

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

FREDDIE MORGAN, et al.,	§	
	§	
Plaintiffs,	§	
	§	CIVIL ACTION NO. H-76-0629
v.	§	
	§	CONSOLIDATED WITH
	§	
THE CITY OF HOUSTON,	§	CIVIL ACTION NO. H-80-1546
	§	
Defendant.	§	

**ORDER GRANTING MOTION TO TERMINATE CONSENT DECREE**

Pending before the court is the City of Houston's Motion to Terminate Consent Decree (Docket Entry No. 142).<sup>1</sup> The consent decree was signed on September 21, 1989, and concerns conditions at the City of Houston's jail facilities. Citing the Prison Litigation Reform Act (PLRA), 18 U.S.C § 3626, the City of Houston argues that "it is time to terminate this litigation and decree,"<sup>2</sup> because the City "has complied with the terms and conditions of the decree and its subsequent revisions, as well as being subject to quarterly inspections by a jail monitor since 1995."<sup>3</sup> The pending motion was filed on June 28, 2013, and although over a month has passed, plaintiffs have not filed any response in opposition.

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<sup>1</sup>See Consent Decree, Exhibit 1 to Motion to Terminate Consent Decree (Motion to Terminate), Docket Entry No. 142.

<sup>2</sup>Motion to Terminate, Docket Entry No. 142, p. 1.

<sup>3</sup>Id.

After carefully considering the pending motion and supporting documents, the court concludes that the pending motion should be granted and that this action should be dismissed with prejudice.

The PLRA limits a court's power to continue prospective relief in civil actions challenging conditions of confinement unless the court first finds that such relief is: (1) narrowly drawn; (2) extends no further than necessary to correct the violation of the involved federal right; and (3) is the least intrusive means necessary to correct the violation of that federal right. See 18 U.S.C. § 3626(a)(1). See also Guajardo v. Texas Department of Criminal Justice, 363 F.3d 392, 394 (5th Cir.), cert. denied, 125 S.Ct. 57 (2004). Consent decrees entered before the enactment of the PLRA on April 26, 1996, are "terminable upon the motion of any party . . . 2 years after such date of enactment." 18 U.S.C. § 3626(b)(1)(A)(iii). Moreover, if a court order granting prospective relief does not expressly state that the PLRA's three conditions are satisfied, the PLRA mandates that the prospective relief shall terminate in the following manner:

In any civil action with respect to prison conditions, a defendant or intervenor 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.

18 U.S.C. § 3626(b)(2). The PLRA broadly defines "prospective relief" to mean "all relief other than compensatory damages," 18 U.S.C. § 3626(g)(7), and extends to prospective relief awarded pursuant to a consent decree. See 18 U.S.C. § 3626(g)(1) (defining "consent decree" as "any relief entered by the court that is based in whole or in part upon the consent or acquiescence of the parties but does not include private settlements"); 18 U.S.C. § 3626(g)(9) (defining "relief" as "all relief in any form that may be granted or approved by the court, and includes consent decrees").

The consent decree at issue in this case focused on three issues: medical care; physical structures; and correctional operations. The consent decree provides that "[t]his action shall be finally DISMISSED WITH PREJUDICE when all terms of this Decree have been fully complied with."<sup>4</sup> In June of 1996, the court entered an Agreed Order on Motion for Enforcement of Consent Decree and for Sanctions (Docket Entry No. 125), in which the parties acknowledged that in July 1995 they had agreed that Gordon Kamka would inspect the City jail facilities, and agreed that Kamka would continue to conduct quarterly inspections of the City jail facilities. In May 2009, following Kamka's death, the court entered a Joint Agreed Motion to Substitute Agreed Jail Expert (Docket Entry No. 128) pursuant to which David M. Bogard was hired

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<sup>4</sup>See Consent Decree, Exhibit 1 to Motion to Terminate, Docket Entry No. 142, p. 12.

to conduct quarterly inspections of the City jail facilities and provide reports.

Because the consent decree was entered long before Congress enacted the PLRA on April 26, 1996, it lacks the findings that the PLRA requires to support prospective relief. See 18 U.S.C. 3626(b)(2). The City of Houston is therefore entitled to the immediate termination of the consent decree absent written findings by the court that the prospective relief granted by the consent decree "remains necessary to correct a current and 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). Because more than two years have passed since the consent decree issued, plaintiffs bear the burden of proving that the consent decree's prospective relief satisfies the PLRA requirements. See Guajardo, 363 F.3d at 395-96 (recognizing that once prison authority seeking termination of consent decree establishes requisite passage of time, burden of proof shifts to prisoners to demonstrate existence of ongoing violations of Federal rights and that prospective relief satisfies PLRA requirements).

