No. 99-248

In the Supreme Court of the United States

JEFFREY LOYD, ET AL., PETITIONERS

v.

ALABAMA DEPARTMENT OF CORRECTIONS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record

BILL LANN LEE
Acting Assistant Attorney General

MARK L. GROSS
MARIE K. MCELDERRY
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the district court erred in permitting the Attorney General of Alabama to seek termination, pursuant to Section 802(a) of the Prison Litigation Reform Act of 1995 (PLRA), 18 U.S.C. 3626(b)(2) (Supp. IV 1998), of a consent decree to which no state agency was a party, when the State was a party to the action in which the decree was entered, and the decree imposed obligations on a state agency.

2. Whether 18 U.S.C. 3626(b)(2) (Supp. IV 1998) of the PLRA violates the doctrine of separation of powers or deprives petitioners of vested property rights without due process of law.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statute and rules—Continued: Page

In the Supreme Court of the United States

No. 99-248

JEFFREY LOYD, ET AL., PETITIONERS

v.

ALABAMA DEPARTMENT OF CORRECTIONS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A18) is reported at 176 F.3d 1336. The opinion of the district court (Pet. App. A19-A20) is unreported. The consent order approved and adopted November 7, 1994, the permanent injunction entered January 27, 1995 and the consent decree approved and adopted March 17, 1995 are reproduced at Pet. App. A21-A40, A41-A42 and A43-A49, respectively.

JURISDICTION

The judgment of the court of appeals was entered on May 26, 1999. The petition for a writ of certiorari was filed on July 6, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1992, petitioners—the class of all inmates who are or will be confined at the Jackson County jail in Scottsboro, Alabama—brought this action against Jackson County and several County officials (collectively County defendants) and the Alabama Department of Corrections, its commissioner, and the Administrator of the Jackson County Department of Health (collectively State defendants), challenging the conditions of their confinement. Pet. 1.[1] The County defendants in turn filed a cross-claim against the Alabama Department of Corrections and its Commissioner. *Ibid.*

In November 1994, the district court entered an order adopting a consent decree which addressed the conditions in the jail and required, *inter alia*, that "[i]nmates in the Jackson County Jail who have been sentenced to imprisonment in the custody of the Alabama Department of Corrections shall be transferred from the existing and new jail, and accepted by the Department of Corrections, on a timely basis." Pet. App. A33. Petitioners and the County defendants were parties to this decree; the State defendants were not. *Id.* at A2.

In January 1995, the district court entered a permanent injunction against the Alabama Department of Corrections, ordering, *inter alia*, that it accept transferred inmates and take any necessary steps to facilitate their transfer. Pet. App. A42. In March 1995,

---

[1] The Jackson County Department of Health is a part of the Alabama Department of Public Health. By suing the Administrator of the County Department of Health in his official capacity, petitioners effectively sued the State Department of Public Health as well.

the court approved and entered a second consent decree, requiring the Department of Corrections, its Commissioner, the Alabama Department of Public Health, and the Administrator of the Jackson County Department of Health to inspect and report on the conditions in the Jackson County jail. *Id.* at A43-A49. The Departments of Corrections and Public Health, as well as petitioners and the Administrator of the Jackson County Department of Health, were parties to this decree.

2. In July 1997, following the enactment of the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321-66 to 1321-77, the Attorney General of Alabama and the Commissioner of the Department of Corrections filed a motion to terminate both consent decrees and the permanent injunction, pursuant to the Act, codified in part at 18 U.S.C. 3626(b)(2) (Supp. IV 1998). Pet. App. A2. That provision permits a motion to terminate by a "defendant or intervener."[2] The Attorney General did not specifically invoke Federal Rule of Civil Procedure 24, which governs intervention in an action. He stated that a state statute authorized him to appear in any case in which Alabama has an interest, Ala. Code § 36-15-1(2) (1991), that he represented the Departments of Public Health and Corrections, and that he was intervening pursuant to Section 3626(b)(2) of the PLRA. Pet. App. A2-A3.

