Nos. 99-224, 99-582

In the
Supreme Court of the United States

CHARLES B. MILLER, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, *et al.*,
Petitioners,

v.

RICHARD A. FRENCH, *et al.*,
Respondents.

On Writs of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

BRIEF OF PETITIONERS CHARLES B. MILLER, *et al.*

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Question Presented

The Prison Litigation Reform Act, 18 U.S.C. §3626, requires federal courts, upon a state's petition, to terminate injunctions governing prison operations where the injunctions are not necessary to correct the violation of a federal right. Section 3626(e) encourages prompt judicial action on states' petitions to terminate by automatically suspending the prospective effect of the injunction if the court does not rule on the petition to terminate within 90 days.

1. Does a district court have authority to suspend §3626(e) under traditional equitable standards?

2. Does §3626(e) violate separation-of-powers principles by legislatively specifying a rule of decision or legislatively annulling a judgment?

Parties Below

Plaintiffs

Richard A. French
Morris E. Dozier
Martin W. Bradberry
Henry C. Jennings
On behalf of a class of all persons who are or may in the future be confined in the Pendleton Correctional Facility, Pendleton, Indiana

Defendants

Charles B. Miller, Superintendent of the Pendleton Correctional Facility

Edward L. Cohn, Commissioner, Indiana Department of Correction

Steve McCauley, Regional Director, Indiana Department of Correction

Intervenor

United States of America

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Opinions below

The Seventh Circuit's opinion is reported at 178 F.3d 437 (7th Cir. 1999). It is printed in the Appendix to Miller's Petition for Certiorari (Pet. App.) at 11 to 43.

The District Court's Order Granting Plaintiffs' Motion for Preliminary Injunction is unreported. It is printed in the Appendix to the Petition for Certiorari at 9 to 10.

Jurisdiction

The Court of Appeals issued its opinion May 6, 1999. The Court of Appeals denied rehearing under its Circuit Rule 40(a) on May 6, 1999. Miller's petition for certiorari, docketed as 99-224, was filed on August 3, 1999. It was granted on December 6, 1999, as was the United States' petition docketed as 99-582 . This Court has jurisdiction under 28 U.S.C. §1254(1).

Relevant Statutes

18 U.S.C. §3626(b) Termination of relief.--

(1) Termination of prospective relief.--(A) In any civil action with respect to prison conditions in which prospective relief is ordered, such relief shall be terminable upon the motion of any party or intervener--

(i) 2 years after the date the court granted or approved the prospective relief;

(ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph; or

(iii) in the case of an order issued on or before the date of enactment of the Prison Litigation Reform Act, 2 years after such date of enactment.

(B) Nothing in this section shall prevent the parties from agreeing to terminate or modify relief before the relief is terminated under subparagraph (A).

(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.

(4) Termination or modification of relief.--Nothing in this section shall prevent any party or intervener from seeking modification or termination before the relief is terminable under paragraph (1) or (2), to the extent that modification or termination would otherwise be legally permissible.

18 U.S.C. §3626(e) Procedure for motions affecting prospective relief.--

(1) Generally.--The court shall promptly rule on any motion to modify or terminate prospective relief in a civil action with respect to prison conditions. Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.

(2) Automatic stay.--Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay during the period--

(A)(i) beginning on the 30th day after such motion is filed, in the case of a motion made under paragraph (1) or (2) of subsection (b); or

(ii) beginning on the 180th day after such motion is filed, in the case of a motion made under any other law; and

(B) ending on the date the court enters a final order ruling on the motion.

(3) Postponement of automatic stay.--The court may postpone the effective date of an automatic stay specified in subsection (e)(2)(A) for not more than 60 days for good

cause. No postponement shall be permissible because of general congestion of the court's calendar.

(4) Order blocking the automatic stay.--Any order staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2) (other than an order to postpone the effective date of the automatic stay under paragraph (3)) shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28, United States Code, regardless of how the order is styled or whether the order is termed a preliminary or a final ruling.

Statement of the Case

1. This litigation began in 1975 with the filing of a complaint on behalf of a class of prisoners at the Indiana Reformatory (now Pendleton Correctional Facility) alleging unconstitutional conditions of confinement. The case was tried, and the trial court entered a remedial injunction in 1982. *French v. Owens*, 538 F. Supp. 910 (S.D. Ind. 1982), *aff'd in part, rev'd in part*, 777 F.2d 1250 (7th Cir. 1985), *cert. denied*, 479 U.S. 817 (1986).

The district court's order broadly regulated prison operations. It set a cap on prison population and set standards for medical care, food preparation, use of physical restraints, recreation, and non-punitive segregation of prisoners. It also established due process standards for prison discipline; required provision of substance abuse and mental health services; established policies for provision of education, vocational training, and prison jobs; and required compliance with certain fire code and job safety standards. 777 F.2d at 1251-58.

The last substantive modification to the injunction occurred on October 6, 1988, when the parties entered a

stipulation regarding fire and safety standards. Jt. App. 44-45.

2. Congress enacted the Prison Litigation Reform Act of 1995 (PLRA) as §§801-810 of Public Law 104-134 (1996). The PLRA was designed to accomplish two objectives relating to federal court involvement in litigation involving prisoners. First, the PLRA was designed to curtail frivolous litigation by individual prisoners. For example, the law mandated judicial screening of prisoners' lawsuits at the initial stage, 28 U.S.C. §1915A, and placed a variety of limits on prisoners' lawsuits challenging prison conditions, 42 U.S.C. §1997e. As a result, new federal lawsuits by prisoners in the United States' courts have been reduced from 68,235 in 1996 to 54,715 in 1998. Administrative Ofc. of the U.S. Courts, *Federal Court Mgmt. Statistics* p. 167 (1996); *id.* (1998).

