No. 23-30633

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

KENT ANDERSON; STEVEN DOMINICK; ANTHONY GIOUSTAVIA; JIMMIE JENKINS; GREG JOURNEE; RICHARD LANFORD; LEONARD LEWIS; EUELL SYLVESTER; LASHAWN JONES,

Plaintiffs-Appellees

UNITED STATES OF AMERICA,

Intervenor Plaintiff-Appellee

v.

SUSAN HUTSON, SHERIFF, ORLEANS PARISH,
Successor to MARLIN N. GUSMAN,

Defendant/Third Party Plaintiff-Appellant

v.

CITY OF NEW ORLEANS,

Third Party Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

As set forth below, this Court already has held that it lacks jurisdiction to review the substance of the challenged orders, because no party appealed those orders when they were issued. A motion to terminate under the Prison Litigation Reform Act is not a proper vehicle for challenging the legality of those orders at the time they were issued. For this reason, the United States does not believe that oral argument is warranted.

Although the United States believes that this appeal can be resolved on the briefs, the United States will appear for oral argument if the Court deems argument would be helpful.

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STATEMENT OF JURISDICTION

The United States intervened as a plaintiff in this action to enforce the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (Title VI). On June 26, 2023, defendant/third party plaintiff-appellant Sheriff Susan Hutson (the Sheriff) moved under Section 3626(b) of the Prison Litigation Reform Act (PLRA), 18 U.S.C. 3626 *et seq.*, to terminate the district court's 2019 orders regarding construction of an 89-bed facility to house and treat detainees with serious mental-health and medical needs. ROA.19050-19070.[1] The district court denied the Sheriff's motion on September 5, 2023, and the Sheriff filed a timely notice of appeal on September 10, 2023. ROA.19500-19521; ROA.19536.

As explained below, although this Court has jurisdiction over PLRA motions to terminate under 28 U.S.C. 1292(a)(1), it lacks jurisdiction over the substance of the 2019 orders that the Sheriff seeks to terminate. Indeed, the Court *already* held earlier in this litigation that it lacks jurisdiction over the substance of the *same orders* because these orders were never appealed.[2]

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[1] "ROA.__" refers to the page numbers of the Record on Appeal. "Br. __" refers to page numbers in the Sheriff's opening brief.

[2] As later explained, the Sheriff's motion is not appropriately characterized as a PLRA motion to terminate. Rather, it is a collateral attack on the legality of the district court orders at the time that they were issued, based on a legal argument

STATEMENT OF THE ISSUES

1. Whether the Court lacks jurisdiction to review the substance of the challenged district court orders regarding construction of a new facility, where the Sheriff failed to appeal those orders at the time that they were issued.

2. Whether the Sheriff's motion fails as a procedural matter because a motion to terminate under Section 3626(b) of the PLRA is not an appropriate vehicle for arguing that the challenged district court orders violated the PLRA at the time that they were issued.

3. Whether the Sheriff is judicially estopped from arguing that the PLRA prohibited the district court from enforcing the Stipulated Order.

4. Whether the district court correctly rejected the Sheriff's argument that the challenged district court orders violated the PLRA's prohibition on judicial enforcement of private settlement agreements.

5. Whether the district court correctly held that Sheriff Hutson was bound by consent orders entered into by her predecessor, Sheriff Gusman.

STATEMENT OF THE CASE

This case concerns the responsibility of the Sheriff of Orleans Parish to provide appropriate housing and care for detainees with serious mental-health and

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that the Sheriff could have advanced in a direct appeal of those orders. For this reason, the Court should hold that it lacks jurisdiction altogether and dismiss the appeal.

medical needs consistent with the Eighth and Fourteenth Amendments to the Constitution. As explained below, to address those needs, the parties agreed to a Stipulated Order that eventually required construction of a new building, known as Phase III, within the secure perimeter of existing jail facilities to house and provide care for such populations. The Orleans Parish Sheriff was a driving force behind the decision to build Phase III; indeed, the Sheriff joined the United States and the plaintiff class in successfully opposing the City's subsequent efforts to withdraw from its commitment to build the new facility.

But there is, as they say, a new sheriff in town. On June 26, 2023—13 months after replacing the former sheriff—the current sheriff, Sheriff Hutson, filed a motion to terminate the same 2019 district court orders the City of New Orleans (City) previously challenged, which enforced the Stipulated Order and related agreement to build the new facility. The district court denied the motion, and the Sheriff appealed.

A. Early Litigation, Consent Judgment, And Stipulated Order

1. Private plaintiffs filed this action in 2012 against then-Orleans Parish Sheriff Marlin Gusman and other officials of the Orleans Parish Sheriff's Office in their official capacities, alleging unconstitutional jail conditions in violation of the Eighth and Fourteenth Amendments to the Constitution, including deliberate indifference to detainees' serious mental-health and medical needs. ROA.174-211.

The United States intervened, alleging violations of Title VI and CRIPA. ROA.1212-1251. In October 2012, the Sheriff filed third-party complaints against the City, seeking funding for any prospective relief that the court might order. ROA.1347-1407.