Pursuant to the PLRA, a court may not grant or approve prospective relief with respect to prison conditions unless it finds that the relief is "narrowly

---

[2] The court of appeals spells "intervenor" with an "o"; the statute spells it with an "e" ("intervener"). Except in quoting from the statute, we use the court of appeals' spelling.

drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary" to correct that violation. 18 U.S.C. 3626(a)(1)(A) (Supp. IV 1998). Section 3626(b)(2) provides for immediate termination of such relief that fails to comply with that standard, upon timely motion of a "defendant or intervener." Prospective relief shall not terminate if the court makes written findings that the relief remains necessary to correct a "current and ongoing violation of the Federal right," and otherwise satisfies the requirements of Section 3626(b)(1)(A). 18 U.S.C. 3626(b)(3) (Supp. IV 1998). A party may seek termination of prospective relief under Section 3626(b) even if the relief "was originally granted or approved before * * * the date of the [PLRA's] enactment of this title." § 802(b)(1), 110 Stat. 1321-70.

In January 1998, the district court granted the Alabama Attorney General and the Commissioner's motion to terminate both consent decrees and the permanent injunction, without an evidentiary hearing on the motion.[3] Pet. App. 19A; *id.* at A3. Petitioners appealed to the Eleventh Circuit, claiming that the Alabama Attorney General lacked standing to intervene to terminate the 1994 consent decree because the State of Alabama was not a party to it, that the district court erred in refusing to hold an evidentiary hearing on the termination motion, and that the PLRA's termination provisions were unconstitutional. *Id.* at A3. The United States intervened to defend the consti-

[3] The court of appeals held that the district court granted intervenor status to the Alabama Attorney General by accepting and ruling on the termination motion. Pet. App. A8.

tutionality of 18 U.S.C. 3626(b)(2), pursuant to 28 U.S.C. 2403(b)[4].

This court held, with one judge dissenting, that a party seeking to intervene as of right need only fulfill the requirements for intervention set forth in Federal Rule of Civil Procedure 24(a)(2) and need not demonstrate standing to sue, where, as here, there exists a justiciable case and controversy between the parties already in the lawsuit. Pet. App. A4. The court analyzed the interests of the Alabama Attorney General and the Department of Corrections collectively, as that of the State, and determined that the State's interest in the 1994 consent decree satisfied Rule 24(a)(2)'s requirements and therefore that the district court properly permitted the intervention of the Alabama Attorney General and the Department of Corrections. *Id.* at A5-A7. Judge Barkett, dissenting, would have held that because none of the parties to the consent decree had moved for its termination, the Alabama Attorney General and the Department were required to satisfy Article III standing requirements. *Id.* at A14-A15.

On the merits, the panel unanimously held that the district court had abused its discretion in refusing to

---

[4] At the time it moved to intervene in the present case, the United States had already intervened in a separate Eleventh Circuit appeal presenting the same constitutional issues. *Nichols* v. *Hopper*, 173 F.3d 820 (1999). The United States accordingly did not file a separate brief in this case, but asked the court of appeals to consider the arguments set forth in its brief filed in the related appeal. The court of appeals granted the United States' motion to intervene and agreed to adopt the United States' brief filed in the companion case. C.A. Order allowing U.S. to Intervene (Nov. 18, 1998). The court's docket, however, does not reflect the court's action on the United States' motion for intervention.

conduct an evidentiary hearing pursuant to 18 U.S.C. 3626(b)(3), concerning the current conditions at the Jackson County jail and the scope of prospective relief that the Alabama Attorney General wished to terminate, and remanded for such a hearing. Pet. App. A10. The court rejected petitioners' challenge to the constitutionality of 18 U.S.C. 3626(b)(2), concluding that the provision did not violate the doctrine of separation of powers or the Due Process Clause of the Fifth Amendment to the United States Constitution. Pet. App. A13.