Second, the PLRA limits federal court injunctions and consent decrees governing the operation and administration of prisons. Under the PLRA, a federal court addressing prison conditions may order injunctive relief only if it "extend[s] 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). The federal court also must make specific findings that its injunction "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." *Id.*

The PLRA applies the same standard to existing litigated injunctions and consent decrees governing prisons. The PLRA requires federal courts to terminate existing injunctions governing prison conditions on any party's motion, once the injunction has been in effect for two years, "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 district court may continue the injunction only if it finds that the injunction is "necessary to correct a current and ongoing violation of the Federal right." *Id.* at (b)(3).

Sections 3626(b)(2) and (3) thus mandate a two-step process for applying the PLRA to existing prison injunctions. When prison officials file a motion to terminate or modify, the district court first must determine whether the existing decree contains the findings required by §3626(b)(2). If the findings are not present, the district court must terminate or modify the decree except in one circumstance: the court may continue equitable relief if the prisoners show the need for an injunction to remedy current unconstitutional conditions. 18 U.S.C. §3626(b)(3). Even then, the injunction may be no broader than necessary to cure the current constitutional infirmity. *Id.*

The PLRA also specifies time limits for district courts to rule on prison officials' motions to terminate or modify prison injunctions. District courts are required to rule "promptly" on such a motion, 18 U.S.C. §3626(e)(1), and if the motion is not ruled on in 30 days (extendable to 90 days[1]), the injunction loses its prospective effect until the district court rules. 18 U.S.C. §3626(e)(2). This "automatic stay" provision of PLRA – staying the prospective effect of prison injunctions if the district court does not rule on the

[1] At the time the State moved to terminate the injunction, the PLRA provided that the automatic suspension would take effect 30 days after the motion was filed. P.L. 104-134, §802 (Apr. 26, 1996), codified at 18 U.S.C. §3626(e)(2). Congress later modified the PLRA to permit district courts to extend by 60 days the time for acting on the motion to terminate or modify. P.L. 105-119, §123(a)(3)(C), codified at 18 U.S.C. §3626(e)(3).

motion to terminate within 30 days (extendable to 90 days) – is the provision invalidated by the Seventh Circuit in this case.

3. On June 5, 1997, the State moved to terminate the injunctive order. The plaintiff class moved for a temporary restraining order and preliminary injunction, arguing that §3626(e)(2) is unconstitutional.

The district court entered a temporary restraining order and, after hearing, a preliminary injunction enjoining operation of 18 U.S.C. §3626(e)(2).[2] The State appealed the entry of the preliminary injunction under 28 U.S.C. §1292(a)(1).

The State's motion to terminate the injunction is now set for hearing on the merits in June 2000.

4. The Seventh Circuit panel affirmed the district court's ruling that §3626(e)(2) is an unconstitutional violation of separation of powers. The panel also rejected the construction of §3626(e)(2) advanced by the Department of Justice, and adopted by the Fifth and Sixth Circuits, which abrogates the automatic nature of the stay in §3626(e)(2).

The Department of Justice, which had intervened below, asserted that §3626(e)(2) would be unconstitutional

[2] The district court's Order Granting Plaintiffs' Motion for Preliminary Injunction refers to 18 U.S.C. §3626(b)(2), not §3626(e)(2). Pet. App. 9. But the parties, the Seventh Circuit panel, and judges dissenting from denial of rehearing *en banc* all agreed that the injunction intended to refer to §3626(e)(2), and the reference to (b)(2) was erroneous. Appellees' Brief at 10; Pet. App. 17; Pet. App. 32 (Easterbrook, J., dissenting from denial of rehearing *en banc*). The transcript of the district court hearing clearly shows that §3626(e)(2) was at issue. Jt. App. 57-58, 60, 63. No party argues that the district court's order enjoined any provision other than §3626(e)(2).

unless district courts could decline to apply the automatic stay when "factual complexity or other factors" rendered the statutory time period inadequate to decide the termination motion. Pet. App. 20. It argued that a district court could stay the effect of §3626(e)(2) indefinitely when equity required. *Id.* Although the Fifth and Sixth Circuits adopted this interpretation, *Hadix v. Johnson*, 144 F.3d 925, 944-46 (6th Cir. 1998); *Ruiz v. Johnson*, 178 F.3d 385, 393-94 (5th Cir. 1999), the Seventh Circuit panel did not, concluding that the congressional command in §3626(e)(2) is clear and leaves no room for judicial discretion. Pet. App. 21-23.

The panel then ruled unanimously that §3626(e)(2) is an unconstitutional legislative intrusion into the judicial realm, violating separation-of-powers principles. Pet. App. 24-29. The panel held that the section requires a certain outcome (ceasing prospective effect of the injunction) unless the district court acts by a congressionally specified deadline, and thus unconstitutionally enacts legislative suspension of an existing court order: "it is a self-executing legislative determination that a specific decree of a federal court — here the decree addressing conditions at Pendleton — must be set aside at least for a period of time, no matter what the equities, no matter what the urgency of keeping it in place. This amounts to an unconstitutional intrusion on the power of the courts to adjudicate cases." Pet. App. 26-27. The Seventh Circuit panel also found the statute unconstitutional on the independent separation-of-powers ground that §3626(e)(2) prescribes a rule of decision in a particular case, violating the principle of *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871). Pet. App. 28-29.