In 2013, the United States, the plaintiff class, and Sheriff Gusman entered into a Consent Judgment setting forth, among other things, procedures for addressing constitutional deficiencies in the treatment of detainees with serious mental-health and medical needs. ROA.4887-4939. In mid-2016, after years of delay and disagreements about implementation of the Consent Judgment, the parties entered into a Stipulated Order for Appointment of Independent Jail Compliance Director, which, at the parties' request, the district court entered as an order of the court (Stipulated Order). ROA.11303-11323. Among other things, the Stipulated Order provided for the appointment of a Compliance Director, with final authority over the Sheriff to operate the jail and to make binding decisions regarding how to implement certain aspects of the Consent Judgment. ROA.11304-11318. As relevant here, the Stipulated Order provided that "the City, the Sheriff, and the Compliance Director shall develop and finalize a plan for . . . appropriate housing for prisoners with mental health issues and medical needs." ROA.11316.

In January 2017, after extensive consultation with the parties and pursuant to the Stipulated Order, the Compliance Director submitted a Supplemental Compliance Action Plan (SCAP). ROA.11304-11317; ROA.11678-11693. The SCAP recommended the construction of a new treatment facility known as "Phase III" on existing Orleans Parish Sheriff's Office property, with 89 beds to house detainees with acute and sub-acute mental-health needs, an infirmary, and treatment space for all detainees with certain medical and mental-health needs. ROA.11685-11686. Sheriff Gusman signed the SCAP, along with the Compliance Director. ROA.11690.

B. The District Court's 2019 Orders And The City's Rule 60(b) Motion For Relief

1. For the next two years, the City represented to the district court that it was working toward constructing Phase III. But on January 25, 2019, the City informed the court that it was interested in exploring alternatives to constructing Phase III and asked the court for more time. ROA.16490. In response, given the City's prior agreement to the Stipulated Order and, by implication, to the recommendation of the SCAP, the court ordered the City to "direct the architect chosen to design the permanent facility described in the [SCAP] to begin the programming phase of the Phase III facility as soon as possible." ROA.13075 (January 2019 Order).

A month after the court issued the January 2019 Order, the City informed the district court that it was "actively working" with Sheriff Gusman and the Compliance Director "to program, design, and construct a Phase III project that meets the requirements of the Consent Decree, and does so in a cost-effective manner." ROA.13079. Based on this representation, on March 18, 2019, the district court ordered the City and Sheriff to "continue the programming phase of Phase III," to "work collaboratively to design and build a facility that provides for the constitutional treatment of [detainees with serious mental-health and medical needs] without undue delay, expense[,] or waste," and to provide monthly progress reports to "advise the Court of the City's progress toward construction of Phase III." ROA.13225-13226 (March 2019 Order).

2. On June 5, 2020, the City unilaterally ordered the architect and project manager for Phase III to stop work. ROA.16494. The City then filed a motion under Federal Rule of Civil Procedure 60(b)(5), arguing that changed circumstances warranted relief from the district court's January 2019 and March 2019 Orders (the 2019 Orders). ROA.14102-14122. After the other parties, including Sheriff Gusman, opposed the City's Rule 60(b) motion, the City advanced a new argument in its reply brief—that Section 3626(a)(1)(C) of the PLRA prohibited the court from ordering the construction of a new jail facility. ROA.15439-15441. Specifically, it argued that Section 3626(a)(1)(C)'s language

stating that "[n]othing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons" precluded the district court from issuing the 2019 Orders. ROA.15439 (citation omitted).

3. After a two-week hearing, the magistrate judge issued a Report and Recommendation (R&R) recommending denial of the City's motion. ROA.16473-16543. The magistrate found that the City's argument that the PLRA prohibited the district court from issuing the 2019 Orders was waived because the City had not raised it until it filed its reply brief. ROA.16501-16502. The magistrate also concluded that, even if the argument were not waived, it failed on its merits because the 2019 Orders did not "order[] the City to build a jail." ROA.16502-16508. The magistrate explained that in the Stipulated Order the City bound itself to whatever plan the Compliance Director ultimately submitted and then worked closely with the Compliance Director to fashion an acceptable plan. *See* ROA.16503. The district court adopted the magistrate's R&R on January 25, 2021, and the City appealed. ROA.16633-16637, 16642-16643.[3]

This Court affirmed the district court's decision in a published opinion on June 30, 2022. *See Anderson v. City of New Orleans*, 38 F.4th 472 (5th Cir. 2022).

[3] This Court granted then-Sheriff-elect Hutson leave to file an amicus brief in that appeal and allowed her to participate in oral argument. *See* Docs. 00516199962, 00516200006, 00516211675, *Anderson v. City of New Orleans*, 38 F.4th 472 (5th Cir. 2022) (No. 21-30072).

As relevant here, the Court declined to rule on the merits of the City's PLRA argument, holding that, because "Rule 60(b)(5) may not be used to challenge the legal conclusions on which a prior judgment or order rests," the Court lacked jurisdiction over "the substance of the January and March 2019 orders." *Id.* at 478 (citation omitted); *see also id.* at 479 (observing that if the City asserted its PLRA argument "as an independent issue of law," then the Court "would lack jurisdiction because the only basis for appeal is the Rule 60(b) motion").

C. Sheriff Hutson Takes Office And Moves To Terminate The District Court's Orders Relating To Phase III

1. On May 2, 2022, Sheriff Hutson was inaugurated as the new Sheriff of Orleans Parish. Sheriff Hutson was automatically substituted as a party under Federal Rule of Civil Procedure 25(d), replacing Sheriff Gusman.[4]

2. On June 26, 2023, approximately one year after this Court affirmed the district court's denial of the City's Rule 60(b) motion and 13 months into her term as Sheriff, Sheriff Hutson filed a Motion to Terminate All Orders Regarding the Construction of the Phase III Jail. ROA.19050-19070. Sheriff Hutson argued that "[t]he pending prospective relief ordering the construction of the Phase III jail and the associated orders" were private settlement agreements, and therefore the PLRA

[4] Rule 25(d) provides that "[a]n action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party."

forbid the court from enforcing them. ROA.19050-19051 (citing 18 U.S.C. 3626(g)(6)). She also argued that, "[e]ven if [the] [c]ourt had authority to enforce the private settlement agreement," the court "could not enforce [it] against Sheriff Hutson" because she "was not a party to the agreement." ROA.19051. She claimed that "[u]nder Louisiana law, private contracts entered into by one sheriff, like the private settlement agreement here, are not binding on successor sheriffs." ROA.19051.

