IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Muni Fred Harris, et al., Plaintiff, vs. Harold J. Cardwell, et al., Defendant.	No. CV-75-185-PHX-SRB **ORDER**

This case stems from a 1982 Amended Judgment addressing prison conditions in Arizona. At issue is Defendants' Motion to Terminate Prospective Relief as Outlined in This Court's "Amended Judgment" Dated May 25, 1982, Pursuant to Rule 60(b) and 18 U.S.C. § 3626, et seq. (Doc. 922).

I. BACKGROUND

This case began in 1975 as a class action filed on behalf "of all prisoners incarcerated at the Arizona State Prison." (Pls.' Resp. to Defs.' Mot. to Terminate ("Pls.' Resp."), Ex. F ("Second Am. Compl.") at 1.) Plaintiffs alleged that the conditions of confinement at the Arizona State Prison constituted cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution. Plaintiffs claimed they were subject to "overcrowding, lack of medical care, filth, poor food, rape, violence, . . . harassment," and racial discrimination. (Second Am. Compl. at 1-2.) They also claimed that "[t]he treatment,

classification and restrictions imposed on prisoners are arbitrary and capricious and, as such, constitute violations of the First Amendment right to free speech and right to petition the government for redress of grievances, and the due process and equal protection clause of the Fourteenth Amendment." (Second Am. Compl. at 2.) Plaintiffs requested "that minimum constitutional standards be applied to the Arizona State Prison in its treatment of inmates," and they requested declaratory and injunctive relief "to prevent further degradation and harassment." (Second Am. Compl. at 2.) The Class was certified in 1977 as including "Plaintiffs and all other present and future inmates who are now or who will be incarcerated in the men's division of the Arizona State Prison in Florence, Arizona[.]" (Pls.' Resp., Ex. G at 1.) The court expanded the Class later that year to include the women's division of the Arizona State Prison at Florence.[1] (Pls.' Resp., Ex. B at 2.)

On May 25, 1982, Judge Muecke signed an Amended Judgment that set forth practices, procedures and standards "negotiated by the parties and approved by the Court" relating to the treatment of prisoners. (Pls.' Resp., Ex. H ("Am. J.") at 2.) The Amended Judgment granted prospective relief to the Class and relates to a wide range of prison policies and procedures including housing, classification, recreation, work and educational programs, and health care. It states that "[t]he practices, procedures and standards prescribed below are such as have been negotiated by the parties and approved by the Court, and in no way represent a judicial determination of practices, procedures or standards required by the Constitutions of the United States and of the State of Arizona." (Am. J. at 2.) The Amended

---

[1]Plaintiffs argue that "[i]t is clear that the class certified in the September 29th and October 6th orders has now expanded to include all inmates in [] today's Arizona State Prison System regardless of their location." (Pls.' Resp. at 4.) The Court does not agree that the Class expanded beyond those inmates at the Florence, Arizona complex. United States District Court Judge Carl A. Muecke, on May 18, 1989, denied a motion for enforcement of the Amended Judgment filed by a Perryville, Arizona inmate because "the Class consists only of the prisoners at the Arizona State Prison Complex–Florence, Arizona." (Order dated May 19, 1989 (Doc. 817) at 1.) Because the inmate did not allege "that he has ever been a prisoner at the Florence Facility, nor has he alleged any violations of the court order or judgment with respect to the Florence Facility," the court, *sua sponte*, dismissed the inmate's motion. (Doc. 817 at 1-2.)

Judgment also states that it "incorporates all prior Orders of the Court including those of September 1, 1977, October 6, 1977, December 12, 1978, March 8, 1979, May 23, 1979, and September 24, 1979, and those Orders are hereby merged into this Judgment in their entirety." (Am. J. at 1.) Also, "[t]he claims made in Plaintiffs' Second Amended Complaint are hereby adjudicated and merged into this Judgment." (Am. J. at 1.)

Defendants have now moved to terminate all prospective relief arising out of the Amended Judgment, arguing that the facts and law have "changed significantly" since 1982. (Defs.' Mot. to Terminate Prospective Relief ("Defs.' Mot.") at 3, 4.)