Recognizing the different approach of the Sixth Circuit in *Hadix v. Johnson*, 144 F.3d 925, the panel circulated its decision to all active circuit judges under Seventh Circuit Rule 40(a). Chief Judge Posner and Circuit Judges Easterbrook and Manion dissented from the denial of

rehearing *en banc*. The three dissenters noted that this case provides a good example of the very judicial conduct Congress sought to prevent by enacting the PLRA. Congress sought "prompt" disposition of motions to vacate prison conditions injunctions, but the district judge who declared §3626(e) unconstitutional did nothing whatsoever to rule on or otherwise advance litigation on the motion to vacate for the entire two-year period between his injunction and the Seventh Circuit's opinion. Pet. App. 34.

The dissenters observed that the statute does not tell the judge how to rule; it only suspends the prospective effect of the injunctive decree if the district court does not rule within 90 days. The dissenters stated that §3626(e)(2) is necessary to effectively implement the substantive requirements of §3626(b)(2), which specifies standards for federal court decrees governing prison conditions. Pet. App. 36-37. It is "a mechanism to ensure the application of the new rules to the stock of existing decrees . . . so that state and local governments may regain control of their institutions once an injunction has achieved its purpose of correcting violations of federal law." Pet. App. 35.

The dissenters concluded that the requirement for prompt adjudication in §3626 violates no constitutional principle. It does not command the district court how or when to rule, but only precludes the parties from taking advantage of a judgment if the district court does not rule "promptly," as the law requires. Pet. App. 36. Like other time limits on judicial action, §3626(e)(2) does not intrude on the judicial function, but protects parties from unwarranted judicial intrusion. Pet. App. 37-39. Because the automatic stay provision of §3626(e)(2) merely enforces the statutory promptness requirement, it is not unconstitutional. Pet. App. 36-38.

Summary of the Argument

I. Section 3626(e)(2) contains an automatic stay that is not subject to equitable extension. The stay is automatic to accomplish the congressional objective of providing incentives for district courts to promptly process motions to terminate prison injunctions. The statute gives no support to the interpretation of the Fifth and Sixth Circuits and the Department of Justice that the automatic stay may be extended beyond the statutory limit.

The language of §3626(e)(2) is the clearest evidence that Congress intended the stay to be automatic and not extendable. The section is labeled "automatic stay" and says that the stay "shall" go into effect if the district court has failed to rule on the motion to terminate within 30 days (extendable to 90 days). This language shows congressional intent to make the stay automatic and not subject to further extension. The legislative history supports this interpretation without contradiction.

This interpretation is the only one in accord with the purpose of the PLRA. As this Court has noted in previous opinions, district courts occasionally intrude too far into the prerogatives of State and local officials who operate prisons. The PLRA was designed to give those officials a mechanism to obtain prompt judicial action in situations where court supervision of prison administration has become unnecessary. Without the deadlines in §3626(e)(2), prison officials lack a mechanism for ensuring quick judicial attention to their motions to terminate judicial supervision of prisons.

The clear statutory language, legislative history, and manifest purpose of the PLRA preclude application of the

doctrine of constitutional doubt, which the Department of Justice has invoked in support of its construction. Where congressional intent is clear, the doctrine of constitutional doubt may not be employed to alter the meaning of the statute. Because congressional intent is clear that the stay be automatic, no further indication is necessary of congressional desire to pre-empt the exercise of federal equitable powers to extend the stay.

II. The automatic stay does not violate separation of powers principles.

A. The automatic stay does not legislatively suspend a judicial order. Instead, it sets a time limit for action on a motion, then prescribes consequences that ensue if the deadline is not met.

The statute does not vacate or terminate the injunction, but only suspends it beginning 30 days (extendable to 90 days) after the motion is filed until the district court rules on the motion. The automatic stay thus is similar to the automatic termination of temporary restraining orders in Rule 65, the automatic expiration of injunctions under the Norris-LaGuardia Act, and the automatic stay in bankruptcy. In each of these cases, an injunctive order ceases to have prospective effect until a court acts. Section 3626(e)(2) is consistent with this Court's decisions giving Congress wide discretion to regulate federal courts' remedial power.

Section 3626(e)(2) does not encroach upon the judicial function or aggrandize power to the legislative branch. Rather, it places a slight burden on the judicial branch in the form of a time limit, but it does not alter the core power of the judiciary to decide cases or otherwise disturb the allocation of power among the branches. Section 3626(e)(2) does not mandate any particular decision in a

case, nor does it detract from the courts' power to remedy any wrongs they find. Indeed, §3626(b)(3) explicitly requires federal courts to continue injunctive relief if necessary to remedy ongoing federal violations. But – in accordance with law predating the PLRA – federal courts are required to terminate injunctive relief when it no longer is necessary to correct federal law violations.

Contrary to the Seventh Circuit's decision, §3626(e)(2) does not violate the rule of *Plaut v. Spendthrift Farm*, 514 U.S. 211 (1995). *Plaut* addresses legislative power to alter final judgments in cases dismissed with prejudice; §3626(e)(2) affects only ongoing injunctions that continue to govern prison administration. The Constitution does not prohibit Congress from requiring the courts to re-examine injunctions with prospective effect.

Section 3626(e)(2) also does not have the practical effect of precluding prisoners from obtaining necessary relief. All of the cases to which §3626(e)(2) applies already have injunctions in place, and prisoners and their attorneys should therefore be aware of any unconstitutional conditions in their prisons well before any motion to terminate is filed.