ARGUMENT

1. a. Petitioners challenge the Alabama Attorney General's intervention to terminate the 1994 consent decree, on the ground that neither he, nor the two State agencies which he represents, were parties to it. Pet. 5. They contend that the courts below should have required him to establish standing to intervene, which, they claim, he could not do. Pet. 9-10. They ask this Court to resolve a conflict in the circuits concerning whether a party who seeks to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) can simply fulfill that Rule's requirements, or whether that party must also have standing. There is a "diversity of views" among the circuits on this question. See *Mausolf* v. *Babbitt*, 85 F.3d 1295, 1300 (8th Cir. 1996); *Diamond* v. *Charles*, 476 U.S. 54, 68 & n.21 (1986). But because the facts of this case do not squarely present the intervention issue urged by petitioners and because the Alabama Attorney General could in any event establish standing if required to do so, the petition should be denied.

Intervention was not necessary to permit the Alabama Attorney General to appear on behalf of the

state Departments of Corrections and Public Health in the district court, because those Departments were defendants in the lawsuit. Accordingly, the Attorney General's motion is not properly regarded as a motion to intervene under Rule 24(a)(2) of the Federal Rules of Civil Procedure. Rather, he sought relief in the form of termination of prospective relief on behalf of two agencies that were defendants in the lawsuit who were entitled by the terms of 18 U.S.C. 3626(b)(2) to seek termination of prospective relief.[5] This case may present the question whether a defendant in an action can move to terminate a consent decree entered therein, when he is not a party to the decree, but it does not present the question whether an intervenor must have standing, as stated in the petition. For that reason alone the petition should be denied.

b. Even if the State defendants were regarded as "intervenors" with respect to the 1994 consent decree entered into by the County defendants and the petitioners, and even if this Court were to hold that such intervenors must demonstrate standing, that ruling would afford petitioners no relief in this case. The State defendants have standing to challenge the 1994 consent decree because they were directly affected by it.

Although the Department of Corrections was not a party to the decree, Pet. 5, and therefore the decree could not properly impose obligations on the Department, *Local 93, Int'l Ass'n of Firefighters* v. *Cleveland*,

---

[5] In response to an inquiry by the district court concerning which defendants he sought relief on behalf of, the Attorney General stated that he was an "intervenor" under Section 3626(b)(2) and was representing the State Departments of Corrections and Public Health. Pet. 2-3.

478 U.S. 501, 529 (1986), nonetheless the decree expressly required that the Department accept prisoners transferred from the County jail. Pet. App. A33. In addition, the court of appeals found that the State had a sufficient interest to move for termination of the 1994 consent decree as a whole because the improvements in the County jail required by the decree "could only be achieved and maintained with a smaller prison population, making Alabama a key party to the success of the * * * decree." *Id.* at A9 n.9. The court found the decree was "not made up of two separate pieces, each of which can survive on its own." *Id.* at A9-A10 n.9. Thus, the decree did not, as petitioners contend, "impose duties and burdens on the sheriff and the county defendants alone." Pet. 9. The duty to accept prisoners, and the financial and administrative burden imposed on the Department of Corrections as a result, without its consent, amounts to an immediate and personal injury in fact. See *Warth* v. *Seldin*, 422 U.S. 490, 502 (1975); *Sierra Club* v. *Morton*, 405 U.S. 727, 740 (1972). Review is therefore not warranted in this case, because even if petitioners were to prevail in their argument that standing is required, a favorable decision would afford them no relief.[6]

---

[6] For the same reasons stated above, this case does not present the question of what "interest" qualifies for intervention pursuant to Rule 24(a)(2). Pet. 11-15. Should this Court regard the State defendants as intervenors and reach that question, their interest qualifies for intervention pursuant to the Rule.

Petitioners' contention that the Alabama Attorney General lacks standing to defend the district court's decision on appeal is likewise meritless. Pet. 10. Petitioners rely on *Diamond*, where the intervenor was the sole appellant. 476 U.S. at 61. That case does not apply here, where petitioners initiated the appeal, not the Alabama Attorney General, and where the County defendants

Although petitioners (Pet. 9, 13-14), and the dissenting judge below (Pet. App. A16), take issue with the findings of the courts below, this Court ordinarily does not "undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949). The Court should not, therefore, grant certiorari to review a judgment that hinges on such factual determinations.

