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

DAVID RUIZ, et al.,
Plaintiffs,

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

vs.

WAYNE SCOTT, et al.,
Defendants.

Civil Action No. H-78-987

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION TO VACATE FINAL JUDGMENT**

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TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### FEDERAL CASES

## TABLE OF AUTHORITIES

### FEDERAL CASES (continued)

## INTRODUCTION

By their counsel the Attorney General, defendants have moved, pursuant to Rule 60(b)(5), to vacate the Final Judgment entered on December 11, 1992. The Final Judgment was arrived at by agreement of the parties and is a carefully crafted compromise. By it, defendants achieved an end to active judicial supervision of the Texas state prisons and eliminated hundreds of pages of court orders prescribing a myriad of details of prison operations. Plaintiffs achieved retention of the Court's jurisdiction and a few continuing injunctive provisions. The injunctions serve as a bulwark to support the reforms that they won only after a hard-fought trial and appeal, in the course of which the Court found widespread and egregious constitutional violations affecting every aspect of prison operations and prison life. The few continuing injunctive provisions are very general, yet establish rock bottom guarantees that Texas prisons do not backslide into the abysmal conditions that persisted until relieved by order of the Court.

The parties intended the Final Judgment to have continuing, not temporary, effect. As the Court observed, "the parties have chosen to include in the proposed final judgment certain permanent injunctions that prescribe or proscribe defendants' future actions in several key areas." Memorandum Opinion, Dec. 11, 1992, p.3 (emphasis added). See also, Memorandum Opinion, Dec. 11, 1992, p.32 ("parties intended to avoid . . . future litigation"); Final Judgment, Sec. XIII.A, Acknowledgements (reciting events affecting defendants' obligations that "may or may not" occur in the future). Nonetheless, defendants now seek to vacate all such protections for the plaintiff class even though they admit that the Final Judgment has no practical impact on their operation of the prisons and they would not do anything different if the Final Judgment did not exist. Motion To Vacate Final Judgment, p. 5. Defendants are not entitled to any such relief.

## I. DEFENDANTS' MOTION SHOULD BE SUMMARILY DENIED AS A MATTER OF LAW BECAUSE THEIR ALLEGATIONS DO NOT MEET THE REQUIREMENTS FOR RELIEF FROM JUDGMENT UNDER RULE 60(b)

### A. Facts Alleged by Defendants

The factual thrust of defendants' motion is that they have "a strong and continuing commitment to maintain a constitutional prison system," have complied with the Court's orders, and current conditions meet constitutional minima; id., p. 3; see also 4, 5, 6, 7, 9. Therefore, they say, the Judgment should be terminated.

Defendants allege that "the prison system has no crowding problem." Motion To Vacate Final Judgment, p. 2. They further allege that because the Final Judgment "vacated all specific building limitations and requirements," it "allowed prison construction to proceed unimpeded by court-imposed capacity limits." Id., p. 3. Defendants therefore mounted "the largest prison construction effort ever before seen, anywhere in the world," and the "prison overcrowding crisis has been resolved." Ibid. Defendants specifically assert that they currently have a capacity of almost 150,000 beds, "which includes beds available but not used." Id., p. 4.

Defendants acknowledge that "no practical effect would be felt by the vacating of the Final Judgment." Id., p. 5. "[N]o prison policy or practice which the state would desire to employ...is in any way impeded by the Final Judgment." Id.

### B. Rule 60(b) Requires That The Court Do Equity

Rule 60(b)(5) provides, in pertinent part:

> "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . . (5) the judgment has been satisfied, released, or discharged, . . . or it is no longer equitable that the judgment should have prospective application; . . . ."

As the Supreme Court explained in Rufo v. Inmates of the Suffolk County Jail, 502 U.S. 367, 112 S.Ct. 748 (1992):

> "Rule 60(b) provides that a party may obtain relief from a court order when 'it is no longer equitable that the judgment should have prospective application,' not when it is no longer convenient to live with with the terms of a consent decree." 112 S.Ct. at 760.