B. Section 3626(e)(2) also does not mandate a rule of decision in a specific case. Rather, it changes the procedure applicable to motions to terminate ongoing injunctions without instructing courts whether to grant or deny those motions. Section 3626(e)(2) neither prescribes a rule of decision, withdraws judicial jurisdiction, nor mandates the outcome of a motion to terminate an injunction.

Argument

I. The stay in §3626(e)(2) is automatic, and federal courts lack the equitable power to extend it beyond 90 days.

The stay in §3626(e)(2) was intended by Congress to be automatic, and it is not subject to federal courts' general equitable powers to extend it beyond the period fixed in the statute. The Seventh Circuit properly held that the Fifth and Sixth Circuits incorrectly interpreted the statute, rendering the stay in §3626(e)(2) not automatic, but essentially discretionary. *Hadix*, 144 F.3d 925; *Ruiz*, 178 F.3d 385. It is clear that Congress intended the automatic stay in §3626(e)(2) to be mandatory, and to interpret it otherwise would do fatal violence to the will of Congress.

The Fifth and Sixth Circuits' interpretations, adopting the Department of Justice's approach, effectively construe the automatic stay out of the statute. The Fifth and Sixth Circuits permit district courts to enjoin the automatic stay for a variety of equitable reasons, rewriting the law to wholly frustrate congressional purpose. The Seventh Circuit properly recognized that §3626(e)(2) restricts the equitable powers of the district courts by making the stay of prospective application of prison injunctions automatic. Pet. App. 22-23.[3]

[3] The effect of the Fifth and Sixth Circuits' opinions is, however, largely identical to the effect of the Seventh Circuit's invalidation of §3626(e)(2). Prison officials have no effective means to require district courts to rule promptly on motions to terminate prison injunctions in any of the three circuits. In the Fifth and Sixth Circuits, decisions to equitably stay the automatic stay are automatically appealable under 18 U.S.C. §3626(e)(4). In the Seventh Circuit, the only remedy for failure to act promptly is mandamus under 18 U.S.C. §3626(e)(1).

The very language of the statute negates the contention that §3626(e)(2) can itself be equitably stayed. The subsection is entitled "automatic stay," and the term "automatic" connotes involuntariness and independence from outside cause. *Webster's Third New Int'l Dictionary* 148 (unabridged ed. 1986). This clear language embodies the expressed intent of Congress and should both begin and end statutory construction absent an ambiguity. *See Atlantic Mut. Ins. Co. v. Commissioner*, 523 U.S. 382, 118 S.Ct. 1413, 1416 (1998) (plain language is key element in statutory construction); *Ingalls Shipbuilding, Inc. v. Director*, 519 U.S. 248, 254 (1997) (same).

The statutory language mandates that the motion to terminate "*shall* operate as a stay" once 30 days (extendable to 90 days) pass without ruling on the motion, with the stay ending on the date the motion is ruled upon. 18 U.S.C. §3626(e)(2) (emphasis added). The mandatory "shall" language supports the automatic nature of the stay. *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 118 S.Ct. 956, 962 (1998) (the word "shall" "normally creates an obligation impervious to judicial discretion"). Section 3626(e)(3), which provides for one 60-day extension of the stay for "good cause" similarly indicates that no additional extension is permitted under the law for any reason.

The immediate appeal provision also shows congressional intent that the stay be truly automatic. It was added to ensure that any district court decision that treated the stay as other than automatic would be immediately reviewed by an appellate court, ensuring that the application (and, if necessary, the constitutionality) of the automatic stay would be subjected to appellate review as soon as possible. Pet. App. 23. The immediate appeal provision, §3626(e)(4), permits an immediate appeal of any order that attempts to evade the automatic stay, "regardless of how the order is

styled or whether the order is termed a preliminary or a final ruling." It reinforces the conclusion that the stay is automatic and cannot be suspended. Pet. App. 23.

Because of the clear statutory language making the stay automatic, the doctrine of constitutional doubt does not support the Department of Justice's position. Although courts may construe a statute to save it from constitutional infirmities, *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 841 (1986) ("*Schor*"), they may not construe it in a manner that negates Congress's intent. *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Cncl.*, 485 U.S. 568, 575 (1988). Because congressional intent to make the stay automatic is clear, the Department of Justice's construction is unsupportable. *See Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 212 (1998) (doctrine of constitutional doubt applies only when the statutory language is ambiguous).

The legislative history also supports the State's construction. The Conference Report on the statute stressed that the stay is automatic to give district courts incentives to rule quickly. "Under current law, law enforcement and other local officials are often handcuffed in their efforts to modify or terminate unnecessary and burdensome consent decrees o[r] other orders by judge[s] who stonewall and simply refuse, for many months or even years, to issue a ruling on a request for modification or termination. . . . By providing that the prospective relief that is subject to the motion will be stayed if the motion is not decided promptly, judges will be motivated to decide the motions and avoid having the stay automatically take effect." H.R. Rept. No. 104-21, *Violent Criminal Incarceration Act of 1995*, at 26 (1995) (section-by-section summary).

The Senate sponsor of the 1997 amendments to the PLRA, adding the 60-day extension, said that the

amendments "clarify that the stay . . . in fact is automatic by expressly modeling it on the bankruptcy automatic stay, and [the amendments] state explicitly that any order blocking the automatic stay is appealable, thereby ensuring review of the district court's action." 143 Cong. Rec. S12269 (Nov. 9, 1997) (statement of Sen. Abraham).

