IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

David Ruiz, *et al.*,	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
	§	**Civil No. H-78-987**
Wayne Scott, Director TDCJ-ID, *et al.*,	§	
Defendants.	§	

ORDER

Defendants have moved to vacate the discovery order entered in the above-entitled and numbered civil action, and to terminate the prospective relief contemplated in the final judgment thereof, pursuant to a section of the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626(b)(1)(iii). The motion to vacate the discovery order is lacking in merit, and it will be denied. No order will issue on the motion to terminate relief until a factual inquiry to determine its applicability is completed.

Defendants strenuously object to both the pace and the extent of the discovery inspections being conducted by the plaintiffs' class. It is argued that the pace of discovery offends the statutory mandate to rule promptly on motions to terminate relief. The defendants argue:

> Nineteen months, an appeal, a mandamus petition, and a motion to terminate pursuant to 18 U.S.C. § 3626(b)(1) later, the Court has yet to rule on the constitutionality of the Prison Litigation Reform Act. If the court finds the Act to be unconstitutional, then none of the effort of the parties towards cooperation and discovery will be of any moment. If the court finds the act to be constitutional, then it must act "promptly" pursuant to the Act. 18 U.S.C. § 3626(e)(1). Permitting global discovery with no discernible temporal end cannot fall within the spirit of the PLRA's mandate to rule promptly.
> Defendants' Motion to Reconsider and Vacate Order of Discovery at 3.

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One unfamiliar with the record of this case might be persuaded by this account, but the court does not fall within that category. Plaintiffs' efforts at discovery were blocked by defendants for a significant portion of the nineteen months referred to. It was the unfavorable resolution of defendants' own appeal which ended their intransigence as to the plaintiffs' right to conduct discovery. Furthermore, defendants have canceled site inspections and delayed their rescheduling. Defendants have also taken considerable time to produce death records requested by the plaintiffs. Despite these delays, plaintiffs have notified defendants that site inspections should be completed in September, 1998. After examining the declarations of the parties, it is found that the plaintiffs are making a prompt effort to complete discovery as ordered by the United States Court of Appeals for the Fifth Circuit and this court.

As to the breadth of discovery, it should be noted that, while the eight substantive areas discussed in the final judgment in this case are discrete, they nonetheless cover significant, sometimes interrelated, aspects of the treatment of inmates. Moreover, plaintiffs may seek information that "appears reasonably calculated to lead to discovery of admissible evidence" pertaining to current and ongoing constitutional violations within these eight areas. Fed. R. Civ. P. 26(b)(1). A certain magnitude of discovery inheres in the process of ruling on a PLRA termination motion, especially in a case of this size, regarding a prison system as large the Texas Department of Criminal Justice-Institutional Division. Recognizing this inescapable fact, the United States Court of Appeals for the Sixth Circuit noted, "[i]n many cases, including those now before us on appeal, the district courts' statutory task of ascertaining the presence of a current or ongoing violation of a federal right requires delving into complex factual or legal intricacies and a court record spanning many years." *Hadix v. Johnson*, 1998 WL 251069 (6th Cir. May 20, 1998).

The present acknowledgment of the size of the task at hand is in no sense an endorsement of delay or of discovery outside of the substantive areas; nor is it an even slight disagreement with the Fifth Circuit's assessment of the discovery requirement:

> Relevantly updating [the record] to the present with respect to the "eight substantive issues" as to which the December 1992 judgment issued "continuing permanent injunctive orders" should not be overly burdensome or time consuming . . . . Plaintiffs have not even alleged that there is any current or ongoing constitutional violation in the prison system.[1] Opinion at 26.

A discovery process in "the genuine spirit of promptness and brevity" has been ordered. At this juncture, no transgression on the part of the plaintiffs has been observed.

As for the promptness of a ruling on the constitutionality of the PLRA, it is preferable to avoid the constitutional question if possible, and it is somewhat disingenuous to contend that the factual inquiry soon to be resolved, which is material to both the applicability of the PLRA and the defendants' compliance with the 1992 consent decree, can be avoided for any appreciable amount of time.

Defendants have presented a second motion for termination of the final judgment, this latest pursuant to 18 U.S.C. § 3626(b)(1)(iii). That portion of the PLRA provides for termination

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[1] This last premise must be updated, however. Plaintiffs now allege:

> [W]e have secured evidence and will use discovery to seek further evidence of unauthorized punishment in violation of due process and indicative of deliberate disregard of prisoners and their needs, excessive and unnecessary force by correctional officers, prisoner violence and victimization caused by crowding and lack of sufficient staff in living units, deliberate indifference to prisoners' requests and needs for protection from other prisoners, exacerbation rather than amelioration of crowding since entry of the Final Judgment (lockdowns, use of administrative segregation, greater restrictions in close and medium custody), administrative segregation based on ethnic origin and freeworld residence instead of individual characteristics (evidencing the stress of overcrowding), extreme isolation and deprivation of activity in administrative segregation, and a systematic failure and refusal to meet prisoners basic needs. Supplemental Declaration of Donna Brorby in Opposition to Motions to Terminate Discovery and Jurisdiction at 8-9.

of prospective injunctive relief, in civil actions related to prison conditions, two years after the date of enactment of the PLRA, an anniversary that has now passed. Already pending is the defendants' motion to terminate relief under 18 U.S.C. § 3626(b)(2), which terminates prospective injunctive relief that does not include certain findings regarding the necessity and narrowness of such relief. Both of the provisions under which termination motions have been filed are inapplicable if the savings clause of the termination section is given effect, that is, if the court makes written findings based on the record that, *inter alia*, prospective relief remains necessary to correct a current and ongoing violation of the federal right. 18 U.S.C. § 3626(b)(3).

It has been stated by previous order that the first motion to terminate relief in compliance with 18 U.S.C. § 3626(b)(2) will not be resolved until a factual hearing is conducted to determine whether the savings clause of 18 U.S.C. § 3626(b)(3) is triggered. This determination was made, in part, in an effort to resolve the pending termination motion without reaching the constitutional challenges made by the plaintiffs. That rationale applies with equal force to the second termination motion, which may also be resolved on factual grounds; thus, consideration of defendants' most recent motion must be deferred until a factual inquiry is completed.

Accordingly, it is

ORDERED and **ADJUDGED** that defendants' Motion to Reconsider and Vacate the Order of Discovery should be, and it is hereby, **DENIED**.

Signed this 16th day of July, 1998.

William Wayne Justice
Senior United States District Judge