As the Court further stated in Rufo, "a consent decree is a final judgment that may be reopened only to the extent that equity requires." 112 S.Ct. at 764 (emphasis added). The Court noted the equitable nature of Rule 60(b) relief also in one of the school desegregation cases on which defendants rely in their motion, Freeman v. Pitts, ___ U.S. ___, 112 S.Ct. 1430, 1444 (1992) ("essence of a court's equity power lies in its inherent capacity to adjust remedies in a feasible and practical way to eliminate the conditions or redress the injuries caused by unlawful action").

Defendants' moving papers establish that equity does not support, much less require, the reopening of the consent decree that is the Final Judgment in this case. Defendants have not alleged that the judgment they seek to abrogate impinges in any way on their ability to manage their prisons. To the contrary, they expressly acknowledge "that no practical effect would be felt by the vacating of the Final Judgment" and that "no prison policy or practice . . . is in any way impeded by the Final Judgment." Motion To Vacate Final Judgment, p.5.

No case cited by defendants, and no case of which plaintiffs are aware, indicates that a party can enter into a consent judgment to resolve hard-fought litigation after specific findings of unconstitutional practices, and then -- with no allegation of either changed circumstances or practical impact on its operations -- turn around and disavow the judgment to which it agreed. Defendants' current motion could as easily have been made on December 12, 1992, the day after the

constitutional compliance and reformed attitude, as they do now. Record of Proceedings, October 28, 1992, Collins testimony, Scott testimony and Vance testimony. To have any meaning, however, the parties' solemn agreement to long-term, continuing obligations requires defendants, at a minimum, to show that something concrete has changed so that such obligations are no longer equitable. There must be allegation and proof that the Judgment's obligations have some practical, detrimental impact on the prison system's operations. Since there is no such allegation here, defendants' motion must be denied: no court of equity sits to do idle acts or render abstract opinions.

Further, sitting as a court of equity under Rule 60(b), the Court should not subject the parties to the very substantial expense and burden of the discovery and hearing that would be necessary to test defendants' allegations that they have achieved and can be expected to maintain constitutional conditions in their prisons. The original trial in this case was 159 days long and involved 349 witnesses and 1565 exhibits, after four years of pretrial discovery, and then the prison system was comprised of no more than seventeen units housing no more than 25,000 prisoners. Ruiz v. Estelle, 503 F.Supp. 1265, 1274 n. 1 and 1276 (S.D. Tex. 1980). After "the largest prison construction effort ever before seen, anywhere in the world" (Motion To Vacate Final Judgment, p. 3), creating a capacity of 150,000 beds in an undisclosed number of prison units (Id., p. 4), discovery and retrial in the mid-1990's could dwarf any prior proceedings in this case. It will not be possible to shortcut the discovery and hearing process. As the Supreme Court said in Rufo, it is not sufficient for a party to assert that "the constitutional violation underlying the decree has disappeared and will not recur;" rather, a district court is required to make detailed "findings." 112 S.Ct. at 763, n.12; see also Board of Education v. Dowell, 498 U.S. 237, 249-250, 111

at 763, n.12; see also Board of Education v. Dowell, 498 U.S. 237, 249-250, 111 S.Ct. 630, 638 (1991). The findings must include not only that current conditions are constitutional, but also that (1) abrogating the Court's orders will not "create" unconstitutional conditions (Rufo, 112 S.Ct. at 763-64) and (2) the Rufo standards for modification are met.

### C. Rufo Requires A Significant Change In Circumstances That Warrants Revision Of The Final Judgment

In Rufo, the Supreme Court held that Rule 60(b),

> "in providing that, on such terms that are just, a party may be relieved from a final judgment or decree where it is no longer equitable that the judgment have prospective application, permits a less stringent, more flexible standard [than the "clear showing of grievous wrong evoked by new and unforeseen conditions" standard actually applied in United States v. Swift & Co., 286 U.S. 106, 119 (1979)]." 112 S.Ct. at 758.