II. LEGAL STANDARDS AND ANALYSIS

A. Federal Rule of Civil Procedure 60(b)(5)

Rule 60(b)(5) of the Federal Rules of Civil Procedure provides that a court "may relieve a party from a final judgment, order, or proceeding . . . [when] it is no longer equitable that the judgment should have prospective application[.]" "[I]t is appropriate to grant a Rule 60(b)(5) motion when the party seeking relief from an injunction or consent decree can show 'a significant change either in factual conditions or in law.' A court may recognize subsequent changes in either statutory or decisional law." *Agostini v. Felton*, 521 U.S. 203, 215 (1997) (quoting *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992)). "The Rule codifies the long-established principle of equity practice that a court may, in its discretion, take cognizance of changed circumstances and relieve a party from a continuing decree." *Gilmore v. People of the State of California*, 220 F.3d 987, 1007 (9th Cir. 2000).

Defendants maintain that the change in the law in this case justifying relief was the enactment of the Prison Litigation Reform Act of 1996 ("PLRA"), 18 U.S.C. § 3626 *et seq*. (Defs.' Mot. at 4.)

B. The PLRA

Congress enacted the PLRA in 1996 to "revive the 'hands-off'" approach that federal courts used to adhere to when dealing with "problems of prison administration." *Gilmore*, 220 F.3d at 991, 996-97. To this end, the PLRA provides that "[p]rospective 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." 18 U.S.C. § 3626(a)(1)(A). In orders issued prior to enactment of the PLRA, prospective relief became terminable two years after the PLRA was enacted. *Id.* § 3626(b)(1)(iii). The PLRA provision relied on by Defendants goes even further and allows the immediate termination of prospective relief when the conditions of § 3626(b)(3) are not met:

> **(2) Immediate termination of prospective relief**.--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.
>
> **(3) Limitation**.--Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief 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 that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

Id.§ 3626(b)(2)-(3).

Thus, "any 'prospective relief' that exceeds the constitutional minimum must be terminated regardless of when it was granted." *Gilmore*, 220 F.3d at 999 (citing Pub. L. 104-134, Title I § 101, 110 Stat. 1321-70 (Apr. 26, 1996) ("Section 3626 of title 18, United States Code, as amended by this section, 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.")); *see also Milliken v. Bradley*, 433 U.S. 267, 281 (1977) ("federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation . . . .). The PLRA's "termination provisions do not require termination of . . . final judgments of Article III courts. The provisions apply exclusively to prospective relief, limiting the scope of federal jurisdiction to enforce the prospective aspect of final judgments in prison conditions cases." *Id*. at 1001. "[A]lthough § 3626(b)(2) speaks of 'immediate termination,' . . . a district court cannot

terminate prospective relief without determining whether the existing relief (in whole or in part) exceeds the constitutional minimum." *Id.* at 1007 & n.25 ("We do not read this to mean that explicit findings must have been made, so long as the record, the court's decision ordering prospective relief, and relevant caselaw fairly disclose that the relief actually meets the § 3626(b)(2) narrow tailoring standard.").

The parties disagree about whether the Amended Judgment contained a finding of a violation of a federal right and thus which PLRA provision applies to Defendants' Motion to Terminate–§ 3626(b)(2) or § 3626(b)(3). Defendants argue that § 3626(b)(2)'s immediate termination provision applies because "the Amended Judgment was not based on any federal or state constitutional violation. The Amended Judgment was simply an agreement between the parties, and signed by the Judge, regarding the modification of many prison conditions." (Defs.' Mot. at 6.) The Amended Judgment itself does not contain any findings of constitutional violations, and Defendants argue that is where this Court's inquiry stops.

Plaintiffs, on the other hand, argue that "[i]t is now clear from the resurrected record that there are explicit findings of constitutional violations underlying and merged into the 1982 Amended Judgment. As a result, this court is required to conduct a review of the record [pursuant to 18 U.S.C. § 3626(b)(3)], following an evidentiary hearing, to determine whether there are continuing and ongoing constitutional violations before granting the Defendants' Motion to Terminate prospective relief." (Pls.' Resp. at 2.)

