Supreme Court, U.S.
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In The

Supreme Court of the United States

MARICOPA COUNTY SHERIFF'S OFFICE,
JOE ARPAIO, THE DULY ELECTED
SHERIFF OF MARICOPA COUNTY, et al.,

Petitioners,

v.

U.S. DISTRICT COURT FOR
THE DISTRICT OF ARIZONA,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Ninth Circuit erred in declining jurisdiction as to Petitioners' Writ of Mandamus where the District Court has failed to make a ruling upon Petitioners' Motion to Terminate this litigation pursuant to 18 U.S.C. § 3626, which has been pending since September 25, 2001, and where the same statute requires a prompt ruling on such a motion.

2. Whether the Ninth Circuit erred in declining jurisdiction as to Petitioners' Writ of Mandamus where the District Court has failed to terminate this litigation pursuant to 18 U.S.C. § 3626, and where the same statute specifies that prospective relief related to jail operations that were in existence when the statute was enacted becomes terminable no later than April 26, 1998.

LIST OF PARTIES

In addition to those listed in the caption, Petitioners, Defendants in the underlying action, include the Maricopa County (Arizona) Board of Supervisors, which includes supervisors Fulton Brock, Don Stapley, Andrew Kunasek, Max W. Wilson, and Mary Rose Wilcox. Some of the Petitioners have replaced former parties to this lawsuit by virtue of elections during the course of this litigation. Accordingly, some documents in the Appendix to this Writ may refer to parties who no longer hold office in Arizona.

Respondent is the United States District Court for the District of Arizona.

Real Parties in Interest are pretrial detainees in the Maricopa County jails and include named class members Damian Hart, Michael G. McKane and Bartholomew L. Trumble, who are no longer in custody of the Maricopa County jails.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a Writ of Certiorari to review the United States Court of Appeals for the Ninth Circuit's denial of Petitioners' Writ of Mandamus.

OPINIONS BELOW

There was no formal opinion of the District Court. No opinion was rendered by the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit's Order denying Petitioners' Writ of Mandamus and the Ninth Circuit's Order denying Petitioners' Motion for Reconsideration are respectively set forth at App. 1 and App. 35.

JURISDICTION

The Order of the United States Court of Appeals for the Ninth Circuit denying Petitioners' Writ of Mandamus was filed on April 19, 2006. On May 19, 2006, the Ninth Circuit denied Petitioners' Motion for Reconsideration of the April 19, 2006, Order. This Petition for a Writ of Certiorari is being filed within the prescribed 90-day period after April 19, 2006. Jurisdiction is conferred on this Court by 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

This case involves the Prison Litigation Reform Act, Pub.L. No. 104-134, 110 Stat. 1321-66 (the "PLRA"). The

specific statute involved is 18 U.S.C. § 3626, which is set forth at App. 36.

STATEMENT OF CASE

A group of pretrial detainees held in the Maricopa County, Arizona jail system initiated this institutional reform class action in 1977, alleging violations of their constitutional rights. In March 1981, the parties entered into a consent decree that addressed and regulated various aspects of Maricopa County jail operations as they applied to pretrial detainees ("1981 Judgment"). The 1981 Judgment, as supplemented by certain subsequent amendments, additions and supplemental stipulations, continued to govern certain aspects of the Maricopa County jail operations until it was superseded by another consent decree entered pursuant to stipulation of the parties on January 10, 1995 ("1995 Judgment"). By its terms, the 1995 Judgment superseded the 1981 Judgment, and all subsequent amendments, additions and supplemental stipulations relating thereto, and was designed to control the future direction of this action. The 1995 Judgment imposed certain obligations on the Maricopa County Sheriff's Office and the Maricopa County Board of Supervisors, and established certain goals with respect to the operation of the Maricopa County jail system.

In April 1998, Petitioners moved for the termination of this case and the 1995 Judgment for the first time based upon the decree termination provisions of the PLRA, 18 U.S.C. § 3626(b). The District Court thereafter, in September 1998, entered its Order denying Petitioners' Motion to Terminate. In October 1998, Petitioners filed their Notice

of Appeal with the Ninth Circuit, appealing the District Court's Order denying Petitioners' Motion to Terminate. In January 2001, the Ninth Circuit filed its Memorandum Disposition, which remanded this case for further proceedings consistent with *Gilmore v. California*, 220 F.3d 987 (9th Cir. 2000).[1]

In September 2001, the Petitioners renewed their Motion to Terminate this litigation. To date, the District Court has not ruled on Petitioners' Motion to Terminate even though 18 U.S.C. § 3626(e)(1) requires the District Court to issue a "prompt" ruling, and the PLRA makes clear that the statutory life of the 1995 Judgment expired on April 26, 1998, pursuant to U.S.C. § 3626(b)(1)(A)(iii). On February 6, 2006, Petitioners filed a Writ of Mandamus with the Ninth Circuit, which was denied by a panel of the Ninth Circuit on April 19, 2006. Petitioners respectfully request that a Writ of Certiorari issue to review the Ninth Circuit's denial of Petitioners' Writ of Mandamus.

