiffs misunderstand the scope of the *Plaut* decision and misapply *Plaut* to the facts of this case. In *Plaut,* the Supreme Court recently overturned an effort by Congress to force courts to apply new law to existing final monetary judgments. In so doing, the Court held that Congress impermissibly encroaches on judicial authority when it dictates that an existing final money judgment is unenforceable. In *Plaut,* the Court considered legislation that retroactively allowed plaintiffs in certain securities fraud suits to revive actions that had been previously dismissed as a result of a statute of limitations rule first announced and applied by the Supreme Court in *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson,* 501 U.S. 350, 111 S.Ct. 2773, 115 L.Ed.2d 321 (1991). The Court in *Plaut* held that the legislation represented an attempt by Congress to "set aside the final judgment of an Article III court by retroactive legislation,"115 S.Ct. at 1458, and thus violated separation of powers principles. The Court held that "[j]udgments within the powers vested in courts by the Judiciary Article of the Constitution may not lawfully be revised, overturned or refused faith and credit by another Department of Government." *Id.* at 1546,*quoting Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.,* 333 U.S. 103, 113, 68 S.Ct. 431, 92 L.Ed. 568 (1948). *See also Hayburn's Case,* 2 U.S. (2 Dall.) 408, 413, 1 L.Ed. 436 (1792) (opinion of Iredell, J., and Sitgreaves, D.J.).

Sections 3626(b)(2) and (b)(3) of the PLRA do not violate the principle announced in *Plaut. Plaut* involved suits for monetary damages. In that context, the Court stated that "[h]aving achieved finality, ... a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable to that very case was something other than what the courts said it was." 115 S.Ct. at 1457. The Court further explained that its ruling was distinguishable from decisions approving statutes "that altered the prospective effect of injunctions entered by Article III courts." *Id.* at 1459 (citing *Pennsylvania v. Wheeling & Belmont Bridge Co.,* 59 U.S. (18 How.) 421, 15 L.Ed. 435 (1855)).

***12** In *Wheeling & Belmont,* the Supreme Court had earlier declared that a bridge across the Ohio River unlawfully impeded navigation, and ordered that the bridge be raised or removed. Soon after the injunction issued, an Act of Congress declared the bridge to be a "lawful structure[]," designated the bridge as a United States post-road, and authorized the bridge's owners to maintain it at the same height. *Wheeling & Belmont,* 59 U.S. at 429.

The Court upheld the legislation, against a separation of powers challenge, as a lawful exercise of congressional power. While stating "that the act of Congress cannot have the effect and operation to annul the judgment of the court already rendered, or the rights determined thereby in favor of the plaintiff,"*id.* at 431, the Court concluded that "[s]o far ... as this bridge created an obstruction to the free

navigation of the river, in view of the previous acts of congress, they are to be regarded as modified by this subsequent legislation; and, although it still may be an obstruction in fact, [it] is not so in the contemplation of the law." *Id.* at 430.

The rule of *Wheeling & Belmont* is that, where Congress validly alters the substantive law that was a predicate for injunctive relief, courts have inherent authority prospectively to alter that injunctive relief to take account of the changed legal circumstances.[11] *See Mount Graham Coalition v. Thomas,* 89 F.3d 554, 556–57 (9th Cir.1996). That inherent authority is now codified in Fed.R.Civ.P. 60(b), which provides for relief from judgments on a variety of grounds. *See Plaut,* 115 S.Ct. at 1447 (Rule 60(b) simply codified "pre-existing judicial power"); *see also Rufo v. Inmates of Suffolk County Jail,* 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992) (construing Rule 60(b) in the consent decree context). Although Congress may not simply nullify a prior judgment—whether the judgment is for monetary or injunctive relief—it may prospectively alter the substantive law in a manner that results in judicial modification or termination of existing prospective relief. *See Mount Graham Coalition,* 89 F.3d at 556–57.

As applied to injunctions entered prior to the enactment of the PLRA, Sections 3626(b)(2) and (b)(3) operate to (1) require express findings linking any relief that is to be continued to an identified violation of a federal right, and (2) require courts' to conform continuing prospective relief to current legal and factual circumstances. While it is true that Sections 3626(b)(2) and (b)(3) affect injunctive orders that are "final" for certain purposes, *see Rufo,* 502 U.S. at 378; *United States v. Michigan,* 18 F.3d 348, 351 (6th Cir.), *cert. denied,*513 U.S. 925, 115 S.Ct. 312, 130 L.Ed.2d 275 (1994), those affected orders were never meant to represent "the last word of the judicial department with regard to a particular case or controversy." *Plaut,* 115 S.Ct. at 1457. Rather, unlike with a money judgment, courts have always reserved the power—indeed the obligation—to revisit continuing injunctive orders in light of the evolving factual or legal landscape, and to modify or terminate the relief accordingly.