Following briefing by the parties, the magistrate judge issued an R&R to deny the motion to terminate. ROA.19304-19333. The magistrate rejected the Sheriff's argument that the Stipulated Order was a private settlement agreement and therefore could not under the PLRA be enforced through the 2019 Orders, as well as her argument that she was not bound by commitments made by the previous sheriff. ROA.19311-19321.

After considering the Sheriff's objections to the R&R and the United States' response, the district court issued an order adopting the R&R and denying the motion to terminate. ROA.19500-19521. The district court accepted the magistrate judge's conclusions. ROA.19502-19511. In particular, the district court observed that this Court previously had declined to reach the City's argument that the 2019 Orders violated the PLRA on the ground that the City had never appealed those orders. ROA.19505-19506. The district court described the

Sheriff's motion to terminate as "yet another thinly-veiled attempt to end-run the original decision not to appeal those specific orders." ROA.19506.

3. The Sheriff appealed the denial of the motion to terminate. ROA.19536.[5]

SUMMARY OF THE ARGUMENT

This Court should affirm the district court's denial of the Sheriff's motion to terminate. The Court need not even reach the merits of the Sheriff's arguments, because her motion is jurisdictionally and procedurally improper and should be denied on those grounds alone. But if the Court reaches the merits, it should affirm for the reasons set forth below.

1. This Court lacks jurisdiction to review the Sheriff's argument that the 2019 Orders impermissibly enforce a private settlement agreement and therefore violate the PLRA. When the City challenged the legality of these *same* orders under another provision of the PLRA earlier in this litigation, the Court held that it lacked jurisdiction to review the substance of the orders because they were never appealed. The Sheriff cannot remedy her failure to timely appeal the orders under the guise of a PLRA motion to terminate.

[5] On September 10, 2023, the Sheriff filed in the district court a motion to stay pending appeal all orders regarding the construction of the Phase III facility. The district court denied the Sheriff's motion to stay on November 15. On November 27, the Sheriff filed a Motion to Stay in this Court, which the Court denied on December 13.

2. Even if the Court had jurisdiction to review the substance of the 2019 Orders, it should decline to reach the Sheriff's arguments because a motion to terminate under Section 3626(b) of the PLRA is not an appropriate vehicle for the Sheriff's legal challenge. The purpose of Section 3626(b) is to allow defendants to terminate prospective relief that is no longer necessary to correct a current and ongoing violation of federal rights. But the Sheriff's motion to terminate does not argue that the constitutional and statutory violations that the challenged orders sought to remedy have been cured. Rather, the motion is based on a (flawed) legal argument that the 2019 Orders violate different provisions of the PLRA, Sections 3626(c)(2) and (g)(6), because they impermissibly enforce a private settlement agreement. Because a PLRA motion to terminate is not a proper vehicle for the Sheriff's argument, this Court should decline to reach it.

3. The Court should also hold that the Sheriff is judicially estopped from arguing that the 2019 Orders violate the PLRA. In the context of the City's Rule 60(b) motion, the Sheriff's predecessor in office repeatedly argued that the 2019 Orders *did not* violate the PLRA and that the district court had authority to issue them to enforce the Stipulated Order and the related SCAP. The district court agreed with the Sheriff's arguments. The Sheriff should therefore be estopped from arguing the opposite now. Moreover, it does not matter that it was the Sheriff's predecessor, and not the current Sheriff, who took these contrary

positions; this Court has held that a successor may be judicially estopped from taking positions that conflict with those taken by her predecessor in the same litigation.

4. The district court correctly rejected the Sheriff's argument that the 2019 Orders unlawfully enforce a private settlement agreement in violation of Sections 3626(c)(2) and (g)(6) of the PLRA. At the urging of the parties, including then-Sheriff Gusman, the district court entered the Stipulated Order as an "order," retained jurisdiction over its enforcement, and made the need-narrowness-intrusiveness findings that the PLRA requires *only* for court-ordered prospective relief. The Stipulated Order was thus a consent order, not a private settlement agreement. As such, the 2019 Orders enforcing it did not violate the PLRA's prohibition on judicial enforcement of private settlement agreements.

5. The district court correctly held that Sheriff Hutson is bound by consent orders entered into by her predecessor in office, Sheriff Gusman. Federal Rule of Civil Procedure 25(d) provides that "when a public officer who is a party [to litigation] in an official capacity . . . ceases to hold office while the action is pending[,] . . . [t]he officer's successor is automatically substituted as a party." Accordingly, courts consistently have held that public officials are bound by consent orders entered into by their predecessors, even where the successor official may disagree with the consent order. There is no question that Sheriff Gusman had

authority to enter into the Stipulated Order and to agree to build Phase III to address the needs of detainees with mental-health and medical needs. Sheriff Hutson, as his successor in office, is thus bound to those agreements and must comply with the district court's orders enforcing them.