The Court distinguished "institutional reform" cases which "involve the supervision of changing conduct or conditions" from cases like Swift where the "grievous wrong" standard fits because they involve "rights fully accrued upon facts so nearly permanent as to be substantially impervious to change." Rufo v. Inmates of the Suffolk County Jail, supra, 112 S.Ct. at 758, quoting United States v. Swift & Co., supra, 286 U.S. at 114-15. The Court held in Rufo that the lower courts had erred in denying modification of the jail conditions consent decree based on the Swift "clear showing of grievous wrong evoked by new and unforeseen conditions" standard. It prescribed a new, more flexible standard for "institutional reform cases" and remanded the case for application of the newly articulated standard.

Under Rufo, the Court is empowered, in the exercise of "sound judicial discretion," to modify consent decrees agreed to by the parties, even over the objections of one of the parties, provided that certain standards are met. 112 S.Ct. at 758. The standard adopted by the Supreme Court is nowhere to be

decree bears the burden of establishing that a significant change of circumstances warrants revision of the decree. If the moving party meets this standard, the court should consider whether the proposed modification is suitably tailored to the changed circumstance." Id. at 760.

Meeting the "initial burden" on such a motion requires defendants to show "either a significant change in factual conditions or in law." Id. Defendants have not attempted to do that here. Nor do they suggest, in Rufo terms, that compliance with the Judgment has become "substantially more onerous," or that the Judgment has become "unworkable because of unforeseen obstacles." 112 S.Ct. at 760. To the contrary, they acknowledge that vacating the Judgment would have "no practical effect" on their operations. Mot. To Vacate Final Judgment, p. 5.

Rufo establishes that relief "should not be granted where a party relies upon events that actually were anticipated at the time it entered into a decree." Id. On this point, the Supreme Court expressly relied on the Fifth Circuit's decision adverse to defendants in this very case, Ruiz v. Lynaugh, 811 F.2d 856, 862-63 (5th Cir. 1987). Here, defendants do not allege that the Judgment should be vacated because of any unanticipated event. Indeed, their witnesses testified in support of the Judgment that they fully anticipated complying with the Judgment, and that they were in compliance with the Constitution at the time the Final Judgment was approved. See generally, Collins, Scott and Vance testimony, Record of Proceedings, October 28, 1992.

Only if the moving party meets its initial burden does the Court reach the question of "whether the proposed modification is suitably tailored to the changed circumstance." Id. at 763. Here, defendants "proposed modification" is

complete abrogation of the Judgment. Defendants do not demonstrate that such sweeping relief is "suitably tailored" to meet any changed circumstance.

Finally, defendants are not entitled to relief on the ground that they undertook "to do more than the Constitution itself requires." Rufo, 112 S.Ct. At 762. As the Supreme Court pointed out, "almost any affirmative decree beyond a directive to obey the Constitution necessarily" requires more than bare constitutional minima. Id. at 762-63; see Dowell, supra, 111 S.Ct. at 638; Local 93, Firefighters v. City of Cleveland, 478 U.S. 501, 525 (1986) (consent decree enables federal court to adopt remedial measures broader than those available after trial); Badgley v. Santacroce, 800 F.2d 33, 38 (2d Cir. 1986). The Fifth Circuit has made it plain in this and other prison cases that elements of relief may go beyond constitutional mandates. Ruiz v. Estelle, 679 F.2d 1115, 1155-56 (5th Cir. 1982) ("well-settled" that court "may require remedial measures that the Constitution does not of its own force initially require").[1/] The Court expressly recognized this in approving the Final Judgment. Mem. Opin., Dec. 11, 1992, at p.31-32.