> ***13** Since injunctive relief necessarily depends on a continuing affront to one's legal rights, while legal relief depends only on a judicial determination that one's legal rights have been violated with resulting cognizable damage to the claimant, Congress could permissibly change the law so as to deprive a party of its right to injunctive relief.

Plaut v. Spendthrift Farm, Inc., 1 F.3d 1487, 1495 (6th Cir.1993), *aff'd,*514 U.S. 211, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1995).

Similarly, Sections 3626(b)(2) and (b)(3) do not impermissibly "prescribe rules of decision to the Judicial Department ... in cases pending before it." *Plaut,* 115 S.Ct. at 1452 (citing *United States v. Klein,* 13 Wall. 128, 80 U.S. 128, 146, 20 L.Ed. 519 (1871)). As discussed above, those portions of the Act provide for the modification of prospective relief where *a court* finds that relief to fall short of contemporary legal standards governing remedies. Congress has invoked its legislative authority to structure the relief that is available under the Constitution, while leaving to the courts the judicial function of determining "what the law is," *Marbury v. Madison,* 5 U.S. (1 Cranch) at 177, and of applying that law to the facts of each case. *Compare United States v. Klein, supra* (Congress may not compel courts to discount the legal or evidentiary effect of a presidential pardon), *with Robertson v. Seattle Audubon Society,* 503 U.S. 429, 112 S.Ct. 1407, 118 L.Ed.2d 73 (1992) (Congress may alter the substantive requirements of an existing statute through independent legislation, leaving courts to apply the new requirements to particular cases). As in *Seattle Audubon,* Congress has "replaced the [original] legal standards ... without directing particular applications under either the old or the new standards." *Id.* at 437.

In *Klein,* the President pardoned, among others, V.F. Wilson for giving aid and comfort to officers of the rebel confederacy during the Civil War on the condition that he take an oath of allegiance. Wilson took the oath of allegiance and, thereafter, died. Wilson's estate sued the United States under a federal statute permitting loyal citizens to obtain compensation from the U.S. Treasury for cotton seized or destroyed during the war. The Court of Claims ruled in the estate's favor. *United States v. Klein,* 80 U .S. at 130–133. While the case was on appeal to the Supreme Court, Congress passed a new statute mandating that presidential pardons could not be considered as evidence of loyalty, rather that such pardons were conclusive evidence of disloyalty. *Id.* at 133–134, 143–144. The Supreme Court struck down the new statute, holding that Congress could not compel courts to discount the legal or evidentiary effect of a presidential pardon and impose a rule of decision in a pending case. *Id.* at 146–148.

***14** Thus, for example, if Sections 3626(b)(2) and (b)(3) commanded courts to find "changed circumstances" under Rule 60(b) in all prison cases, or ordered courts to credit the testimony of wardens over the contrary testimony of inmates, those provisions would violate the "rule of decision" principle articulated in *Klein.* Here, however,

Congress merely articulated applicable remedial standards; it has not imposed an arbitrary outcome or "rule of decision" for the application of pre-existing law.[12] *See Plaut,* 115 S.Ct. at 1452 (the prohibition of *Klein*"does not take hold when Congress 'amend[s] applicable law') (*quoting Seattle Audubon,* 503 U.S. at 441)). Because the PLRA "compel[s] changes in law, not findings or results under old law,"*Seattle Audubon,* 503 U.S. at 438, it does not violate the separation of powers principles established in *Klein. See Benjamin,* 935 F.Supp. 332, 1996 WL 413722 at *17.