Sheriff Hutson incorrectly argues that she is not bound by Sheriff Gusman's agreement to the Stipulated Order because Louisiana state law forecloses sheriffs from entering into agreements that bind their successors. The authority she cites for this point relates to maintenance contracts, supplier agreements, and other contracts that are entirely irrelevant to her obligations under a federal consent order. But even if Louisiana law did generally limit a sheriff's ability to enter into consent orders that bind their successors, such state law must yield to federal law holding that public officials are bound by valid consent orders entered into by their predecessors.

ARGUMENT

I. This Court lacks jurisdiction to review the substance of the 2019 Orders because the Sheriff never appealed those orders.

As this Court *already* has held in connection with the City's appeal of its Rule 60(b) motion, the Court lacks jurisdiction to review the argument that the

2019 Orders violate the PLRA because these orders were not appealed.[6] *See Anderson v. City of New Orleans*, 38 F.4th 472, 478 (5th Cir. 2022). In its Rule 60(b) motion, the City argued primarily that changed conditions warranted relief from the district court's 2019 Orders but also claimed that the orders violated Section 3626(a)(1)(C) of the PLRA, which, the City contended, prohibited the court from ordering the construction of a jail. *Id.* at 477. This Court held that, although it had jurisdiction over the City's arguments regarding changed conditions, it *lacked* jurisdiction over "the substance of the January and March 2019 orders from which the city's motion seeks relief." *Id.* at 478. The Court explained that "Rule 60(b) simply may not be used as an end run to effect an appeal outside the specified time limits, otherwise those limits become essentially meaningless." *Ibid.* (citation omitted); *see also ibid.* ("Rule 60(b)(5) may not be used to challenge the legal conclusions on which a prior judgment or order rests." (quoting *Horne v. Flores*, 557 U.S. 433, 477 (2009))). Consistent with this "well-

[6] The Sheriff purports to have moved to terminate "all orders regarding construction of the Phase III jail." Br. 1. The United States assumes the Sheriff is referring to the January and March 2019 Orders. *See* Br. 7; *see also* ROA.19050; ROA.19054 (identifying the 2019 Orders in her motion to terminate and memorandum in support). To the extent the Sheriff also seeks to terminate the Stipulated Order, the arguments contained herein apply equally to that order. Like the 2019 Orders, no party ever appealed the Stipulated Order—which was issued in 2017—and the Sheriff cannot do so now.

established rule," the Court held that it lacked jurisdiction to review the City's argument that the 2019 Orders violated the PLRA. *Ibid.*

The same is true here. The Sheriff never appealed the 2019 Orders, and the time to do so has long expired.[7] Like Rule 60(b), a PLRA motion to terminate "is not a substitute for a timely appeal from" the 2019 Orders. *Anderson*, 38 F.4th at 475. Rather, as explained below, the purpose of a motion to terminate under Section 3626(b) of the PLRA is to provide for termination of prospective relief that is no longer necessary to correct a current and ongoing violation of federal rights. *See* pp. 16-19, *infra*. The Sheriff, however, moved to terminate the orders on other grounds: because, in her view, the orders violate the PLRA's prohibition on court enforcement of a private settlement agreement. As the district court correctly observed, "[t]he Sheriff's motion [to terminate] is yet another thinly-veiled attempt to end-run the original decision not to appeal [the 2019] orders." ROA.19506.

This Court therefore lacks jurisdiction to review the substance of the 2019 Orders—specifically, the argument that the 2019 Orders violate the PLRA—just as

[7] In its opposition to the City's appeal of its Rule 60(b) motion, Sheriff Gusman specifically argued that this Court lacked jurisdiction over the 2019 Orders because they were never appealed. *See* Doc. 005515950813, at 12, *Anderson*, *supra* (No. 21-30072) ("To the extent the City's motion seeks to reopen and attack the substance of the District Court's [2019 O]rders, it is nothing more than an attempt at an untimely appeal. Any such appeal, however disguised, is time-barred."); *see also id.* at 45. The Sheriff is judicially estopped from taking a contrary position now. *See Hall v. GE Plastic Pac. PTE Ltd.*, 327 F.3d 391, 396 (5th Cir. 2003); *see also* pp. 19-22, *infra*.

it did when it considered the City's appeal from the denial of its Rule 60(b) motion. *See Bowles v. Russell*, 551 U.S. 205, 209 (2007) ("This Court has long held that the taking of an appeal within the prescribed time is mandatory and jurisdictional." (internal quotation marks and citation omitted)); *Funk v. Stryker Corp.*, 631 F.3d 777, 781 (5th Cir. 2011) ("[T]he timely notice of appeal in a civil case is a jurisdictional requirement, to which courts cannot create equitable exceptions.").

II. A PLRA motion to terminate is not a proper vehicle for challenging the 2019 Orders.

The Sheriff's argument that the 2019 Orders impermissibly enforce a private settlement agreement under the PLRA also fails as a procedural matter because that argument is not a proper ground for a motion to terminate under Section 3626(b) of the PLRA. Rather, the purpose of Section 3626(b) is to provide a mechanism for termination of prospective relief when such relief is no longer necessary to correct a violation of a federal right. And as the district court correctly observed, "Sheriff Hutson has not argued that the relief is no longer necessary to correct constitutional violations." ROA.19505. Because the Sheriff's legal argument is not a proper ground for a PLRA motion to terminate, this Court should decline to reach it.