REASONS FOR GRANTING THE WRIT

I. Introduction

Petitioners concede that the remedy of mandamus is a drastic one, which should only be used in extraordinary situations. *Will v. United States*, 389 U.S. 90, 95 (1967). However, it is equally true that, pursuant to 18 U.S.C. § 3626(e)(1), the District Court was to act *"promptly"* in ruling on Petitioners' Motion to Terminate, which was filed

[1] The Court's Memorandum Disposition, attached hereto at App. 2, mistakenly referred to 18 U.S.C. § 3626(b) as 18 U.S.C. § 3526(b).

on September 25, 2001. In 1997, Congress amended the PLRA to provide that "[m]andamus shall lie to remedy any failure to issue a prompt ruling on such a motion," in order "to make clear that mandamus relief is available to compel the court to issue a ruling on a pending motion. . . ." 18 U.S.C. § 3626(e)(1); H.R. CONF. REP. NO. 105-405, at 133 (1997). Therefore, the Ninth Circuit erred in denying Petitioners' Writ of Mandamus because, to date, the District Court has not yet ruled upon Petitioners' Motion to Terminate, even though it has been pending since September 25, 2001.

II. The Ninth Circuit Erred in Denying Petitioners' Writ of Mandamus Where the District Court has not "Promptly" Ruled upon Petitioners' Motion to Terminate.

Congress enacted the PLRA on April 26, 1996, with the clear intent of terminating prospective relief in prison condition cases such as this one. Pursuant to 18 U.S.C. § 3626(b)(1), any prospective relief becomes terminable with respect to existing prospective relief orders, at the latest, two years after the imposition of the PLRA. This section is subject to the court making written findings that there exists current and ongoing constitutional violations, as outlined in 18 U.S.C. § 3626(b)(3). Furthermore, any "prospective relief" that exceeds the constitutional minimum must be terminated immediately regardless of when it was granted. 18 U.S.C. § 3626(b)(2); *see also*, *Gilmore v. California*, 220 F.3d 987, 999 (9th Cir. 2000) (Prospective relief "that exceeds the constitutional minimum must be terminated regardless of when it was granted"). The requirements of the 1995 Judgment, which is set forth at App. 4, exceed the requirements of the Constitution. Nevertheless,

because the parties are past the two-year presumptive limit of the PLRA pursuant to 18 U.S.C. § 3626(b)(1), there is no need to discuss the specific provisions of the 1995 Judgment. However, it is critical that the District Court has not found any current and ongoing violations in the Maricopa County jails that would preclude the termination of the prospective relief. There have not been any evidentiary hearings in this matter since January 22, 2004.

The statutory life of the 1995 Judgment – two (2) years from enactment of the PLRA – expired on April 26, 1998. 18 U.S.C. § 3626(b)(1)(A)(iii). As of that date, 18 U.S.C. § 3626(b)(1) requires termination "upon motion of any party." Pursuant to 18 U.S.C. § 3626(e)(1), the District Court was to act promptly in ruling upon Petitioners' Motion to Terminate. Here, Petitioners' Motion was filed on September 25, 2001, but the District Court has not ruled. Other jurisdictions have recognized the intent of Congress in terminating cases such as this one. In a similar case interpreting the PLRA, the Court of Appeals for the Seventh Circuit determined that, under the PLRA, the District Court erred by letting *more than a year* pass without action on a motion to terminate prospective relief, and then terminating the decree without making any findings. *Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999); *see also*, *In re Scott*, 163 F.3d 282 (5th Cir. 1998) (finding that where *sixteen months* passed since the Court's last ruling and the District Court still had not yet ruled on the defendants' motion to terminate the litigation under the PLRA, the Court was inclined to grant the writ of mandamus and order the District Court to rule instanter, but did not because the District Court scheduled its evidentiary hearing). Here, the Ninth Circuit remanded this case to

the District Court on January 25, 2001 with instructions to follow *Gilmore v. California*, 220 F.3d 987 (9th Cir. 2000).[2] However, to date, the District Court has not made any progress in terminating this litigation, contrary to the clear and unambiguous instructions of the United States Court of Appeals for the Ninth Circuit and Congress.

Although 18 U.S.C. § 3626(e)(2) mandates that the provisions of the 1995 Judgment are stayed, Petitioners have been harmed in numerous ways. The past five years have been marked by an unending and costly fishing expedition by Real Parties in Interest in an attempt to discover constitutional violations at the Maricopa County jails. Real Parties in Interest seek discovery related to current jail conditions, even though, in evaluating Petitioners' pending Motion to Terminate, the District Court must examine the jail conditions "as of the time termination is sought." *Gilmore v. California*, 220 F.3d 987, 1010 (9th Cir. 2000) citing *Benjamin v. Jacobson*, 172 F.3d 144, 166 (2nd Cir. 1999). New jails have opened in Maricopa County since Petitioners filed their renewed Motion to Terminate in 2001, and, if the District Court prolongs this matter much further, more new jails will open and some existing jails will be renovated or closed. Petitioners also have been harmed by continued attorneys' fees for defense, in addition to attorneys' fees for Real Parties in Interest.[3] From a practical point of view, Real Parties in Interest's attorneys have no financial incentive to agree to end this case, given that attorneys' fees are being subsidized by

[2] The Ninth Circuit's January 25, 2001 Memorandum is set forth at App. 2.