II. *SECTIONS 3626(b)(2) AND (b)(3) DO NOT VIOLATE THE EQUAL PROTECTION CLAUSE.*

Plaintiffs argue that the PLRA violates the Equal Protection guarantees under the Constitution. Plaintiffs contend that the PLRA singles out a particular class of citizens—prisoners—and denies them remedies for violation of their federal rights. We disagree. Sections 3626(b)(2) and (b)(3) pass muster under the Equal Protection guarantees of the Fifth And Fourteenth Amendments. Legislation is presumed to be valid, and will be sustained against an equal protection challenge "if the classification drawn by the statute is rationally related to a legitimate state interest," and the statute does not classify individuals by race, alienage, national origin, gender, or illegitimacy, or impinge upon a fundamental right. *Cleburne v. Cleburne Living Center,* 473 U.S. 432, 440–41, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). *See also Thomasson v. Perry,* 80 F.3d 915, 927–928 (4th Cir.1996) (heightened judicial scrutiny is limited to cases where "the statute classifies along inherently suspect lines or burdens the exercise of a fundamental constitutional right" and the courts should be "reluctant to establish new suspect classes), *cert. pet. filed,* 65 U.S.L.W. 3033 (July 1, 1996).

***15** There is no basis for heightened scrutiny in examining the PLRA. *See Benjamin v. Jacobson,* 935 F.Supp. 332, 1996 WL 413722 at *20. It is well-settled that "[p]risoners are not a suspect class." *Moss v. Clark,* 886 F.2d 686, 690 (4th Cir.1989). "The status of incarceration is neither an immutable characteristic, nor an invidious basis of classification," supporting heightened scrutiny under the Equal Protection Clause. *Id. See also Pryor v. Brennan,* 914 F.2d 921, 923 (7th Cir.1990) ("[p]risoners do not constitute a suspect class"). *See also Zipkin v. Heckler,* 790 F.2d 16, 18 (2d Cir.1986) ("incarcerated felons are not a suspect classification").

Nor do the provisions of the PLRA at issue here impinge upon a fundamental right that would support heightened scrutiny. The right of access to the courts "assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights." *Wolff v. McDonnell,* 418 U.S. 539, 579, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). That access right "guarantees no particular methodology but rather the conferral of a capability—the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts." *Lewis v. Casey,* 518 U.S. at ——, 116 S.Ct. at 2182. That capability is not unconstitutionally impaired, however, by Sections 3626(b)(2) or (b)(3). Under those provisions, prisoners will continue to have an opportunity to establish current or ongoing violations of their constitutional rights. As the district court held in *Benjamin v. Jacobson,*"[t]he provisions granting immediate termination of prospective relief in the PLRA do not implicate th[e] right of initial access to commence a lawsuit." 935 F.Supp. 332, 1996 WL 413722 at *20. Moreover, Section "3626(b)(3) specifically permits courts to sustain their remedial orders if the court finds that violations have not been fully corrected and that the relief remains necessary." *Id.* at *22. Because Sections 3626(b)(2) and (b)(3) modify the remedial scheme that is applicable in prison conditions cases, without diminishing a prisoner-litigant's access to the judicial system, those provisions do not implicate the right of access to the courts.

Under the rational basis standard, a legislative classification "must be upheld ... if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Heller v. Doe,* 509 U.S. 312, 320, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993) (citation omitted). The " 'burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it' whether or not the basis has a foundation in the record." *Id.* at 320–321 (citation omitted). Sections 3626(b)(2) and (b)(3) clearly satisfy that deferential standard.

***16** In enacting the PLRA's remedial and termination provisions, Congress sought to promote principles of federalism, security, and fiscal restraint in the unique context of detentional and correctional institutions. As the court in *Benjamin v. Jacobson* explained in upholding the PLRA's termination provisions, "Congress could have been motivated by a concern that federal courts had ignored the proper limits that federalism principles impose on federal court supervision of state and local prisons .... Congress could also have wanted to create a uniform national standard for consent and litigated judgments based on a belief that consent judgments, even though agreed to initially, imposed severe burdens on states and local governments and that these burdens exceeded what was constitutionally required." 935 F.Supp. 332, 1996 WL 413722 at *22. Those objectives are unquestionably legitimate ones, *see, e.g., Turner v. Safely,* 482 U.S. 78, 89, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987); *Thornburgh v. Abbott,* 490 U.S. 401, 408, 109

S.Ct. 1874, 104 L.Ed.2d 459 (1989), and the challenged provisions are a rational method by which to achieve them.[13] "Congress was concerned that federal courts had maintained jurisdiction over consent decrees that provided relief beyond what the constitution required. In an effort to combat this, Congress mandated that defendants have the right to seek judicial review of the consent decrees that had been entered without any finding of an actual violation of a federal right and any consideration of whether the relief granted was narrowly tailored to address that violation." *Benjamin v. Jacobson,* 935 F.Supp. 332, 1996 WL 413722 at *23. "This is plainly a rational mechanism for obtaining congressional objectives." *Id.*