Plaintiffs cite to the six orders that preceded the Amended Judgment and which Judge Muecke said were merged into the Judgment. Two of those orders contained preliminary findings of constitutional violations under the Eighth Amendment. (*See* Pls.' Resp. Exs. A (September 1, 1977 Order), B (October 6, 1977 Order).) The September 1, 1977 order granted Plaintiffs' Motion for Preliminary Injunction and states that during the hearing on the motion,

> The Court heard all of the testimony offered by both parties and, both parties having rested, the Court found that the plaintiffs' constitutional rights under the eight amendment to the United States Constitution were being violated; and the Court having made other findings heretofore announced in open court this

> date, including, but not limited to, the facts that the plaintiffs were likely to succeed in this action and that if preliminary relief is not granted the plaintiff will suffer irreparable harm[.]

(Pls.' Resp., Ex. A at 1.) Along with that finding, the court prohibited and enjoined Defendants from allowing the male inmate population at the Arizona State Prison in Florence to exceed 2,125 until a further hearing on Plaintiffs' motion could be held the following month. (Pls.' Resp., Ex. A at 1-2.) A month later the court held another hearing on Plaintiffs' application for a preliminary injunction and found "that the conditions at the Arizona State Prison at Florence continue to constitute cruel and unusual punishment in violation of the inmates' rights protected by the eighth amendment to the Constitution of the United States, and that the Plaintiff class is likely to be successful in this action . . . ." (Pls.' Resp., Ex. B at 1.) This order required Defendants to reduce the male inmate population at the Arizona State Prison in Florence to "not more than 1,750 by the 31st day of December, 1977" and to provide the court with regular reports on inmate population and injuries. (Pls.' Resp., Ex. B at 2.) A third order was issued on May 23, 1979 following a hearing "regarding issues in the area of prison inmate population and delivery of medical care at the Arizona State Prison[.]" (Pls.' Resp., Ex. 5 at 1.) Under the Findings of Fact, Judge Muecke wrote: "As this Court has previously found, overcrowding at the Arizona State Prison violates the plaintiffs' constitutional rights under the eighth amendment. (*See* Order of September [1], 1977)." (Pls.' Resp., Ex. E at 1.) The court also wrote that a deficiency in the delivery of medical care "could result in a violation of defendants' eighth amendment rights." (Pls.' Resp., Ex. 5 at 3.)

Plaintiffs assert that "a review of the merged orders . . . reveal that there were explicit and repeated findings of constitutional violations regarding prison overcrowding and adequacy of medical care which were merged into the 1982 Amended Judgment." (Pls.' Resp. at 6.) Further, Plaintiffs argue that Defendants "have completely failed to present any kind of showing that there is no current and ongoing violations of the 1982 Amended Judgment's prohibition against prison overcrowding and inadequate medical care[.]" (Pls.'

Resp. at 7.) Plaintiffs believe "there are serious questions with respect to ongoing violations that must be addressed in an evidentiary hearing," although Plaintiffs did not identify any specific violations. (Pls.' Resp. at 7.) Plaintiffs want the Court to order Defendants to notify the Class of the Motion to Terminate so that Class members have "the opportunity to present evidence of continuing and ongoing violations." (Pls.' Resp. at 7.) Plaintiffs also want the Court to "appoint a prison expert to gather evidence for the Court on the nature and extent of any ongoing and current violations." (Pls.' Resp. at 7.)

Neither the parties nor the Court located any other documents such as a stipulation, settlement agreement or a consent decree that would explain what the Amended Judgment means when it says it "incorporates all prior Orders of the Court . . . and those Orders are hereby merged into this Judgment in their entirety." (Second Am. J. at 1.) Defendants argue that the use of the term "merge" in the Amended Judgment "is intended to have its common law meaning; this is evidenced by the fact that immediately following the questioned language, the term is used again: 'The claims made in the Plaintiffs' Second Amended Complaint are hereby adjudicated and merged into this Judgment.'" (Defs.' Supp. Mem. in Supp. of Mot. to Terminate Prospective Relief at 2-3 (quoting Second Am. J. at 1).) Defendants cite to the Restatement (Second) of Judgments and other interpretive aids that explain the doctrine of "merger," for example: "When the plaintiff recovers a valid and final personal judgment, his original claim is extinguished and rights upon the judgment are substituted for it. The plaintiff's original claims is said to be 'merged' in the judgment." Restatement of Judgments 2d § 18, Cmt. a; *see also* Am. Jur. Judgments § 451 ("Upon rendition of a judgment, a cause of action merges into the judgment and that judgment is conclusive as to all matters which were litigated, which properly should have been litigated or might have been litigated in the original action.") (citing *Clements v. Airport Auth. of Washoe County*, 69 F.3d 321, 327 (9th Cir. 1995) ("Assuming the basic requirements of claim preclusion are met, certain unlitigated claims merge with the prior judgment in the case" and are barred even though never adjudicated)).