In addition, the case is in an interlocutory posture. The court of appeals has remanded the case for a hearing under 18 U.S.C. 3626(b)(3), as to whether the consent decree should be terminated or modified. Developments in that hearing could change the legal landscape in ways that could affect the need for this Court to decide issues concerning the propriety of the State's role in the preliminary stages of the litigation.[7]

2. a. Petitioners contend that Section 3626(b)(2) of the PLRA violates the constitutional doctrine of separation of powers. This issue does not warrant this Court's review. Seven courts of appeals have concluded, as did the Eleventh Circuit in this case, that Section 3626(b)(2) is constitutional. See *Berwanger* v. *Cottey*, 178 F.3d 834 (7th Cir. 1999); *Benjamin* v. *Jacobson*, 172 F.3d 144 (2d Cir. 1999) (en banc), cert.

---

filed a brief in support of the district court's decision on appeal, indicating the existence of a live case or controversy. Cf. *ibid.*; Pet. 10.

[7] The hearing on remand may also illuminate Jackson County's position with respect to termination of the consent decree, Pet. 3, 9; Pet. App. A9, a matter that may bear on the need for intervention by the State defendants, and the necessary showing of interest for any such intervention. Cf. *Diamond* v. *Charles*, 476 U.S. at 61.

denied, 120 S. Ct. 72 (1999); *Imprisoned Citizens Union* v. *Ridge*, 169 F.3d 178 (3d Cir. 1999); *Hadix* v. *Johnson*, 133 F.3d 940 (6th Cir.), cert. denied, 118 S. Ct. 2368 (1998); *Inmates of Suffolk County Jail* v. *Rouse*, 129 F.3d 649 (1st Cir. 1997), cert. denied, 118 S. Ct. 2366 (1998); *Gavin* v. *Branstad*, 122 F.3d 1081 (8th Cir. 1997), cert. denied, 118 S. Ct. 2374 (1998); *Plyler* v. *Moore*, 100 F.3d 365 (4th Cir. 1996), cert. denied, 520 U.S. 1277 (1997).[8] This Court has denied petitions for review in five separate cases raising essentially the same constitutional questions presented by petitioners here; this case does not warrant a different outcome. Accordingly, the petition should be denied.

Petitioners argue (Pet. 16-22) that Section 3626(b)(2) violates the doctrine of separation of powers discussed in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). It does not. *Plaut* held that Congress may not require federal courts to reopen final judgments dismissing claims for monetary relief. *Plaut*, 514 U.S. at 218-219. But *Plaut* did not bar Congress from directing federal courts to modify prospective relief—the relief at issue in this case—to the extent that such relief fails to conform to new legal standards. In fact, *Plaut* reaffirmed the Court's decision in *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855), which upheld legislation that "altered the prospective effect of injunctions entered by Article III courts."

---

[8] A panel of the Ninth Circuit held that Section 3626(b)(2) violates the separation of powers doctrine. See *Taylor* v. *United States*, 143 F.3d 1178 (1998). Thereafter, the Ninth Circuit granted rehearing en banc, and withdrew the panel's decision. See *Taylor* v. *United States*, 158 F.3d 1059 (1998). The Ninth Circuit then issued an en banc decision, with a six-judge majority holding the case moot, without resolving the constitutional issue. See *Taylor* v. *United States*, 181 F.3d 1017 (1999) (en banc).

Plaut, 514 U.S. at 232. The crucial distinction is that final judgments on claims for monetary relief represent "the last word of the judicial department with regard to a particular case or controversy," *id.* at 227; while final judgments granting injunctive relief are always subject to modification or termination in light of a "significant change either in factual conditions or in law," *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992).[9] Therefore legislation that requires courts to reopen final judgments on claims for monetary relief violates the separation of powers doctrine; legislation that requires courts to modify prospective relief in accordance with a change in applicable law does not. *Hadix*, 133 F.3d at 942-943; *Dougan* v. *Singletary*, 129 F.3d 1424, 1426 (11th Cir. 1997); *Gavin*, 122 F.3d at 1085-1088; *Plyler*, 100 F.3d at 371-372.

