

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

L.H., A.Z., D.K., and D.R.,
on behalf of themselves and
all other similarly
situated juvenile parolees
in California,

NO. CIV. S-06-2042 LKK/GGH

Plaintiffs,

v.

O R D E R

EDMUND G. BROWN, JR.,
Governor, State of
California, et al,

Defendants.

_____ /

The parties' Joint Motion to Terminate Stipulated Order for Permanent Injunctive Relief ("Joint Motion"), came on for hearing on March 25, 2013. Counsel for Plaintiffs and Defendants were present. This Court has reviewed the pleadings, records, and papers on file and accordingly makes the following determinations:

Whereas, the parties have entered into a Stipulated Order Setting Forth Process for Terminating Stipulated Order for Permanent Injunctive Relief, which became an order of the Court on

1 Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 ("ADA"),
2 and section 504 of the Rehabilitation Act, 29 U.S.C. § 794. (ECF
3 Nos. 201 and 266). The Court approved a Stipulation and Order for
4 Permanent Injunctive Relief ("Injunction") on October 7, 2008,
5 which set forth detailed requirements to remedy these federal
6 violations, including attorney representation, revocation system
7 procedures, effective communication and reasonable accommodations,
8 and consideration of alternatives to incarceration. (ECF No. 438).

9 b. Since the Court approved the Injunction, the parties and
10 the Office of the Special Master have worked diligently together
11 to overhaul the juvenile parole revocation system. In just four
12 years, Defendants (with the aid of Plaintiffs and the Office of the
13 Special Master) made impressive progress, rapidly transforming the
14 juvenile parole revocation system from one that was
15 unconstitutional and fundamentally unfair to one that respects and
16 protects juvenile parolees' constitutional rights to due process,
17 equal protection, and assistance of counsel, and statutory rights
18 under the ADA and the Rehabilitation Act.

19 c. Defendants have eliminated coercive procedures and
20 actions, such as incarcerating youth for alleged parole violations
21 without representation of counsel. All parolees are appointed
22 counsel during the revocation process to further ensure protection
23 of their due process rights. They have abolished practices that
24 could keep revoked youth incarcerated indefinitely. They have
25 systematized decision-making so that the steps are predictable,
26 proceedings are based on evidence, and staff work to inform and

1 involve the juveniles. All proceedings are now provided with
2 exceptional timeliness, and a substantial proportion of juveniles
3 are diverted from revocation into alternatives to incarceration.

4 d. Defendants have demonstrated compliance with virtually
5 all of the Injunction's requirements, as evidenced by Special
6 Master's Eighth Report on the Status of Conditions of the
7 Stipulated Order, the parties' Joint Motion to Terminate, and the
8 Special Master's Recommendation Regarding the parties' Joint Motion
9 to Terminate. The Special Master has found Defendants to be in
10 sustained substantial compliance with the vast majority of the
11 Injunction's requirements; for the remaining few areas where
12 sustained substantial compliance has not been shown, Defendants
13 have made significant advances towards achieving substantial
14 compliance.

15 e. On August 24, 2007, Senate Bill ("SB") 81 was approved
16 by the Governor and chaptered by the Secretary of State. As a
17 result of SB 81, the type of youth who could be committed to the
18 Division of Juvenile Justice ("DJJ") was limited: only youth whose
19 most recent sustained offense was listed under Welfare and
20 Institutions Code 707(b) (violent offenses), or an offense listed
21 in Penal Code 290.008 (sex offenses) are eligible for commitment
22 to DJJ. In addition, SB 81 required that non-707(b) offenders be
23 returned to the county of commitment upon release for community
24 supervision, rather than DJJ parole.

25 f. On October 19, 2010, Assembly Bill ("AB") 1628 was
26 approved by the Governor and chaptered by the Secretary of State.

1 As a result of AB 1628, first commitment youth ("first-commits")
2 to DJJ were re leased from the Division of Juvenile Facilities
3 ("DJF") upon the completion of their sentence, discharged from DJJ
4 parole, and sent to their county of commitment for supervision.
5 These persons are no longer subject to DJJ parole supervision or
6 revocation procedures and may not be returned to a DJJ facility to
7 serve a parole revocation sentence. To the extent these former
8 class members have been subject to revocation, the Court is
9 informed that juvenile probation revocation procedures under the
10 supervision of the Superior Courts, including representation by
11 counsel, are required by state law.

12 g. On June 27, 2012, Senate Bill ("SB") 1021 was approved
13 by the Governor and chaptered by the Secretary of State. After
14 passage of SB 1021, most juvenile parole operations terminated as
15 of January 1, 2013. However, juvenile parolees who were alleged
16 to have violated the terms of their parole prior to January 1, 2013
17 were still subject to revocation proceedings after January 1, 2013.
18 All such revocation proceedings completed on January 17, 2013
19 (although there are currently one or more juveniles on optional
20 waiver who could activate their waiver and request an optional
21 waiver review hearing on or before June 20, 2013).