Section 3626(b) provides that "[i]n 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[:] (i) 2 years after the date the court granted or approved the prospective relief; [or] (ii) 1 year after the date the court has entered an order denying termination of prospective relief under this paragraph." 18 U.S.C. 3626(b)(1). Alternatively, a party may move for termination at any time "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 section further provides, however, that relief shall not terminate if the court finds "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 . . . is narrowly drawn and the least intrusive means to correct the violation." 18 U.S.C. 3626(b)(3).

Taken together, these provisions make clear that the purpose of Section 3626(b) is to provide for termination of prospective relief that is no longer necessary to correct a current and ongoing violation of federal rights. *See, e.g.*, *Tyler v. Murphy*, 135 F.3d 594, 597 (8th Cir. 1998) (The "purpose" of the termination provisions in Section 3626(b)(1) is "to authorize periodic new motions to terminate prospective relief that was initially based upon the proper findings.").

This Court's decisions confirm this purpose. For example, in *Ruiz v. United States*, 243 F.3d 941 (5th Cir. 2001), this Court discussed the "specific standards" that district courts should follow when considering a motion to terminate, all of which were aimed at determining whether there remained any "current and ongoing constitutional violations," and whether the provisions of the consent decree "remain[ed] necessary to correct those violations." *Id.* at 950-951. Similarly, in *Castillo v. Cameron County*, 238 F.3d 339 (5th Cir. 2001), the Court instructed that in deciding whether to grant a motion to terminate, a district court should consider whether a "current and ongoing violation" exists, based on "conditions in the jail at the time termination is sought . . . to determine if there is a violation of a federal right." *Id.* at 353; *see also Brown v. Collier*, 929 F.3d 218, 253 (5th Cir. 2019) (affirming district court's termination of a consent decree that was no longer "necessary to correct current and ongoing violations" of federal law); *Guajardo v. Texas Dep't of Crim. Just.*, 363 F.3d 392, 398 (5th Cir. 2004) (per curiam) (same). The government is aware of no case in this circuit or any other holding that a party may move under Section 3626(b) of the PLRA to terminate a district court order based on a legal argument that it failed to raise in a direct appeal of that order.

In sum, the PLRA's text and this Court's precedent confirm that Section 3626(b) provides a method for defendants to terminate prospective relief when that

relief is no longer necessary to correct a current and ongoing violation of federal law. It is *not* a vehicle for challenging four-year-old district court orders that the losing party failed to appeal at the time, based on a legal argument that has nothing to do with whether the constitutional violations have been cured. *See* ROA.19505-19506.

III. The Sheriff is judicially estopped from arguing that the 2019 Orders violate the PLRA.

The Court should also hold that the Sheriff is judicially estopped from arguing that the 2019 Orders violated the PLRA when they were issued because they impermissibly enforce a private settlement agreement. "Judicial estoppel prevents a party from asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding." *Hall v. GE Plastic Pac. PTE Ltd.*, 327 F.3d 391, 396 (5th Cir. 2003) (internal quotation marks and citation omitted). The purpose of judicial estoppel is "to protect the integrity of the judicial process . . . by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire v. Maine*, 532 U.S. 742, 749-750 (2001) (internal quotation marks and citations omitted). "Because the rule is intended to prevent improper use of judicial machinery, [it] is . . . invoked by a court at its discretion." *Id.* at 750 (internal quotation marks and citations omitted).

To warrant judicial estoppel, this Court has required two showings: (1) that "the position of the party to be estopped is clearly inconsistent with its previous one," and (2) that the party "convinced the court to accept that previous position." *Hall*, 327 F.3d at 396 (citation omitted). Both showings are satisfied here. First, Sheriff Gusman previously "adopt[ed] and incorporate[d] the arguments and authorities set forth in" the Compliance Director's briefing opposing the City's Rule 60(b) motion, including those that responded to the City's arguments that the PLRA prohibited the district court from issuing the 2019 Orders. *See* ROA.16394. These positions included arguments that the court has "the authority to enforce the City's agreement with the parties to build Phase III"; that "[n]othing in the PLRA limits a [c]ourt's authority to enforce its own orders or to require a party to fulfill its contractual agreements and promises"; and that "[n]either of the [2019 O]rders violate any provisions of the PLRA." ROA.16358-16359 (citation omitted). These statements are "clearly inconsistent with" the arguments the Sheriff makes now. *See* Br. 20-43.

Second, the district court was "convinced . . . to accept" those "previous position[s]." *Hall*, 327 F.3d at 396 (citation omitted). In its order denying the City's Rule 60(b) motion, the district court ruled consistently with Sheriff Gusman's positions. *See* ROA.16501-16508 (rejecting City's argument that the PLRA prohibited the district court from issuing the 2019 Orders); ROA.16635

(referencing the court's "legal obligation to hold the City to its" commitment to build Phase III).

That these positions were taken not by Sheriff Hutson but by a predecessor sheriff is irrelevant. This Court has held that a successor in interest may be judicially estopped from taking a position contrary to that of their predecessor in the same litigation. *See In re Coastal Plains, Inc.*, 179 F.3d 197, 203, 205 (5th Cir. 1999) (successor company judicially estopped from asserting certain claims against alleged debtor where predecessor company previously had represented that it had no such claims against the same party); *see also Milton H. Greene Archives, Inc. v. Marilyn Monroe LLC*, 692 F.3d 983, 966 (9th Cir. 2012) (Judicial estoppel applies "not only against actual parties to prior litigation, but also against a party that is in privity to a party in a previous litigation."); *see also* pp. 28-30, *infra* (explaining that Sheriff Hutson was properly substituted for Sheriff Gusman as a party in this litigation under Federal Rule of Civil Procedure 25(d) and that she is bound by the consent orders he entered into).