[3] Pursuant to a District Court Order, Petitioners must pay attorneys' fees incurred by attorney Theodore C. Jarvi.

Petitioners, and that they may be able to seek discovery in this case for use in other cases.

As part of Petitioners' Writ of Mandamus, Petitioners alternatively sought a status conference and an order from the District Court outlining a specific plan to terminate this litigation as soon as possible. Petitioners' request was reasonable in light of the fact that the District Court was "to issue a prompt ruling" on Petitioners' Motion to Terminate, which has been pending for almost five years. However, the Ninth Circuit denied Petitioners' Writ of Mandamus. In its Order, the Ninth Circuit reasoned that "[t]he district court held a status conference in the above-referenced case on March 13, 2006." App. 1. However, while this may be true, the District Court did not address any of the relief sought by Petitioners in their Writ of Mandamus at the status conference, and the District Court did not outline a specific plan to terminate this litigation.

III. The Ninth Circuit Erred in Ignoring the Clear Intent of Congress in Denying Petitioners' Writ of Mandamus.

The PLRA's primary focus is to promote administrative redress, filter out groundless and frivolous claims, and foster better prepared litigation of claims aired in court. *Chase v. Peay*, 286 F.Supp.2d 523, 530 (D.Md. 2003), *aff'd*, 98 Fed.Appx. 253 (4th Cir. 2004); *see also*, *Bieregu v. Ashcroft*, 259 F.Supp.2d 342, 345-46 (D.N.J. 2003); *U.S. v. Al-Marri*, 239 F.Supp.2d 366, 367 (S.D.N.Y. 2002), *aff'd*, 360 F.3d 707 (7th Cir. 2004), *cert. denied*, 543 U.S. 809 (2004); *Blissett v. Casey*, 969 F.Supp. 118 (N.D.N.Y. 1997).

Senator Abraham, one of the PLRA's sponsors, explained the purpose of the PLRA as follows:

> We would also provide that any party can seek to have a court decree ended after two years, and that the court will order it ended unless there is still a constitutional violation that needs to be corrected. As a result, no longer will prison administration be turned over to Federal judges for the indefinite future for the slightest reason. No longer will public safety be jeopardized by capricious judicial prison caps. And no longer will the taxpayers be socked for enormous, unnecessary bills to pay for all this.
>
> Instead, the States will be able to run prisons as they see fit unless there is a constitutional violation. If there is, a narrowly tailored order to correct the violation may be entered.
>
> This is a balanced set of proposals, allowing the courts to step in where they are needed, but puts an end to unnecessary judicial intervention and micro management of our prison system we see too often.

142 CONG. REC. S3704 (daily ed. April 19, 1996) (statement of Sen. Abraham).

The constitutionality of the PLRA has been litigated and upheld, and the Court must fully return the administration and operation of the jails to Maricopa County pursuant to the PLRA, as intended by Congress. "[W]here Congress has made its intent clear, 'we must give effect to that intent.'" *Miller v. French*, 530 U.S. 327, 336 (2000) (holding that automatic stay provision of the PLRA does not permit district courts to exercise their equitable authority to suspend operation of stay and does not violate

separation of powers principles), *citing Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 215 (1962). Terminating this litigation is necessary to comply with the PLRA's purpose of avoiding the entanglement of federal courts in prison litigation beyond that minimum which is necessary to vindicate federal rights. Terminating the instant litigation does not burden a pretrial detainee's fundamental right of access to the courts. The PLRA allows a detainee access to the courts once he or she exhausts his or her administrative remedies. 42 U.S.C. § 1997e(a); *see also*, 18 U.S.C. § 3626(g)(2) ("the term 'civil action with respect to prison conditions' . . . does not include habeas corpus proceedings challenging the fact or duration of confinement in prison."). The PLRA addresses the government's interest in curtailing interference by the federal courts in the administration of prisons, and the Court must now terminate this litigation to fulfill the intent of Congress.

CONCLUSION

With all due respect to the United States Court of Appeals for the Ninth Circuit and the District Court, these courts failed to enforce the clear terms of the PLRA, at a great expense to the parties involved and the taxpayers of Maricopa County, Arizona. After nearly thirty (30) years, this case must end. Petitioners have no other adequate means to terminate this case because the District Court has not yet ruled on their Motion to Terminate, even though it was filed nearly five (5) years ago. For the

reasons set forth above, it is respectfully submitted that this petition for certiorari be granted.

Respectfully submitted,

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