The City of Houston argues that its motion to terminate consent decree "should be granted because the City has, in good faith, substantially, if not fully, complied with the terms of the

consent decree."<sup>5</sup> As evidence that jail conditions have improved, the City cites quarterly reports of the jail monitor. For example, the City argues that

Bogard stated, "the following issues have been addressed and substantially resolved:" (1) building repairs and maintenance, (2) timely access to courts, (3) incident and confrontation reports, (4) restraints, (5) food service, (4) searches, (5) sanitation and cleanliness, (6) prisoner access to hygiene supplies and showers, (7) Houston Police Department (HPD) policies and procedures, and (8) Houston Health Services (HHS) policies and procedures. Exhibit 2, Bogard, June 14, 2013, pp. 12-13). Further, Bogard described the City's jail facilities as "very calm and extremely clean." (Exhibit 2, Bogard, June 14, 2013, p. 12). Bogard also interviewed prisoners and detainees, who had "mostly positive opinions concerning the quality of [medical] care, thoroughness of screening, and professionalism of the medical staff." (Exhibit 2, Bogard, June 14, 2013, p. 7).<sup>6</sup>

The City points out that in an earlier report Bogard observed that the overcrowding issue had been substantially resolved,<sup>7</sup> and that in his most recent report Bogard stated that "[t]he average daily population of both jails continued to remain stable and low through the first five months of 2013."<sup>8</sup> Bogard has also observed that a city-funded Sobering Center opened in April of this year serves as

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<sup>5</sup>Motion to Terminate, Docket Entry No. 142, p. 7.

<sup>6</sup>Id.

<sup>7</sup>Id. (citing Exhibit 4, Quarterly Inspection of the Houston City Jails, *Morgan v. City of Houston*, No. H-76-0629 (S.D. Tex.), 3<sup>rd</sup> Quarter 2011 (June-August 2011), p. 4).

<sup>8</sup>Id. at 8 (citing Exhibit 2, Quarterly Inspection of the Houston City Jails, *Morgan v. City of Houston*, No. H-76-0629 (S.D. Tex.), December 2012-February 2013, p. 4).

"a valuable alternative to arresting and jailing persons for public intoxication,"<sup>9</sup> that the City of Houston and Harris County are marshaling resources in an effort to build a Consolidated Booking Center that would allow the City to close its jail facilities,<sup>10</sup> and that the City has implemented a number of recommendations of a detention expert on suicide risk management and prevention.<sup>11</sup>

The courts review of the file and the jail monitor's quarterly reports leads the court to conclude that the City has and is continuing to improve jail facilities and jail operations. In light of the evidence provided by the jail monitor's quarterly reports and the court's familiarity with the case, the court concludes: (1) that it is not necessary to conduct an evidentiary hearing on the pending motion to terminate; and (2) there is no evidence upon which the court could find either that on-going, system-wide violations of Federal rights exist in the City of Houston's jail facilities, or that prospective relief provided by the consent decree, e.g., quarterly inspections of the City's jail facilities, satisfy the requirements of the PLRA that prospective

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<sup>9</sup>*Id.* (citing Exhibit 2, Quarterly Inspection of the Houston City Jails, *Morgan v. City of Houston*, No. H-76-0629 (S.D. Tex.), March-May 2013, p. 4).

<sup>10</sup>*Id.* at 8-9 (citing Quarterly Inspection of the Houston City Jails, *Morgan v. City of Houston*, No. H-76-0629 (S.D. Tex.), March-May 2013; Exhibit 2, p. 4).

<sup>11</sup>*Id.* at 9-10 (citing Quarterly Inspection of the Houston City Jails, *Morgan v. City of Houston*, No. H-76-0629 (S.D. Tex.), March-May 2013; Exhibit 2, p. 6).

relief by narrowly drawn, extend no further than necessary to correct the violation of a federal right, and be the least intrusive means to correct the violation of that Federal right. Accordingly, the City of Houston's Motion to Terminate Consent Decree (Docket Entry No. 142) is **GRANTED**.

**SIGNED** at Houston, Texas, on this 1st day of August, 2013.



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SIM LAKE  
UNITED STATES DISTRICT JUDGE