Sheriff Hutson is bound by the legal positions previously taken by Sheriff Gusman earlier in this litigation. Because the Sheriff's predecessor successfully argued that the district court had authority to enforce the parties' agreement to

build Phase III, the Sheriff should be judicially estopped from taking the opposite position now.[8]

IV. The 2019 Orders did not violate the PLRA by impermissibly enforcing a private settlement agreement.

The Sheriff argues (Br. 26) that if the 2019 Orders did not constitute orders to build a jail (and therefore did not violate Section 3626(a)(1)(C) of the PLRA), then they must instead be orders to enforce a private settlement agreement (and therefore violate Sections 3626(c)(2)(A) and (g)(6) of the PLRA). The district court correctly rejected this argument, holding that the Stipulated Order was a judicially enforceable consent order, not a private settlement agreement, and that the 2019 Orders enforcing it therefore did not violate the PLRA. ROA.19507-19510.

A. Standard of review

"[T]he question of whether [agreements in PLRA cases] should be considered consent decrees or private settlement agreements hinges squarely on the

[8] While some circuits have held that judicial estoppel applies only to inconsistent factual assertions, others have held that the doctrine applies equally to inconsistent legal positions. *Compare BancInsure, Inc. v. FDIC*, 796 F.3d 1226, 1240 (10th Cir. 2015), *and Zinkand v. Brown*, 478 F.3d 634, 638 (4th Cir. 2007), *with Transclean Corp. v. Jiffy Lube Int'l, Inc.*, 474 F.3d 1298, 1307 (Fed. Cir. 2007), *and In re Cassidy*, 892 F.2d 637, 641-642 (7th Cir. 1990). This Court does not appear to have squarely addressed that question, but it has applied judicial estoppel to legal questions. *See, e.g.*, *Jett v. Zink*, 474 F.2d 149, 154-155 (5th Cir. 1973).

interpretation of the PLRA" and is thus reviewed de novo. *Rowe v. Jones*, 483 F.3d 791, 794 n.4 (11th Cir. 2007) (per curiam).

B. The Stipulated Order is a court order, not a private settlement agreement.

The district court did not err in finding that the Stipulated Order was a judicially enforceable court order and not a private settlement agreement. The court's corollary conclusion that its 2019 Orders did not violate PLRA Sections 3626(c)(2) and (g)(6) by enforcing a private settlement agreement was therefore correct.[9]

As the magistrate judge observed, the argument that the Stipulated Order was a private settlement agreement "borders on frivolous." ROA.19311. The Stipulated Order was negotiated by the parties, after which all parties, including

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[9] The magistrate judge found that to the extent that the Sheriff was attempting to revive the City's already-rejected argument that the 2019 Orders violated Section 3626(a)(1)(C) the PLRA, such argument was precluded under the law of the case doctrine. ROA.19308-19311. The Sheriff has clarified on appeal that she is not making an argument based on Section 3626(a)(1)(C), but rather urges *only* that the 2019 Orders were barred under Sections 3626(c)(2) and (g)(6), which prohibit judicial enforcement of private settlement agreements. *See, e.g.*, Br. 22 (stating that "Sheriff Hutson's legal argument in her Motion to Terminate was entirely distinct from that" advanced by the City in its Rule 60(b) motion, in that the Sheriff's motion was "grounded in the prohibition on enforcing a private settlement agreement, under 18 [U.S.C.] 3626(c)(2), (g)(6), rather than the prohibition on ordering construction, under 18 [U.S.C.] 3626(a)(1)(C)"). The district court agreed that the Sheriff's argument under Sections 3626(c)(2) and (g)(6) was not barred under the law of the case doctrine. *See* ROA.19506-19507. The United States also agrees that the law of the case doctrine does not bar this argument, which nonetheless fails for other reasons.

the former Sheriff, expressly moved the district court to enter it "as an order of the [c]ourt." ROA.11324; *see also* ROA.19312; ROA.19507. The court did so and made the required findings of compliance under the PLRA. *See* ROA.19312-19313.

The Eleventh Circuit's decision in *Rowe* further illustrates why the Sheriff is wrong. In that case, inmates filed a class action alleging unconstitutional conditions of confinement. 483 F.3d at 793. To resolve the litigation, the parties entered into a series of consent agreements, one of which provided that surplus funds from the correctional facility's commissary and pay telephones be put into a trust and donated to local charities. *Ibid.* The parties later agreed to terminate most of the prospective relief entered throughout the litigation; however, they agreed to continue the agreement regarding the charitable trust. *Id.* at 793-794. Defendants later moved to terminate the charitable trust under Section 3626(b). The district court found that the trust agreement was a private settlement agreement rather than a consent order and therefore was not subject to the PLRA's termination provisions. *Id.* at 794.