III. *SECTIONS 3626(b)(2) AND (b)(3) DO NOT VIOLATE DUE PROCESS .*

Plaintiffs argue that the PLRA abrogates their vested "judgment rights" in the Final Judgment of 1992 without due process of law and violates the Due Process Clause of the Constitution. Again, we disagree. Sections 3626(b)(2) and (b)(3) of the PLRA do not violate the Due Process Clause. As we have explained, injunctive relief is subject to modification or termination to accommodate changes in pertinent law or fact. *See, e.g., Rufo v. Inmates of Suffolk County Jail, supra; System Federation v. Wright,* 364 U.S. 642, 647, 81 S.Ct. 368, 5 L.Ed.2d 349 (1961) ("sound judicial discretion may call for the modification of the terms of an injunctive decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen"); *Daylo v. Administrator of Veterans' Affairs,* 501 F.2d 811, 817–18 (D.C.Cir.1974) (same). Courts may relieve a party from a consent decree pursuant to Rule 60(b) when, *inter alia,*"it is no longer equitable that the judgment should have prospective application." Fed. R. Civ. Proc. 60(b)(5). As a result, injunctive decrees in prison conditions suits are clearly not protected "property" interests under the Due Process Clause. *See Board of Regents v. Roth,* 408 U.S. 564, 576–578, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

***17** For the same reason, plaintiffs do not have any vested rights in the prospective relief afforded under the final consent order here. *See Benjamin v. Jacobson,* 935 F.Supp. 332, 1996 WL 413722 at *24–25. *But see Hadix v. Johnson,* 933 F.Supp. 1362, 1996 WL 393737 at *7 (W.D.Mich. July 3, 1996) (holding automatic stay provision of PLRA violates vested rights). A final money judgment entered by a court creates a "vested right" and a constitutionally protected property interest. *See McCullough v. Virginia,* 172 U.S. 102, 123–124, 19 S.Ct. 134, 43 L.Ed. 382 (1898). A prospective decree or order, which is always subject to modification based upon subsequent legislative enactments, creates no such vested right. *See United States v. Locke,* 471 U.S. 84, 104, 105 S.Ct. 1785, 85 L.Ed.2d 64 (1985) ("Even with respect to vested property rights, a legislature generally has the power to impose new regulatory constraints on the way in which those rights are used, or to condition their continued retention on performance of certain affirmative duties"). *See also Fleming v. Rhodes,* 331 U.S. 100, 107, 67 S.Ct. 1140, 91 L.Ed. 1368 (1947).

Nor do Sections 3626(b)(2) and (b)(3) deprive parties of prior judgments without an opportunity to be heard. To the contrary, existing relief is preserved where a court finds on the record that the relief meets applicable remedial standards. No greater process is due in this context.

IV. *SECTION 3626(e)(2), PROPERLY CONSTRUED, DOES NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE.*

Given a literal construction, the PLRA's "automatic stay" provision, 18 U.S.C. § 3626(e)(2), would apparently suspend the operation of an otherwise valid judgment, based solely on the defendant's submission of a motion and the court's failure to act on that motion within 30 days. So construed, the provision would appear to violate the separation of powers doctrine. In order to avoid these doubts, the provision should be construed to preserve the courts' inherent authority to make considered decisions based on the application of law to pertinent facts. *See Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council,* 485 U.S. 568, 575, 108 S.Ct. 1392, 99 L.Ed.2d 645 (1988); *Hooper v. California,* 155 U.S. 648, 657, 15 S.Ct. 207, 39 L.Ed. 297 (1895).

A. *A Strict Construction Of The Automatic Stay Provision Would Violate The Separation Of Powers Doctrine.*

Section 3626(e)(2) provides in pertinent part that "[a]ny prospective relief subject to a pending motion [to terminate] shall be automatically stayed ... beginning on the 30th day after such motion is filed." By its terms, the provision appears either independently to suspend an existing judgment awarding prospective relief, or to require nondiscretionary judicial suspension of that relief. Either construction of the provision would appear to violate the separation of powers doctrine by automatically disturbing final judgments, at the Legislature's command, without permitting any analysis by the courts of the relevant facts or applicable substantive law. *See United*

States v. Klein, 80 U.S. (13 Wall.) 128, 20 L.Ed. 519 (1871).[14]