In fact, defendants make no attempt to justify relief from the Final Judgment under Rufo. They do not even cite Rufo in their motion, despite its being the most recent Supreme Court decision construing Rule 60(b) in the context of jail or prison conditions litigation. Presumably, as they did in 1992 on their prior motion for full relief from judgment, they will argue that Rufo does not apply to motions for relief based on compliance with the Constitution and

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2. See Newman v. Alabama, 559 F.2d 283, 288 (5th Cir. 1977); Miller v. Carson, 563 F.2d 741 (5th Cir. 1977); see also Preston v. Thompson, 589 F.2d 300, 303 (7th Cir. 1978). The "court may order forms of relief not usually required by the Constitution but nevertheless necessary given the circumstances ..." Smith v. Sullivan, 611 F.2d 1038, 1044 (5th Cir. 1980).

achievement of the purposes of the litigation. Preliminary Response To Plaintiff's Memorandum In Opposition to Motion For Relief From Judgment (April, 1992). But Rufo specifically involved a Rule 60(b)(5) motion seeking relief from a consent decree in a jail or prison conditions case, and cannot so easily be discarded.

Rufo does not appear to preclude a Rule 60(b) motion based on compliance with the Constitution and court orders in all cases. Defendants in this case are unable to justify relief from judgment under Rufo because the parties, at the Court's direction, anticipated the changed circumstances of improved conditions and practices and the readiness of state officials to retake control of state prisons, and they negotiated the Final Judgment to supersede the prior, detailed orders in this case. As defendants note, the Final Judgment "(1) returned day-to-day operational control of [their] state prison system to state officials and (2) brought two decades of litigation to an end." Motion To Vacate, p. 2. In fact, in asking the Court to approve the Final Judgment, the TDCJ director testified that it actually "supports" his "ability to exercise [his] discretion as a correctional administrator and make the kinds of decisions that [he needs] to make about how the prison system is going to be run." Record of Proceedings, Oct. 28, 1992, Collins testimony at pp. 25-26. The current director testified that the Judgment is "in the best interest of that system." Id., Scott testimony at p. 71. The Chairman of the TDCJ Board agreed. Id., Vance testimony at p. 76. The parties took full account of the federalism interests defendants now invoke (see, Motion to Vacate Final Judgment, p. 7) when they negotiated the Final Judgment and petitioned the Court to enter it as the Final Judgment in this action.

### D. The Dowell Standard Is Specific To Desegregation Cases And Cannot Be Imported To The Prison Conditions Context Without Modification

Defendants cannot make a case for equitable modification under Rufo and so instead rely on Board of Education v. Dowell, supra, 498 U.S. 237, 111 S.Ct. 630 (1991), in which the Supreme Court held that a school district would be entitled to vacation of a school desegregation decree under Rule 60(b) if it proved and the district court found that it was operating the school district

> "in compliance with the commands of the Equal Protection Clause of the Fourteenth Amendment and that it was unlikely that the school board would return to its former [intentionally discriminating on the basis of race] ways. No additional showing of 'grievous wrong evoked by new and unforeseen conditions' is required of the school board." 498 U.S. at 247.

Defendants allege that they have remedied all past constitutional violations and that they would maintain constitutional conditions even if the Final Judgment were vacated.[2/]

Despite the superficial appeal of defendants' attempt to analogize this prison conditions case to school desegregation cases, the difference in the nature of the constitutional rights at stake precludes simply importing the law of school desegregation remedies to prison conditions cases like this one. In a school desegregation case like Dowell, the constitutional wrong is the state action that causes schools to be segregated. The state's constitutional obligation is not itself to cause schools to be segregated. The state has no affirmative constitutional obligation to maintain racially integrated schools, only the obligation not to cause racial imbalance in its schools. The remedy in a school desegregation case is to neutralize the past state action that caused segregation so that any remaining

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2. In addition to Dowell, defendants rely on a second, similar school desegregation case, Freeman v. Pitts, 112 S.Ct. 1430 (1992).

imbalance is attributable to private and not state action. At the point in time when the state can prove and the courts can find that the state's segregative actions have been neutralized so that any remaining imbalance is purely the result of private action, the case is over. The state has no continuing obligation to desegregate, or to prevent re-segregation by private action. See Freeman v. Pitts, ___ U.S. ___, 112 S.Ct. 1430 (1992)[3/]. There is no justification for continuing prospective desegregation relief because there is no prospective obligation to desegregate or to prevent resegregation.