The problem Congress addressed in this section is not imaginary. The Court has examined district court decrees that were "inordinately – indeed wildly – intrusive" upon prison officials' responsibilities. *Lewis v. Casey*, 518 U.S. 343, 362 (1996). The Court has criticized judges for becoming "enmeshed in the minutiae of prison operations" owing to their "natural tendency to believe that their individual solutions to often intractable problems are better and more workable" than prison officials' solutions. *Bell v. Wolfish*, 441 U.S. 520, 562 (1979). *See also Glover v. Johnson*, 138 F.3d 229, 233 (6th Cir. 1998) (noting district court's "loss of proper perception regarding its role," delving too far into the "minutiae" of prison administration). Such district court actions led congressional supporters of the PLRA to criticize judicial "micromanagement" of prisons. *See* 142 Cong. Rec. S3703 (Apr. 19, 1996) (statement of Sen. Abraham); 141 Cong. Rec. H14106 (Dec. 6, 1995) (statement of Rep. Canady).

The automatic stay in §3626(e)(2) was intended to give district courts incentives to act promptly on prison officials' motions to modify or vacate injunctive orders. "Deadlines are essential lest these [substantive] rules [in the PLRA] prove nugatory, so §3626(e)(1) requires the court to decide motions to terminate 'promptly', and §3626(e)(2) quantifies 'prompt' as within 30 days, with a possible extension to 90 days under §3626(e)(3)." Pet. App. 35 (Easterbrook, J., dissenting from denial of rehearing *en banc*). If the automatic stay is not in fact automatic – if district courts can themselves extend the statutory 90-day

period – the incentives Congress intended are erased. The purpose of this portion of the PLRA then would be eviscerated.

The Department of Justice has argued that district courts retain the inherent equitable authority to decline to enforce the automatic stay because no statute clearly ousts that power.[4] In light of the clear statutory language making the stay automatic, the legislative history, and the manifest purpose of §3626(e)(2), no further congressional statement limiting district courts' general equitable authority is necessary to show congressional intent. Section 3626(e)(2) negates general equitable authority to "stay the stay."

The Court should reject the Department of Justice's suggestion that the automatic stay is not automatic. And for

[4] The unusual nature of the Justice Department's construction is shown by commentary contemporaneous with enactment of the PLRA. Across a wide range of substantive views on the statute, all commentators interpret the automatic stay as the Seventh Circuit did. None adopted the Department of Justice's position that the stay itself may be enjoined under standard equitable principles. *See, e.g.*, Federal Judicial Center, *Resource Guide for Managing Prisoner Civil Rights Litigation* 49 (1996) (stay is automatic); Ira Bloom, *Prisons, Prisoners, and Pine Forests: Congress Breaches the Wall Separating Legislative from Judicial Power*, 40 Ariz. L. Rev. 389, 410 (1998) (same); Note, *The End of the Prison Law Firm: Frivolous Inmate Litigation, Judicial Oversight, and the Prison Litigation Reform Act of 1995*, 29 Rutgers L.J. 361, 378 (1998) (same); Note, *The Prison Litigation Reform Act of 1995: A Legitimate Attempt to Curtail Frivolous Inmate Lawsuits and End the Alleged Micro-Management of State Prisons or a Violation of Separation of Powers?*, 63 Brooklyn L. Rev. 319, 324 (1997) (same); Note, *Peanut Butter & Politics: An Evaluation of the Separation-of-Powers Issues in Section 802 of the Prison Litigation Reform Act*, 73 Ind. L.J. 329, 344 (1997) (same); Note, *Return to Hard Time: The Prison Litigation Reform Act of 1995*, 31 Ga. L. Rev. 879, 894 (1997) (same); Deborah Dekker, *Consent Decrees & the Prison Litigation Reform Act of 1995: Usurping Judicial Power or Quelling Judicial Micro-Management?*, 1997 Wisc. L. Rev. 1275, 1282 (same).

the reasons set forth in the next section, the statute need not be so construed because it suffers no constitutional infirmity.

II. Section 3626(e)(2) does not violate separation-of-powers principles.

Section 3626(e)(2) complies with the Constitution. It neither legislatively suspends court orders nor mandates a rule of decision.

A. The PLRA does not unconstitutionally suspend a judicial order.

Section 3626(e)(2) does not unconstitutionally legislatively suspend a judicial order. Rather, the law sets a time limit for the district court to rule on a party's motion in one type of case. It also prescribes consequences for the failure to act within that time, and these consequences act as an incentive for courts to rule promptly. The time limit and associated incentive are vital to accomplishing the legislative purpose of the PLRA, and they do not invade the primary function of the Judicial Branch – to decide cases.

The statutory time limit does not erase the district court's injunctive order. Rather, the statute simply deprives the order of its prospective effect until the district court rules on the motion to modify or terminate. 18 U.S.C. §3626(e)(2)(B). Only the district court's failure to act on a motion to modify or terminate the injunction within the time period prescribed by law causes the suspension. If prisoners meet the standard for continuing the injunction in §3626(b)(2) and (3), the injunction resumes its prospective effect when the district court denies the prison's motion to terminate. 18 U.S.C. §3626(e)(2)(B).

1. Section 3626(e)(2) does not violate separation-of-powers principles. Separation of powers does not

hermetically seal each branch from the others. *Mistretta v. United States*, 488 U.S. 361, 380 (1989). "The Framers did not require – and indeed rejected – the notion that the three Branches must be entirely separate and distinct." *Id.* Separation of powers does "not mean that these [three] departments ought to have no partial agency in, or no controul over the acts of each other," but rather "that where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution, are subverted." *The Federalist* No. 47, pp. 325-26 (J. Cooke ed. 1961) (Madison).