22 h. As a result of Assembly Bill 1628 and Senate Bill 1021,
23 the number of juvenile parolees in California has dropped
24 dramatically. As of January 1, 2013, no new class members will be
25 added since juvenile parole supervision terminated. As of February
26 16, 2013, only 21 class members remained, all of whom are in

1 custody on revocation terms, and by June 28, 2013, there will no
2 longer be any L.H. class members. Additionally, on January 1,
3 2013, Defendants ended the practice of revocation extension whereby
4 juveniles' revocation terms could be extended for misbehavior while
5 in custody. Accordingly, the terms of the juveniles serving
6 revocation terms cannot be extended.

7 i. This Court has adopted all of the findings in the eight
8 previously-filed Reports of the Special Master on the Status and
9 Conditions of the Stipulated Order. In the Recommendation filed
10 with this Court on March 18, 2013, the Office of the Special Master
11 issued her findings with respect to the Joint Motion.

12 j. Plaintiffs have requested that this court "reserve
13 jurisdiction" over this case for five (5) years for the "limited"
14 purpose of "ensuring that the State does not re-institute a system
15 of state-run juvenile parole." Defendants assert that such a
16 reservation of jurisdiction is beyond this court's power. Because
17 plaintiffs have identified no constitutional, statutory, Supreme
18 Court or Ninth Circuit authority for the proposition that this
19 court could engage in such conduct - exercising authority over the
20 State in the absence of any claim of current or even threatened
21 constitutional or statutory violation -- the court declines the
22 invitation to do so.¹

23
24 ¹ See Collins v. Thompson, 8 F.3d 657 (9th Cir. 1993), cert.
25 denied, 511 U.S. 1127 (1994) (in the context of a prison consent
26 decree, affirming the district court's decision not to continue the
exercise of jurisdiction beyond the time the constitutional
violations were fully remedied); accord, Board of Education v.
Dowell, 498 U.S. 237 (1991) (in the context of a school

1 k. Accordingly, the Court finds that the jointly requested
2 relief is fair, reasonable and adequate within the meaning of Fed.
3 R. Civ. P. 23(e)(2). The court further finds that the Stipulated
4 Order for Permanent Injunctive Relief has been satisfied pursuant
5 to Fed. R. Civ. P. 60(b)(5), inasmuch as defendants' full, good-
6 faith and long-term compliance with the injunction and their
7 cooperation with the Special Master have permanently eliminated the
8 constitutional and statutory violations. Further, defendants have
9 now eliminated the juvenile parole system, which was the focus of
10 the injunction, effective June 28, 2013.

11 **GOOD CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:**

12 1. The Stipulated Order for Permanent Injunctive Relief
13 shall apply in full force until the last scheduled hearing
14 (including hearings requested as a result of the activation of
15 optional waivers) has taken place. During this time, the parties
16 shall continue to track and monitor Defendants' compliance with the
17 Injunction.

18 m. Defendants shall notify Plaintiffs' counsel, the Special
19 Master, and the Court once the last scheduled hearing (including

20 _____
21 desegregation decree, "necessary concern for the important values
22 of local control of public school systems dictates that a federal
23 court's regulatory control of such systems not extend beyond the
24 time required to remedy the effects of past intentional
25 discrimination") (internal quotation marks omitted);
26 Labor/Community Strategy Center v. Los Angeles County Metropolitan
Transp. Authority, 564 F.3d 1115, 1123 (9th Cir. 2009) (in the
context of a consent decree regarding a public transportation
system, "federal court intervention in state institutions is a
temporary measure and may extend no longer than necessary to cure
constitutional violations").

1 hearings requested as a result of the activation of optional
2 waivers) has been completed. Ten (10) days after Defendants file
3 such notification, Defendants shall be relieved of any duty to
4 comply with the requirements emanating from the Injunction, until
5 the last parolee serving a revocation term has been released from
6 custody, except for the following provisions:

7 a. Tracking parolee discharge dates to ensure that
8 parolees are not over-detained;


9 b. Notifying Plaintiffs' counsel, the Special Master,
10 and the Court once the last parolee serving a revocation term has
11 been released from custody.

12 n. Upon Defendants' notification that the final class member
13 has been released, the parties and the Special Counsel shall,
14 within twenty (20) days, file their motions, if any, for attorneys'
15 fees, and fees for the Special Master Court.

16 o. Upon resolution of the fee motions, the court will
17 terminate this case.

18 IT IS SO ORDERED.

19 DATED: March 29, 2013.

20
21
22 
23 LAWRENCE K. KARLTON
24 SENIOR JUDGE
25 UNITED STATES DISTRICT COURT
26