***18** The fact that relief would not be automatically *terminated,* but merely automatically suspended, does not cure the potential constitutional defect. Under Article III, the legislative authority is limited to announcing the law, and setting the standards by which courts render substantive and remedial decisions, including decisions to stay or alter prospective judgments; Congress lacks the power to dictate absolutely that a judgment already rendered be altered or suspended.[15]

In some cases, it may be simply impossible for a judge to make the required findings within the prescribed time, so as to avoid the automatic stay. Under the standards set by the other provisions of the PLRA, the proper response to a motion to terminate an existing injunction would be an orderly briefing and presentation of the factual and legal issues, perhaps including an evidentiary hearing, so that the court can determine whether the challenged 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 is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. § 3626(b)(3).

"Once the jurisdiction of the court has been invoked, that court has an obligation to exercise its jurisdiction meaningfully." *United States v. Michigan,* 18 F.3d 348, 351 (6th Cir.1995). Congress cannot abridge that judicial obligation by forcing the court into a schedule that makes it impossible for the court to consider the relevant factual and legal issues. "[T]he province and duty of the judicial department to say what the law is,"*Marbury v. Madison,* 5 U.S. at 177, necessarily entails the authority and the duty to take enough time to consider fully the relevant issues, without a legislative alteration of the status quo. A legislative requirement that a court stay a judicial decree without having an opportunity to consider the relevant issues is tantamount to direct legislative suspension of such decrees.

***19** A strict construction of the automatic stay provision would also appear to violate the separation of powers doctrine in that it would restrict courts' Article III authority to remedy constitutional violations and to effectuate their prior decrees. If the stay provision were read to require suspension of relief that a court has entered in order to remedy a violation of federal law—irrespective of whether unconstitutional conduct continues, or whether relief remains necessary to address past conduct—it would purport to undo the judgment of a court based on factors wholly irrelevant to whether the underlying violation has been abated. By suspending relief based on the pendency of a motion and the court's failure to act on it within 30 days, the stay provision would clearly impinge on the court's remedial authority. In *United States v. Michigan* and *Hadix v. Johnson, supra,* two courts interpreted the stay provision strictly and invalidated it under that interpretation. Under its construction of the provision, the *Michigan* court observed that "Congress has usurped a role that is exclusively judicial. The power to decide substantive issues of law, such as a motion to terminate the case, is a most basic attribute of the Judiciary's power under Article III. Through the stay provision, Congress automatically grants the movants relief, albeit temporarily, with no case-by-case determination." *United States v. Michigan,* No. 1:84 CV 63, slip op. at at 10–11.

We agree with the proposition that, if the statutory stay were self-executing, or if it operated to preclude a court's deliberative processes, it would appear to violate separation of powers principles.[16] We submit, however, that the provision can and should be construed to avoid such an outcome.

B. *Properly Construed, Section 3626(e)(2) Does Not Violate The Separation Of Powers Doctrine.*

Because a contrary interpretation would appear to violate separation of powers principles, we believe that the stay provision must be read to preserve the courts' inherent authority to make considered decisions based on the application of law to pertinent facts. Such a reading encompasses two principles. First, the stay provision may not be read to terminate previously-ordered relief without judicial action; only a court may suspend or alter its prior judgments. Under that principle, a court's ruling suspending relief must be substantive rather than ministerial. In other words, the court must determine that suspension or termination of relief is appropriate, under applicable legal principles, rather than merely giving effect to a congressional suspension of its judgment. Under this reading of the provision, a defendant will not be free to violate with impunity the terms of a decree merely because the 30–day period has elapsed without a ruling by the district court. Rather, where the specified period has elapsed without a judicial ruling, the defendant may seek a stay or suspension of pending relief from the court, which the court will grant or deny under applicable legal principles. *Cf. Walker v. City of Birmingham,* 388 U.S. 307, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967) (demonstrators subject to arguably unconstitutional injunction were not free to violate it, but were required to seek to have it judicially modified or dissolved).

***20** Second, the stay provision cannot so truncate a court's consideration of the merits of continued relief as

to prevent a deliberative decision. Under Section 3626(b)(3), "[p]rospective 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." Where a court has adequate time within the 30–day period to determine that relief remains necessary under the Act's standards, relief will continue and the stay will not take effect. 18 U.S.C. § 3626(e)(2)(B). Conversely, if a court affirmatively finds that existing relief is no longer necessary, or must be modified to comply with current remedial standards, the stay similarly will not take effect.