Indeed, one branch may place significant burdens on another without violating separation-of-powers principles. *Clinton v. Jones*, 520 U.S. 681, 701 (1997). Only when one branch's action disturbs the allocation of power among the branches does the action violate the constitutional plan. *Id.* "[O]ne branch may not intrude on the central prerogatives of another." *Loving v. United States*, 517 U.S. 748, 757 (1996).

The core power of the Judicial Branch is to decide cases. *Mistretta*, 488 U.S. at 389. For the Judicial Branch, separation of powers protects judicial independence and litigants' rights to adjudication by an independent judge. *Schor*, 478 U.S. at 848. But "bright-line rules cannot effectively be employed to yield broad principles applicable to all Article III [separation-of-powers] inquiries." *Schor*, 478 U.S. at 857.

2. Section 3626(e)(2) does not violate these separation-of-powers principles because it does not permit congressional intrusion into the core judicial function of deciding cases. While the statute places a time limit on judicial action and attaches consequences to failure to meet the time limit, it does not remove from the Judicial Branch the power to decide whether there are federal law violations

at prisons and to remedy any violations it finds. In the phrase of *Morrison v. Olson*, 487 U.S. 654, 695 (1988), §3626(e)(2) does not "impermissibly undermine" the judicial function. It represents neither aggrandizement of nor encroachment into the core judicial function. *See Schor*, 478 U.S. at 850 (separation of powers prevents Congress from aggrandizing judicial power and encroaching upon judicial function).

In concept, §3626(e)(2) is no different than the time limits on temporary restraining orders in Federal Rule of Civil Procedure 65(b) (federal court's TRO automatically expires after 10 days, with one possible 10-day extension, if court has not held a hearing with notice) and the five-day statutory limit on temporary restraining orders in the Norris-LaGuardia Act, 29 U.S.C. §107 ("Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days"). Each of these provisions mandates that a judicial order loses its prospective effect if the district court fails to act within a prescribed time period. Section 3626(e)(2) has precisely the same effect.

Section 3626(e)(2) also mirrors the automatic stay in bankruptcy, 11 U.S.C. § 362(a)(2). As with §3626(e)(2), the bankruptcy stay is created by statute, triggered by a litigant's action, and temporarily divests courts' judgments of their prospective effect ("a [bankruptcy] petition . . . operates as a stay, applicable to all entities, of . . . the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title"). The statute suspends enforcement of judgments against debtors, including judgments of Article III courts, absent permission by the bankruptcy court to enforce the judgment.

Section 3626(e)(2) also is consonant with the Court's other decisions permitting Congress to limit the lower courts'

jurisdiction, including placing limitations on remedies. *Hanna v. Plumer*, 380 U.S. 460, 472-73 (1965) (Congress may regulate judicial procedure); *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 329-30 (1938) (certain statutorily specified findings required before court may issue injunction in labor dispute); *Lockerty v. Phillips*, 319 U.S. 182, 187-88 (1943) (limiting jurisdiction over certain claims only to Emergency Court of Appeals); *California v. Grace Brethren Church*, 457 U.S. 393, 407-08, 411 (1982) (Tax Injunction Act precludes federal court jurisdiction to enjoin state taxes).

Taken together, these cases hold that Congress may limit federal courts' remedial authority, at least as long as litigants have *some* method to vindicate federal rights. While §3626(e)(2) automatically stays prison injunctions in some cases, it by no means precludes all prisoners' remedies. They may retain the injunction by proving a continuing federal violation under §3626(b)(3). If they are unable to obtain an injunction but later prove a federal violation, they may obtain damages. They also may seek mandamus under §3626(b)(1). Thus, they are not deprived of all remedies for potential constitutional violations.

Most commentators also agree that Congress has broad authority to limit federal court jurisdiction.[5] Even those who argue for limits on congressional power over court jurisdiction argue only that the Constitution requires *some* remedy – not all remedies or even ideal remedies – to be

[5] *E.g.*, Paul M. Bator, *Congressional Power Over the Jurisdiction of the Federal Courts*, 27 Vill. L. Rev. 1030 (1982); Gerald Gunther, *Congressional Power to Curtail Federal Court Jurisdiction: An Opinionated Guide to the Ongoing Debate*, 36 Stan. L. Rev. 895 (1984); Julian Velasco, *Congressional Control Over Federal Court Jurisdiction: A Defense of the Traditional View*, 46 Cath. U. L. Rev. 671 (1997).

available.[6] Section 3626(e)(2) leaves remedies available to prisoners, including injunctive relief under the PLRA's standards, damages, and mandamus.

3. The Seventh Circuit panel ruled incorrectly that §3626(e)(2) violates *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). *Plaut* invalidated a statute that sought to revive a set of securities fraud cases after this Court ruled that they were untimely under the applicable statute of limitations. *Plaut* addresses only statutes that act on final judgments in cases dismissed with prejudice, not statutes like §3626(e)(2) applying to active injunctions that continue to govern prison administration. Because the injunctions affected by §3626(e)(2) are not final judgments as defined in *Plaut*, the statute is not unconstitutional legislative review of a judgment. *See* 514 U.S. at 218 (applying *Hayburn's Case*, 2 Dall. 409 (1792)).