The court of appeals reversed, holding that the charitable trust agreement was a consent order. The court explained that, "[b]ased on the plain language of the PLRA, judicial enforcement is . . . the critical distinction between private settlement agreements and consent decrees." *Rowe*, 483 F.3d at 796. The court

observed that the charitable trust agreement "bears all the hallmarks of a consent decree." *Id.* at 798. For example, the "order is itself entitled 'Final Order,' and the district judge signed [it] under the notation 'So Ordered.'" *Ibid.* Additionally, "instead of noting that the parties agreed" to continue the trust, the agreement stated that the court "*finds* that the [charitable trust] should continue." *Ibid.* The court found it particularly meaningful that the district court "retained jurisdiction over the enforcement of the charitable trust" and that the trust was to continue "pending further [o]rder of [the district] [c]ourt." *Ibid.* The court concluded that "[b]y reserving judicial authority to discontinue the charitable trust in a 'further [o]rder of this [c]ourt,' the 1998 'Final Order' indicates that the charitable trust is subject to judicial enforcement and thus is not the product of a private settlement agreement." *Ibid.*

All of the "hallmarks" that the Eleventh Circuit found indicative of a consent order in *Rowe* are present in the Stipulated Order as well. 483 F.3d at 798. The agreement is entitled "Stipulated *Order* for Appointment of Independent Jail Compliance Director." ROA.11303 (emphasis added). As in *Rowe*, the district court here signed the agreement "So Ordered." ROA.11323. The Stipulated Order also stated that the court "*finds*" that the jail was not in compliance and that further relief was needed. ROA.11318 (emphasis added). And, as in *Rowe*, the district court retained jurisdiction to enforce the agreement. *See* ROA.11317 ("The

Compliance Director's authority shall extend as defined . . . above, or until otherwise ordered by the [c]ourt."); ROA.11317 (providing that if a party moves for termination of the compliance director, the court will hold an evidentiary hearing); ROA.11318 (providing that the "agreement may be amended by [c]ourt order or by consent of all parties, subject to [c]ourt approval").

Importantly, the Stipulated Order also contained need-narrowness-intrusiveness findings required by Section 3626(a) of the PLRA. ROA.11318. Though such findings must be included in PLRA consent orders, they are *not required in private settlement agreements*. *See* 18 U.S.C. 3626(c)(1) and (2). Because private settlement agreements may be broader than what is required to cure constitutional violations, they are not subject to the limits on prospective relief set forth in Section 3626(a). *See* 18 U.S.C. 3626(c)(2); *see also Benjamin v. Jacobson*, 172 F.3d 144, 156 (2d Cir. 1999) (en banc) (In the PLRA, "Congress simply excluded [private settlement] agreements from the governmental obligations that must be based on need-narrowness-intrusiveness findings, and hence preserved them from termination."). The fact that the Stipulated Order contains need-narrowness-intrusiveness findings is conclusive evidence that it is a consent order, not a private settlement agreement.

After the parties failed to make progress on their agreement in the Stipulated Order and the related SCAP to build Phase III, the district court issued the 2019

Orders. Those orders required the parties "to begin the programming phase of the Phase III facility as soon as possible and to update the [c]ourt on the progress of those efforts," and to "work collaboratively to design and build a facility that provides for the constitutional treatment of the special populations discussed herein without undue delay, expense[,] or waste." ROA.19508 (citation omitted); *see also* ROA.13073-13075; ROA.13225-13226.

Because they were aimed at enforcing the Stipulated Order, which was a court order and not a private settlement agreement, the 2019 Orders did not violate Sections 3626(c)(2)(A) and (g)(6) of the PLRA.

V. The district court correctly held that Sheriff Hutson was bound by consent orders entered into by her predecessor, Sheriff Gusman.

Sheriff Hutson argues that she is not bound by the former sheriff's agreement to build Phase III "because she is neither a party to the agreement nor bound by the actions of her predecessor." Br. 44. Specifically, she relies on Louisiana law purportedly holding that contracts made by one sheriff do not bind successor sheriffs. Br. 44-48. This argument directly contradicts federal law, and the district court correctly rejected it. ROA.19510-19511.

A. Standard of review

Whether state-law limitations on successor contract-law liability relieve the Sheriff from complying with a federal consent order entered into by her

predecessor is a question of law and is reviewed de novo. *See Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439, 442 (5th Cir. 2001).

B. The district court properly substituted Sheriff Hutson as a defendant in this litigation, and she is bound by agreements entered into by her predecessor.

Federal Rule of Civil Procedure 25(d) provides that "[a]n action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party." As the Supreme Court has recognized, Rule 25(d) was "specifically designed to prevent suits involving public officers from becoming moot due to personnel changes." *Karcher v. May*, 484 U.S. 72, 83 (1987); *see also ACLU of Miss., Inc. v. Finch*, 638 F.2d 1336, 1342 (5th Cir. 1981) ("[T]he main purpose of [Rule 25(d)] [is] to prevent the abatement of actions against public officers upon a change of administration."); *King v. McMillan*, 594 F.3d 301, 310 (4th Cir. 2010) (Rule 25(d) "protects the [plaintiff] who may need more than the original . . . defendant's term of office to litigate her official capacity claim.").

In the same vein, courts consistently have recognized that public officials are bound by consent orders and other agreements entered into by their predecessors. *See, e.g.*, *Morales Feliciano v. Rullan*, 303 F.3d 1, 8 (1st Cir. 2002) ("[A] government official, sued in his representative capacity, cannot freely repudiate

stipulations entered into by his predecessor in office during an earlier stage of the same litigation."); *Harris v. City of Philadelphia*, 47 F.3d 1311, 1327 (3d Cir. 1995) ("[T]he election of a new administration does not relieve [a City] of valid obligations assumed by previous administrations," and "changes in administrative policy alone do not permit the City to unilaterally default on its obligations to the court and other litigants."); *Newman v. Graddick*, 740 F.2d 1513, 1517-1518 (11th Cir. 1984) (Because former governor and former corrections commissioner were "parties to th[e] lawsuit when the [consent] agreement was signed," they "had the authority to sign the consent decree, and to bind the incoming officials."). The same is true here. There is no question that Sheriff Gusman had authority to enter into the Stipulated Order (and the related SCAP) earlier in this litigation. Sheriff Hutson, as his successor, is now bound by those agreements.