With respect to cases in which, due to factual complexity or other factors, the 30–day period affords a court inadequate time in which to determine whether and what type of relief remains necessary, the Act should be interpreted to allow such time as is required to make a considered determination. Generally, courts may be expected to act as expeditiously as their dockets, and the practicalities of fact-intensive proceedings, will allow. In those rare instances in which a court ignores the Act's admonitions that it promptly rule on a pending motion, a defendant may seek a writ of mandamus in the court of appeals requiring an immediate disposition by the district court. 28 U.S.C. § 1651(a); *see, e.g., McClellan v.. Young,* 421 F.2d 690, 691 (6th Cir.1970) (issuing writ of mandamus directing district court to decide habeas petition); *United States v. Lynd,* 321 F.2d 26, 28 (5th Cir.1963) (Bell, J., concurring specially) (writ of mandamus is appropriate remedy where court fails to grant or deny relief), *cert. denied,*375 U.S. 968, 84 S.Ct. 486, 11 L.Ed.2d 416 (1964).

We acknowledge that the reading we propose is contrary to an ordinary understanding of the language of the provision. The provision's use of the word "automatic" suggests that stays are to take effect without judicial discretion. Moreover, Section 3626(e)(2)(B)'s provision that the automatic stay ends "on the date the court enters a final order ruling on the motion [to terminate]" may indicate that Congress intended issuance of a final order to be the only method by which a court could avoid the automatic stay. Nevertheless, where, as here, one reading of a provision would apparently render it unconstitutional, while an alternative reading exists under which the provision would clearly be valid, the applicable principle of construction "is a categorical one." *Rust v. Sullivan,* 500 U.S. at 190. The courts' "plain duty is to adopt that [reading] which will save the Act."*Id.* (*quoting Blodget v. Holden,* 275 U.S. 142, 148, 48 S.Ct. 105, 72 L.Ed. 206 (1927)).

CONCLUSION

***21** For the foregoing reasons, the Court should uphold the challenged provisions of the Prison Litigation Reform Act.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and accurate copies of The United States' Response to Defendants' Supplemental Motion to Vacate Final Judgment and Memorandum of Law with Respect to the Constitutionality of Certain Provisions of the Prison Litigation Reform Act were served upon counsel listed below by Federal Express overnight service on this 24th day of September, 1996.

William G. Maddox

Senior Trial Attorney

Special Litigation Section

Footnotes

1 The Act does not apply to habeas corpus proceedings challenging "the fact or duration of confinement in prison." 18 U.S.C. § 3626(g)(2).

2 Section 3626(a)(2) provides that preliminary injunctive relief entered under the Act "shall automatically expire" 90 days after its entry if the court fails to make the required findings.

3 The statutory requirement in Section 3626(a)(1) that courts find proof or admission of a constitutional violation before approving prospective relief regarding prison conditions, in the form of a consent decree, is obviously a departure from pre-PLRA judicial practice. Although not at issue here, this requirement is plainly consistent with separation of powers principles. Congress has not stripped federal courts of their authority under Article III to remedy constitutional violations. In Section 3626(a)(1), it has simply directed the courts to find that such violations exist prior to exercising their remedial power. *See Benjamin v. Jacobson,* No. 75–civ–3073, 935 F.Supp. 332, 1996 WL 413722 at *18–19 (S.D.N.Y. July 23, 1996).

4 In contexts where Congress has established a comprehensive statutory remedial scheme to handle a particular category of disputes with the federal government, the Court has held that *Bivens* actions against individual federal officials are precluded, even where the remedial scheme does not provide redress for the particular alleged constitutional wrong. *Schweiker v. Chilicky,* 487 U.S. 412, 108 S.Ct. 2460, 101 L.Ed.2d 370 (1988); *Bush v. Lucas,* 462 U.S. 367, 103 S.Ct. 2404, 76 L.Ed.2d 648 (1983).

5 In *Rufo,* the Supreme Court explained that a lenient standard for modification applies to details of consent decrees "unrelated to remedying the underlying constitutional violation." *Rufo,* 502 U.S. at 383 n. 7. The moving party need only provide a "reasonable basis" to support the modification of the decree in regard to such matters.

6 Section 3626(b)(3) provides that prospective relief "shall not terminate" if the court makes the required "written findings based on the record." That "record" is not necessarily limited to the record that existed prior to the filing of a motion to terminate under Section 3626(b). Rather, where the court determines that additional evidence is necessary for it to decide whether to terminate relief, the record may include supplemental information that is presented to the court.