Rather, §3626(b)(2) requires judicial re-examination of ongoing prison conditions injunctions, mandating district courts to determine whether proper findings show that the injunctions meet the substantive standard for narrowness of the federal equitable order. And §3626(e)(2) is the mechanism for ensuring that judicial re-examination occurs in a timely manner. Neither section dictates the result to be reached under the legislatively specified standard.

As Congress intended, §3626(e)(2) gives prisoners strong incentives to quickly bring to the district court's

[6] *See, e.g.*, Henry M. Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 Harv. L. Rev. 1362, 1365-66 (1953); Laurence H. Tribe, *Jurisdictional Gerrymandering: Zoning Disfavored Rights out of the Federal Courts*, 16 Harv. C.R.-C.L. L. Rev. 129, 135-36 (1981); Lawrence Gene Sager, *Foreward: Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts*, 95 Harv. L. Rev. 1, 88 (1981).

attention any facts that will support continuation of the injunction. If no findings satisfying §3626(b)(2) are in place, prisoners must provide evidence satisfying the requirement of §3626(b)(3) that there is a current federal violation requiring injunctive relief to correct.

4. The statute's 30-day (or 90-day) time limit also does not operate in practice to effectively deny remedies to prisoners. *See Hadix*, 144 F.3d at 941 (suggesting potential practical problems with the time limits); Pet. App. 26-27 (same). When prison officials file a motion to terminate or modify, the district court's task consists of two steps. First, the district court must determine whether its injunction is supported by the findings specified in §3626(b)(2). This simple application of the statutory rule to the existing court order can be made within 30 days. *Cf. Watson v. Ray*, 192 F.3d 1153, 1157 (8th Cir. 1999) (concluding that earlier order did not contain findings); *Cagle v. Hutto*, 177 F.3d 253, 257 (4th Cir. 1999) (same). Second, if the injunction is not supported by those findings, the district court must terminate the injunction unless the prisoners can prove that the injunction must remain in place to prevent a violation of their federal rights.

Most importantly, in a prison already under an injunction governing conditions (as are all the prisons subject to §3626(e)(2)), the prisoners and their counsel should be aware of ongoing constitutional violations well before any motion to terminate or modify is filed. The prisoners should bring those unconstitutional conditions to the attention of the relevant court when they occur, not wait for a motion to modify or terminate. This practical reality undermines prisoners' complaints that the 90-day time period is insufficient for them to meet the standard in §3626(b).

If there is a serious, current violation of federal rights, the prisoners should be able to show the violation within the

30-day period, and certainly within the 90-day period. Several courts have terminated prison injunctions without the need for lengthy evidentiary presentations about current conditions. *E.g.*, *Cagle*, 177 F.3d 253 (no evidentiary hearing unless prisoners allege specific facts amounting to constitutional violation); *Watson*, 192 F.3d 1153 (termination proper absent evidence of current constitutional violation); *Harvey v. Schoen*, 51 F. Supp.2d 1001 (D.Minn. 1999); *Vasquez v. Carver*, 18 F. Supp.2d 503 (E.D.Pa. 1998), *aff'd*, 181 F.3d 85 (3d Cir. 1999); *Imprisoned Citizens Union v. Shapp*, 11 F. Supp.2d 586 (E.D.Pa. 1998); *Thompson v. Gomez*, 993 F. Supp. 749 (N.D. Cal. 1997). Thus, the Seventh Circuit's focus on the complexity of prison litigation is misplaced. Pet. App. 31. The point is not the length of the proceedings that led to the original injunction. Rather, the focus should be on the prisoners' ability to show an ongoing constitutional violation.

Similarly, §3626(e)(2) gives prison officials the incentive to move to modify or terminate only when they believe that the institution fully complies with constitutional standards. If they had real doubts whether constitutional standards were met, they would postpone motions to modify or terminate until they were confident that the prisoners would be unable to bring forward evidence of ongoing constitutional violations.

The deadline also gives prison officials strong incentives to cooperate with prisoners' discovery requests in connection with motions to modify or terminate. Prison officials know that their motions to modify or terminate will be much less likely to succeed if they are perceived as impeding prisoners' access to information or impeding the judicial process in any way. As Judge Easterbrook wrote, "Courts can foil delaying maneuvers by imposing sanctions on parties that fail to cooperate in discovery, see Fed. R. Civ. P. 37, and by drawing adverse inferences about missing

evidence." Pet. App. 38. Prison officials' incentives to cooperate in proceedings under §3626(b) therefore are strong.

Judge Easterbrook properly analyzed this part of the case under the Due Process Clause, not as a separation-of-powers problem. Pet. App. 37. The prisoners are not entitled to the benefit of their judgment in perpetuity (even under pre-PLRA law, *see Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992) (discussing standard for modification)), but the judgment cannot be effaced without notice and an opportunity to be heard. Section 3626(e)(2) provides those due process requirements. If the prisoners allege a continuing federal violation, the injunction covering prison conditions can be modified or terminated only after a hearing at which the prisoners have an opportunity to produce evidence satisfying the statutory standard for continuing the injunction. The injunction is terminated or permanently modified only if they cannot meet that standard.

The time limit in §3626(e)(2) thus is a constitutional exercise of legislative authority. Section 3626(e)(2) does not legislatively invalidate a judicial judgment. Rather, it sets a deadline for district courts to rule on specified motions, and it prescribes consequences if the courts fail to meet the deadlines. No judgment is eradicated by §3626(e)(2), although injunctions may temporarily lose prospective effect. Section 3626(e)(2) thus is a legitimate exercise of legislative power in an area in which Congress believed the federal courts were acting inappropriately. Because the statute does not violate separation-of-powers principles, the Seventh Circuit was wrong to invalidate the statute on that basis.

