IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

David Ruiz, *et al.*,

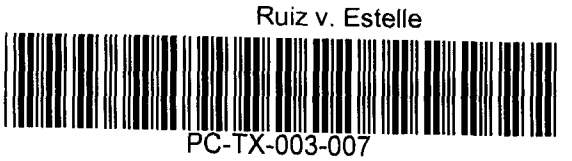
Plaintiffs,

v.

Wayne Scott, Director, TDCJ-ID, *et al.*,

Defendants.

Civil No. H-78-987



ORDER

A motion for reconsideration of this court's January 26, 1998, order, holding unconstitutional the automatic stay provision of the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626(e)(2)(A)-(B), has been filed by the United States, as plaintiff-intervenor. The motion for reconsideration will be treated as a motion to alter or amend a judgment pursuant to Rule 59(e), Federal Rules of Civil Procedure. The provision at issue calls for a stay of injunctive relief, such as the consent decree entered in the above-entitled civil action, 30 days after the filing of a motion to terminate relief under the PLRA. The imposition of a stay may be postponed for up to 60 additional days after the initial 30-day term, if good cause is shown.[1] 18 U.S.C. §

[1]The provision reads, "[a]ny motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period . . . beginning on the 30th day after such motion is filed . . . ending on the date the court enters a final order ruling on the motion . . . The court may postpone the effective date of an automatic stay . . . for not more than 60 days for good cause. No postponement shall be permissible because of general congestion of the court's calender." 18 U.S.C. § 3626(e)(2)-(3) (emphasis added). The amended version also specifies that "[a]ny order staying, suspending, delaying, or barring operation of the automatic stay provision will be appealable." 18 U.S.C. § 3626(e)(4).

3626(e)(2)-(3). Rather than challenging the constitutional analysis set forth in the January 26, 1998, order, the United States offers a heretofore unconsidered interpretation of the provision, which, it is argued, comports with the United States Constitution. It is determined that the construction set forth by the plaintiff-intervenor appears to be invalid; therefore, the prior order will be left undisturbed.

It is the position of the United States that the automatic stay provision may itself be stayed where the requirements for a temporary restraining order are met, or where other equitable factors would render the stay unjust. This interpretation assertedly avoids the most serious constitutional infirmity attributed to the provision, legislative dictation of the substantive result in a case and elimination of the "intervening step in which a court interprets and applies the rule on a case-by-case basis . . . ." *Hadix v. Johnson*, 933 F. Supp. 1360 (E.D. Mich 1996), *rev'd on other grounds*, 1998 WL 251069 (6th Cir. May 20, 1998). The United States Court of Appeals for the Sixth Circuit recently endorsed the interpretation proffered by the United States and reversed a lower court's invalidation of the automatic stay provision. *Hadix v. Johnson*, 1998 WL 251069 (6th Cir. May 20, 1998). However, the appellate court in that case, and the United States in the instant case, agree that constitutional problems result if the provision is interpreted to prevent Article III courts from equitably staying imposition of the stay. *See Id.* at 10-17. In the Order of January 26, 1998, the provision was interpreted in that manner, as affording no explicit or implicit allowance for enlargement of the 90-day period set forth in the provision, and rendering on the 91st day "a temporary legislative veto over court-ordered relief in an ongoing case before the court." *Id.* at 13.

Hence, the question presented is one of statutory construction, that is, whether the

automatic stay provision can be interpreted as recognizing a district court's ability to stay the automatic stay provision in certain circumstances. In seeking to answer this question in the affirmative, the United States cites one recent amendment to the automatic stay provision, a change allowing for an immediate appeal of any order "staying, suspending, delaying, or barring the operation of the automatic stay . . . ." 18 U.S.C. section 3626(e)(4). The plaintiff-intervenor contends that the mention of orders staying the stay provision is a "statutory acknowledgment of the equitable authority of Article III courts to stay the automatic stay." United States' Supplemental Memorandum in Support of its Motion for Reconsideration at 8.[2] That acknowledgment, it is argued, saves the constitutionality of the section.

In addition to this textual support, two presumptions operate to guide the statutory construction question. First, the inherent equitable powers of federal courts are "not to be denied or limited in the absence of a clear and valid legislative command." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). Second, statutes should be construed to avoid constitutional problems "unless such construction is plainly contrary to the intent of Congress." *Concrete Pipe and Prods. of Cal., Inc. v. Construction Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 628-29 (1993). Both of these rules support the United States' position that the stay provision has no effect on a court's equitable powers.

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[2] The United States also argues that the legislative choice to permit appeal of orders staying the provision, rather than specifying the remedy of mandamus, signifies Congress' recognition of an Article III court's power to stay the stay. If the provision were intended to prevent courts from staying the stay, it is argued, the appropriate remedy in the case of a court's transgression of that proscription would be mandamus. This argument fails to consider a scenario, such as has occurred in the instant action and others, where the stay provision is held unconstitutional. Appeal, albeit not interlocutory appeal, would be an appropriate avenue for a party disagreeing with that holding.

Despite the textual evidence, and these two important maxims, it is determined that the clear language of the stay provision requires imposition of a stay after a maximum of 90 days. The statute states, "[t]he court may postpone the effective date of an automatic stay . . . for not more than 60 days for good cause." 18 U.S.C. section 3626(e)(3). It would require great "embroidery of the statute's text," *O'Brien v. Dubois*, 1998 WL 257206 at 5 (May 26, 1998 1st Cir.), to conclude that this sentence also recognizes postponement of the stay for more than sixty days based on some showing other than good cause. This subsection cannot be fairly interpreted in any other manner, and it amounts to a clear legislative directive curtailing the judiciary's equitable powers, a curtailment which, in this instance, "so impinges upon the autonomy of the Judiciary as to run afoul of the separation of powers doctrine." *Hadix v. Johnson*, 1998 WL 251069 at 12 (6th Cir. May 20, 1998).

Finally, the amendment cited by the United States, with its expanded appealability of orders "staying, suspending, delaying, or barring" the stay is not received as evidence that Congress recognized courts' continuing equitable powers to enter such orders. On the contrary, the section purports to allow greater appellate enforcement of the strict time limits of the provision, and more importantly, it legitimizes heretofore disallowed appeals of nonfinal orders, such as that entered in the instant case, holding the automatic stay provision unconstitutional. *See Ruiz v. Scott*, No. 96-21118 (5th Cir. Aug. 6, 1997) (dismissing appeal of nonfinal order holding automatic stay provision unconstitutional). In conclusion, the well-reasoned constitutional analysis of *Hadix v. Johnson* is followed here, and the statutory construction set forth therein, and urged by the United States, is disallowed. Since no error is perceived in it, the order of January 26, 1998, will not be amended or altered. Accordingly, it is

ADJUDGED and **ORDERED** that plaintiff-intervenor's motion to alter or amend the Order of January 26, 1998, holding the automatic stay provision of the PLRA unconstitutional, should be, and it is hereby, **DENIED.**

SIGNED this 15th day of June, 1998.

William Wayne Justice
United States District Judge