7 *Freeman, Dowell,* and *Penick,* are school desegregation cases. The Supreme Court has admonished, however, that "a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." *Freeman v. Pitts,* 503 U.S. at 487 (quoting *Swann v. Charlotte–Mecklenburg Bd. of Educ.,* 402 U.S. 1, 15–16, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971)). Courts in prison litigation cases have applied the remedial principles of school desegregation cases. *See, e.g., Grubbs v. Bradley,* 821 F.Supp. 496, 503 (M.D.Tenn.1993) (prison conditions).

8 Under the PLRA, once a court finds a "current or ongoing violation of the Federal right," the court must go on 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). Thus, even after finding that *some* relief is necessary, because there exists a "current or ongoing violation," as that term is construed above, a court may have to modify an order or decree going forward to ensure that its scope satisfies the PLRA standards.

9 Such conduct might, however, provide grounds for the exercise of the contempt power of the federal courts, which the PLRA does not purport to affect. *See Walker v. City of Birmingham,* 388 U.S. 307, 87 S.Ct. 1824, 18 L.Ed.2d 1210 (1967) (court judgments must be obeyed unless and until a defendant obtains judicial modification or dissolution of their terms); *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n,* 443 U.S. 658, 696, 99 S.Ct. 3055, 61 L.Ed.2d 823 (1979) ("Even if [judicial] orders [were] erroneous in some respects, all parties have an unequivocal obligation to obey them while they remain in effect.").

10 For these reasons, 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), is incorrect. In *Gates,* the district 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. The result in *Gates* is plainly contrary to the intent of the statute, is not necessary to avoid a serious constitutional question, and should be rejected here.

11 By contrast, the *Wheeling & Belmont* Court observed that Congress could not revoke the court costs awarded to the plaintiff in the prior judgment. 59 U.S. at 436.

12 In *Klein,* Congress could not alter the underlying substantive law because it lacked constitutional authority to limit the effect of a presidential pardon. *Klein,* 80 U.S. at 142. Here, by contrast, Congress has the authority to limit the remedial mechanism that is available to remedy constitutional violations.

13 Because Congress found both frequent abuses and heightened dangers in the context of prison conditions litigation, *see* H.R. Rep. 21 at 24 & n. 2, its decision to legislate in that area is distinguishable from statutes that single out disfavored groups based on a punitive or discriminatory animus. *Compare James v. Strange,* 407 U.S. 128, 142, 92 S.Ct. 2027, 32 L.Ed.2d 600 (1972); *Romer v. Evans,* 517 U.S. 620, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996).

14 By contrast, the Act's "termination" provisions, 18 U.S.C. § 3626(b)(1), (b)(2), coupled with those provisions' "limitation," 18 U.S.C. § 3626(b)(3), set forth a standard for courts to apply in determining whether to terminate relief.

15 The conclusion that a strict construction of the PLRA's automatic stay provision would render it unconstitutional does not cast doubt on the validity of the automatic stay of proceedings contained in the Bankruptcy Code. 11 U.S.C. § 362(a). Congress possesses express constitutional authorization to act in the bankruptcy area. *See* U.S. Const. art. I, § 8, cl. 4; *Kalb v. Feuerstein,* 308 U.S. 433, 439, 60 S.Ct. 343, 84 L.Ed. 370 (1940), (Congress's plenary power over bankruptcy renders automatic bankruptcy stay provision constitutional); *cf. Dames & Moore v. Regan,* 453 U.S. 654, 101 S.Ct. 2972, 69 L.Ed.2d 918 (1981) (upholding presidential stay of judgments and judicial proceedings in claims by U.S. nationals against Iranian nationals, based on President's recognized power to settle international claims in exercise of his foreign affairs authority). In addition, the bankruptcy stay operates

to preserve the status quo, pending judicial proceedings, while the PLRA stay operates to alter the status quo by suspending an existing judicial order. *See United States v. Michigan,* No. 1:84 CV 63, slip op. at 11 n. 3 (W.D.Mich. July 3, 1996) (distinguishing bankruptcy stay).

16 In addition, if the practical effect of the automatic stay were to suspend relief that is necessary to remedy constitutional violations, it would result in a violation of the underlying substantive constitutional right, as well as a violation of separation of powers principles.