In this case, Plaintiffs made claims of constitutional violations, but they were never adjudicated. Two of the orders contained only the provisional finding by Judge Muecke of a constitutional violation within the context of granting a preliminary injunction, which found a likelihood of success by Plaintiffs on the merits.[2] (See Pls.' Resp., Exs. A and B.) No permanent injunction was ever issued nor was there any final judicial determination of a constitutional violation. A third order merely states, "As this Court has previously found, overcrowding at the Arizona State Prison violates the plaintiffs' constitutional rights under the eighth amendment," and "Denial of proper medical care violates a state prisoner's eighth amendment rights." (Pls.' Resp., Ex. E at 1, 4.) This order does not actually include a finding that Plaintiffs' rights were violated and goes on to list the changes made by Defendants to address overcrowding and health care issues, and it orders Defendants to "continue to reduce the [prison] population" and "improve the delivery of health services." (Pls. Resp., Ex. E at 2-5.)

Therefore, the Court finds that the 1982 Amended Judgment contains no findings of constitutional violations and agrees with Defendants that § 3626(b)(2) applies in this case. The 1982 Amended Judgment was clearly an agreement between the parties, approved by the Court, and entered "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). This is evidenced by the fact that the Amended Judgment states explicitly that "[t]he practices, procedures and standards prescribed below are such as have been negotiated by the parties and approved by the Court and in no way represent a judicial determination of practices, procedures or standards required by the Constitution of the United States and of

---

[2]Under the PLRA, "[p]reliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period." 18 U.S.C. § 3626(a)(2). In this case, the court did not make the findings required by 18 U.S.C. § 3626(a)(1) or make the preliminary injunction orders final. Therefore, those orders are irrelevant.

the State of Arizona." (Am. J. at 2.) Prospective relief, in the absence of a finding of the violation of a federal right, must be terminated immediately. *See* 18 U.S.C. § 3626(b)(2).[3]

Accordingly, under the PLRA's immediate termination provision and Federal Rule of Civil Procedure 60(b)(5), the Court grants Defendants' Motion to Terminate.

IT IS ORDERED granting Defendants' Motion to Terminate Prospective Relief as Outlined in This Court's "Amended Judgment" Dated May 25, 1982, Pursuant to Rule 60(b) and 18 U.S.C. § 3626, et seq. (Doc. 922).

DATED this 30th day of August, 2007.

Susan R. Bolton
United States District Judge

[3]Even if the Court were to find that the Amended Judgment was based on Judge Muecke's preliminary findings of eighth amendment violations related to inmate housing and medical care, several provisions in the Amended Judgment do not meet the PLRA's narrow tailoring standard. *See Gilmore*, 220 F.3d at 1007 & n.25 ("a district court cannot terminate prospective relief without determining whether the existing relief (in whole or in part) exceeds the constitutional minimum"). Even a cursory review of the Amended Judgment reveals that its twenty-seven paragraphs of practices, procedures and standards are not "narrowly drawn, extend[] no further than necessary to correct the violation of the Federal right, and [are] the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(b)(2). The Amended Judgment requires, for example, that Defendants "[e]nsure there are sufficient recreational programs, to include both athletic and cultural activities, available to all eligible inmates pursuant to classification decisions." (Am. J. at 3, ¶ 14.) It requires that Defendants "[e]nsure that educational programs, to include high school and college level courses and vocational programs that provide instruction in marketable job skills, are available to all eligible inmates pursuant to classification decisions." (Am. J. at 3, ¶ 13.) Also, Defendants must "[m]aintain an inmate work program to include industrial, agricultural, maintenance and service jobs that will ensure employment of all eligible inmates pursuant to classification decisions." (Am J. at 3, ¶ 12.) None of these agreed upon practices relate to issues of prison overcrowding or medical care, and so do not meet the narrow tailoring standard required by § 3626(b)(2) or *Gilmore*.