By contrast, in an institutional reform case like this one and Rufo, as defendants recognize, the state has an affirmative and continuing obligation to provide for its prisoners' basic human needs, e.g., food, clothing, shelter, medical care and reasonable safety. Mot. to Vacate at p.9; see, e.g., Helling v. McKinney, ___ U.S. ___, 113 S.Ct. 2475, 2480-81 (1993); DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 109 S.Ct. 998, 1005-06 (1989); Estelle v. Gamble, 429 U.S. 97 (1976). For as long as the state runs prisons, there is not a point in time when its affirmative constitutional obligation to provide the basic necessities of life protected by remedial court orders in prison cases can be said to be extinguished.

The nature of the Fourteenth Amendment right at stake in school desegregation cases -- the right to be free from state-intended, state-sanctioned, de jure school segregation -- is the foundation for the conclusion that school

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3. "Racial balance is not to be achieved for its own sake .... Once the racial imbalance due to the de jure violation has been remedied, the school district is under no duty to remedy imbalance that is caused by demographic factors." 112 S.Ct. at 1447. "If the unlawful de jure policy of a school system has been the cause of the racial imbalance in student attendance, that condition must be remedied. The school district bears the burden of showing that any current imbalance is not traceable, in a proximate way, to the prior violation." Ibid.

desegregation decrees are intended to be temporary, for the transitional period between the time of de jure discrimination and the elimination of the segregative effects of de jure discrimination in public schools. See, Board of Education v. Dowell, supra, 498 U.S. 237, 247-248, 111 S.Ct. 630 (quoting "transition" language in Brown v. Board of Education, 349 U.S. 294, 299-301 (1955) and Green v. New Kent County School Board, 391 U.S. 430, 486 (1968), explaining that school desegregation decrees are "temporary" and "not intended to operate in perpetuity").[4/] Once a school district has achieved "unitary status" by having ceased intentionally discriminating and eliminated the vestiges of its prior discrimination, the conditions that violate the Constitution or that flow from a violation of the Constitution have been eliminated and the purposes of the school desegregation litigation have fully been achieved. See, Board of Education v. Dowell, supra, 498 U.S. 237, 245-247, 111 S.Ct. 630.[5/]

By contrast, prospective application of the Final Judgment in this case is aimed at ensuring against the recurrence of conditions that violate the Constitution. Even if, as defendants contend, "the State has remedied all past constitutional violations" (Motion To Vacate Final Judgment, p. 7), recurrence of

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4. Like the relief at issue in United States v. Swift & Co., supra, the Final Judgment in this case was intended to have continuing, not temporary, effect.

5. Dowell was a case in which the school system had been under federal court supervision for 25 years, and the trial court concluded, in its "Order Terminating Case," that the desegregation plan had "worked and that substantial compliance with the constitutional requirements has been achieved." 111 S.Ct. at 633. The Supreme Court nonetheless refused to terminate the injunction, instead remanding the case for specific findings of whether the defendants had "made a sufficient showing of constitutional compliance" and whether the "vestiges" of unconstitutionality "had been eliminated to the extent practicable." Id. at 638. In doing so, the district court was directed to consider "every facet" of the defendants' operations. Id. In this case, defendants would not be able to carry the burden necessary for this Court to make any comparable findings. See point II, infra.

even one or some of the abysmal conditions that characterized the prison system at the time of trial would violate the Constitution.