B. Section 3626(e)(2) does not prescribe a rule of decision in a specific case.

Section 3626(e)(2) also does not violate the prohibition against legislating a rule of decision in pending judicial cases other than by changing underlying law. *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871). *Klein* is an enigmatic, Reconstruction-era case involving both separation-of-powers principles and congressional attempts to alter the effects of presidential pardons, and it does not prohibit the kind of congressional action embodied in §3626(e)(2).

In *Klein*, suit was brought to recover private property sold by the United States during the Civil War. Proof that the property owner had not aided the rebellion was made by showing that he had received a presidential pardon. Congress then enacted a law providing that the receipt of the pardon was proof of disloyalty, rather than loyalty, and requiring courts to dismiss any appeal in a case in which the plaintiff had established his loyalty through a pardon. The Court held that the limitation on jurisdiction and alteration of the pardons' effect violated the Constitution. 80 U.S. (13 Wall.) at 146-48. The statute at issue in *Klein* did not change underlying law, but rather ascribed a particular evidentiary effect to a presidential pardon, at once modifying the effect of the pardon and requiring cases to be dismissed despite unchanged substantive law.

In contrast to *Klein*, in the PLRA Congress did not prescribe a rule of decision in pending cases. Rather, §3626(e) changed the procedure applicable to motions to terminate prison injunctions, a change that does not fall within the category of legislation prohibited by *Klein*. *See United States v. Sioux Nation of Indians*, 448 U.S. 371, 404 (1980) (distinguishing *Klein* and describing it as holding

unconstitutional statutes that mandate decisions in favor of the government in pending cases and vitiate the effect of pardons).

Section 3626(e)(2) is not an unconstitutional rule of decision under *Klein* because it is not a rule of decision at all. As explained in the previous section, it does not tell a court how to rule, it does not affect judicial jurisdiction, and it does not foreordain the result of the pending motion to modify or terminate the injunction. "[T]he PLRA automatic stay provision does not mandate a rule of decision." *Hadix*, 144 F.3d at 940.

Instead, it limits remedies in the absence of required findings that federal law is violated. Once 30 (or 90) days have passed after a motion to modify or terminate is filed, §3626(e)(2) suspends the prospective effect of an injunction until the district court applies the standard in §3626(b) to decide the pending motion. Section 3626(e)(2) is therefore procedural, and a district court can entirely avoid its effects by ruling on the prison officials' motion within the time prescribed by the law. At most, *Klein* limits withdrawal of federal jurisdiction; it does not address restrictions on remedies.[7]

The rule of decision to be applied in prison injunction cases comes not from §3626(e)(2), but rather from §3626(b), which changed the law of federal injunctive relief primarily

[7] Commentators have discounted *Klein*'s continuing significance. "Much that is said in the opinion is exaggerated if not dead wrong, and perhaps those infirmities, and the turbulence of the constitutional politics of the era, caution against seeking to draw too much from this single decision." Daniel J. Meltzer, *Congress, Courts, and Constitutional Remedies*, 86 Geo. L.J. 2537, 2549 (1998).

by adding the requirement of specific findings.[8] Section 3626(b) requires prison condition injunctions to be narrowly tailored, to address only violations of federal rights (not, for example, state-law-based rights or other matters to which the parties agree), and to extend no further than necessary to correct the federal violation; it also mandates specific findings that these substantive terms are met. But §3626(b) is neither the subject of this litigation nor in serious dispute, as it has been found to meet constitutional requirements by every circuit that has examined it.[9] *See also Robertson v. Seattle Audubon Soc.*, 503 U.S. 429, 440 (1992) (change in substantive law is constitutional even when designed to affect result in particular litigation).

In short, the potential prospective suspension of an injunction is not a "rule of decision," and it therefore does not violate *Klein*.

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[8] The substantive standard in 18 U.S.C. §3626(b) is consistent with pre-PLRA law regarding judicial supervision of public institutions, although the statute imposes a requirement of specific findings that apparently goes beyond that in Fed. R. Civ. P. 52. Federal equitable remedies must be limited to correcting the injury found. *Lewis*, 518 U.S. at 357; *Bell*, 441 U.S. at 562 ("the inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the Constitution. . ."). Injunctions must account for state and local governmental interests in operating their own institutions. *Missouri v. Jenkins*, 515 U.S. 70, 88 (1995). And federal equitable relief must terminate when no longer necessary to protect a federal right. *Freeman v. Pitts*, 503 U.S. 467, 490 (1992).

[9] *Inmates of Suffolk Co. Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997); *Benjamin v. Jacobson*, 172 F.3d 144 (2d Cir. 1999) (*en banc*), *cert. denied*, 120 S.Ct. 72 (1999); *Imprisoned Citizens Union v. Ridge*, 169 F.3d 178 (3d Cir. 1999); *Plyler v. Moore*, 100 F.3d 365 (4th Cir. 1996), *cert. denied*, 520 U.S. 1277 (1997); *Hadix v. Johnson*, 133 F.3d 940 (6th Cir.), *cert. denied*, 118 S.Ct. 2368 (1998); *Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999); *Gavin v. Branstad*, 122 F.3d 1081 (8th Cir. 1997), *cert. denied*, 118 S.Ct. 2374 (1998); *Dougan v. Singletary*, 129 F.3d 1424 (11th Cir. 1997), *cert. denied*, 118 S.Ct. 2375 (1998).

Conclusion

This Court should reverse the Seventh Circuit's judgment.

Respectfully submitted,

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