---

[9] Petitioners point out that *Rufo* described an injunctive consent decree as a "final judgment that may be reopened only to the extent that equity requires," see *Rufo*, 502 U.S. at 391, and that Section 3626(b)(2) imposes a new reopening requirement that did not exist when the judgment in this case was pronounced. Pet. 17. But that statement in *Rufo* referred only to the appropriate scope of the modification; the Court readily acknowledged that "[a] consent decree must of course be modified if one or more of the obligations placed upon the parties has become impermissible under federal law." See 502 U.S. at 388. Section 3626(b)(2) simply requires courts to modify a consent decree which orders more extensive relief than is permissible under federal law.

Rufo involved Federal Rule of Civil Procedure 60(b), which authorizes discretionary judicial modification of judgments; while Section 3626(b)(2) requires modification in certain circumstances. But even if injunctions are usually modified at a court's discretion, the fact that they are frequently modified indicates that they are not "the last word of the judicial department" within the meaning of *Plaut*. See *Plaut*, 514 U.S. at 227.

It follows that the Eleventh Circuit's decision holding Section 3626(b)(2) constitutional is correct and does not warrant this Court's review. The PLRA changed the law applicable to cases involving prison conditions: it limited the prospective relief courts could provide to that which was narrowly drawn, least intrusive and extending no further than necessary to correct a violation of federal rights. Section 3626(b)(2) simply requires courts to terminate grants of prospective relief that do not comply with that new legal standard. The provision is therefore fully consistent with the separation-of-powers doctrine set forth in *Plaut* and *Wheeling & Belmont Bridge*. See *Hadix*, 133 F.3d at 943; *Dougan*, 129 F.3d at 1426-1427; *Gavin*, 122 F.3d at 1085-1088; *Plyler*, 100 F.3d at 372.

Petitioners contend that *Wheeling & Belmont Bridge* is distinguishable. That case, they argue, involved a change in the substantive rights of the parties, whereas here Congress directed courts to terminate prospective injunctions without altering the underlying constitutional rights. See Pet. 20 & n.12. That suggested distinction has no constitutional significance. Though Congress has not limited the scope of the Due Process Clause (and lacks authority to do so), it has limited judicial remedial authority, which it has the power to do. See *Yakus* v. *United States*, 321 U.S. 414, 439-440, 442 n.8 (1944). Just as Congress may require a court to alter prospective relief to conform to a change in substantive law, see *Wheeling & Belmont Bridge*, 59 U.S. (18 How.) at 432, it may require a court to alter prospective relief to conform to a change in remedial law. In terms of separation of powers, the two situations are the same. See *Gavin*, 122 F.3d at 1087, see also *Rouse*, 129 F.3d at 65 (relevant underlying law concerns district court's remedial authority, which the

PLRA has limited); *Plyler*, 100 F.3d at 372 (applicable law is not the Eighth Amendment, but district court's authority to grant relief exceeding that required by federal law).

b. Petitioners also contend (Pet. 23-26) that Section 3626(b)(2), in its retroactive application, deprives them of vested rights without due process of law in violation of the Fifth Amendment to the United States Constitution. Prospective orders are, however, always subject to possible modification or termination, and that principle is fully applicable to consent decrees. *Rufo*, 502 U.S. at 378. Therefore, petitioners had no vested property interest protected by the Due Process Clause in the prospective relief embodied in the two consent decrees or the injunction in this case. See *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 273-274 (1994) (explaining that plaintiff had no vested rights in an injunctive decree); see also *Hadix*, 133 F.3d at 943 n.3; *Dougan*, 129 F.3d at 1427-1428; *Gavin*, 122 F.3d at 1090-1091; *Plyler*, 100 F.3d at 374. *Tonya K.* v. *Board of Educ.*, 847 F.2d 1243 (7th Cir. 1988), cited by petitioners, is not to the contrary. That case suggests that plaintiffs may have vested rights in decisions "fixing interests in property." See *id.* at 1248. It does not establish a property interest in judgments granting prospective relief.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

BILL LANN LEE
Acting Assistant Attorney General

MARK L. GROSS
MARIE K. MCELDERRY
Attorneys

NOVEMBER 1999