There are cases in which vacation of prison decrees is appropriate. Thus, as defendants note (Motion To Vacate, p. 8), the Fifth Circuit ordered termination of jurisdiction in Taylor v. Sterrett, 600 F.2d 1135 (5th Cir. 1979). In that simple single jail facility case, the jail that originally had been subject to suit had been replaced and removed from service. The district court had never ruled that any conditions in the original or new jail facility were unconstitutional. The district court was expanding its supervision of the jail, over defendants' objections, without benefit of findings of constitutional violations, even after the new jail replaced the old jail and the plaintiffs conceded that the new jail met the requirements of the orders in the case. There is no comparison between this case and Taylor v. Sterrett. This was a complex multi-issue, system-wide case. There was extensive discovery and a lengthy trial and detailed findings of egregious constitutional violations. Though the system has been expanded and there have been many changes since trial, the prison system has not been replaced by a new one. Finally, in this case, the Court was sensitive to its "duty to return the operations and control of [prisons] to local authorities" (Freeman v. Pitts, supra, 112 S.Ct. at 1445, involving schools rather than prisons) beginning in the late 1980's when it began directing the Office of the Special Master and the parties to reduce the scope of federal intrusion. As the Court noted in its Memorandum Opinion detailing the grounds for its approval of the Final Judgment, the parties to this action chose to include prospective injunctive relief rather than complete termination of the Court's jurisdiction, despite the Court's having invited the parties to suggest a timetable for termination of jurisdiction. Memorandum Opinion, pp. 2-3.

In short, Board of Education v. Dowell, Freeman v. Pitts and Taylor v. Sterrett might be good authority for a motion to vacate a different injunctive decree in a different case, but their underlying principles do not justify defendants' application for relief from judgment in this case.

## II. IF THE COURT WERE TO AGREE THAT DEFENDANTS' ALLEGATIONS ARE SUFFICIENT, PLAINTIFFS ARE ENTITLED TO TEST THEM BY REASONABLE DISCOVERY AND INVESTIGATION AND AN EVIDENTIARY HEARING

Plaintiffs deny defendants' factual assertions that current conditions meet constitutional requirements in all respects and will put defendants to their proof on their allegations. For example, as putative intervenors Brown and Culberson point out, defendants are "forced to argue and show that no condition outlawed by the Final Judgment will recur." Opening Brief In Support Of The Motion Of Representative Culberson and Senator Brown To Intervene As Party Defendants, p. 21. The record already shows that, absent enforceable limits on prison population, defendants cannot maintain constitutional conditions. See e.g., Ruiz v. Estelle, 503 F.Supp. 1265, 1277-78 (S.D. Tex. 1980).

The Court's Order of May 31, 1996, recognized the need for the "development of a factual record." Order at p.4. As argued in point I above, plaintiffs believe that defendants' motion should be denied as a matter of law, since its allegations on their face do not meet the requirements of Rule 60(b). However, if the Court believes that defendants' allegations are sufficient to call for factual development and an evidentiary hearing, plaintiffs will of course cooperate in that process.

## CONCLUSION

For the reasons stated, the Motion to Vacate the Final Judgment should be denied.

DATED: June 19, 1996

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IN THE UNITED STATES DISTRICT COURT
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HOUSTON DIVISION

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| DAVID RUIZ, et al.,<br><br>Plaintiffs,<br><br>UNITED STATES OF AMERICA,<br><br>Plaintiff-Intervenor,<br><br>v.<br><br>WAYNE SCOTT, et al.,<br><br>Defendants. | Civil Action No. H-78-987<br><br>**ORDER DENYING MOTION TO VACATE FINAL JUDGMENT** |

The Court has considered defendants' Motion To Vacate Final Judgment, the memorandum and other papers filed in support thereof, and plaintiffs' opposition to the motion. Based on the foregoing papers and the file in this action, for good cause shown, IT IS HEREBY ORDERED the the Motion To Vacate Final Judgment be and is hereby DENIED.

Dated: _____

_____
William Wayne Justice
United States District Court Judge

PROOF OF SERVICE

I, Christine Huntoon, hereby certify that:

I am a resident of the State of California, County of San Francisco; am over the age of eighteen years and not a party to the within entitled action. My business address is 390 Hayes Street, San Francisco, California.

On June 19, 1996, I caused the within PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION TO VACATE FINAL JUDGMENT to be served on all parties in the within action by placing a copy thereof in a sealed envelope in the United States Mail at San Francisco, California addressed as follows:

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I certify under penalty of perjury that the foregoing is true and correct.

Executed on June 19, 1996, in the City and County of San Francisco, California.

Christine Huntoon