The Sheriff relies (Br. 46-47) on *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992), and *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431 (2004), but they are inapposite. In those cases, the Supreme Court expressed concerns with binding successor public officials through consent orders where the successor officials no longer believed the prospective relief was necessary to correct the violations at issue. *See Rufo*, 502 U.S. at 392; *Frew*, 540 U.S. at 441-442. But nowhere in *Rufo* or *Frew* did the Court suggest that a successor official could withdraw from a consent order that was *still necessary* to correct *current and ongoing* constitutional

or federal violations. Indeed, the Court in *Rufo* held that "a party seeking modification of a consent decree must establish that a significant *change in facts or law* warrants revision of the decree and that the proposed modification is suitably tailored to the changed circumstance." 502 U.S. at 393 (emphasis added). And in *Frew*, the Court explained that a "when the objects of [a consent] decree *have been attained*, responsibility for discharging the State's obligations is returned promptly to the State and its officials." 540 U.S. at 442 (emphasis added).

As the district court recognized, the Sheriff has not even argued that the constitutional and statutory violations giving rise to this litigation have been cured. ROA.19506. The Sheriff has identified no "change in facts or law," *Rufo*, 502 U.S. at 393, justifying her motion to terminate, nor does she even attempt to argue that the "objects of" the Stipulated Order "have been attained," *Frew*, 540 U.S. at 442. These cases therefore do not support the Sheriff's argument.

C. Purported state-law limitations on a sheriff's ability to bind successors do not relieve Sheriff Hutson from complying with the Stipulated Order.

The Sheriff's arguments based on state law do not help her. She claims that under Louisiana law, contracts entered into by one sheriff do not bind successor sheriffs. Br. 44-48. To support this argument, she relies primarily on *Cott Index Co. v. Jagneaux*, 685 So. 2d 656, 658 (La. Ct. App. 1996), which held that a contract for lease of computer equipment signed by a predecessor county clerk of

court was unenforceable against a successor clerk. She also cites advisory opinions of the Louisiana Attorney General, which were issued in response to questions regarding whether sheriffs were bound by their predecessor's agreements involving "maintenance contracts, fiscal agent agreements, various suppliers of services and supplies to the office," and the operation of 911 emergency systems.[10]

As an initial matter, this authority is irrelevant to the subject matter at hand, which does not involve routine service contracts but rather a federal lawsuit for violations of the Constitution and federal civil rights laws.[11] But even if the Sheriff were correct that Louisiana law generally precludes sheriffs from entering into agreements that bind their successors, this principle would not apply here because under the Supremacy Clause of the United States Constitution, federal law holding public officials to agreements made by their predecessors in their official capacities prevails over contrary state law.

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[10] *See*, respectively, La. Att'y Gen. Op. Nos. 01-129 and 92-529. The United States has not been able to locate a third opinion cited by the Sheriff, La. Att'y Gen. Op. No. 92-259.

[11] It is unclear from the Sheriff's opening brief whether her argument based on state law depends on her (incorrect) characterization of the Stipulated Order as a private settlement agreement (*see* ROA.19051 ("Under Louisiana law, private contract entered into by one sheriff, like the private settlement here, are not binding on successor sheriffs.")), or whether it also applies if the Stipulated Order is considered a consent order. For the reasons explained above, her argument fails either way.

The Supremacy Clause provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, Cl. 2. "[T]he supremacy of federal law means that valid federal law overrides otherwise valid state law in cases of conflict between the two." *City of Morgan City v. South La. Elec. Coop. Ass'n*, 49 F.3d 1074, 1079 n.10 (5th Cir. 1995) (Jones, J., dissenting from denial of reh'g en banc). While "supremacy does not deprive the state of any of its preexisting concurrent lawmaking authority, [it] dictates that a particular state law in conflict with a particular federal law will be trumped in cases where both apply." *Ibid.* These principles prevent Sheriff Hutson from relying on state law to excuse her noncompliance with the Stipulated Order.

In *King*, the Fourth Circuit considered a similar argument to the one Sheriff Hutson makes here. In *King*, a former sheriff's department employee sued the sheriff in his official capacity for violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* *See* 594 F.3d at 306. While the suit was pending, the sheriff lost reelection and the district court substituted the new sheriff, Sheriff Johnson, in his place under Rule 25(d). *Ibid.* After the jury found in the plaintiff's favor, Sheriff Johnson argued on appeal that Virginia law precluded her from being substituted for the previous sheriff. *Id.* at 308-309. Just as Sheriff Hutson does

here, Sheriff Johnson argued that state law "does not create an institutional 'sheriff's office,'" but rather that "each sheriff is a singular entity . . . who is legally independent of predecessors and successors." *Id.* at 309 (internal quotation marks and citation omitted). Sheriff Johnson claimed that "[b]ecause Virginia law creates each sheriff as a separate and independent entity," she could not "be substituted under Rule 25(d) in her official capacity" for the actions of the previous sheriff. *Ibid.*

The Fourth Circuit soundly rejected this argument, which, it held, "would permit states to draft laws defining state and local offices in such a way as to limit the liability of their occupants under federal law," in violation of the federal Constitution's Supremacy Clause. *King*, 594 F.3d at 309. The court explained that "regardless of whether [Sheriff] Johnson reads Virginia law correctly with respect to the circumscribed authority of an individual sheriff," the Supremacy Clause means that "Virginia law cannot override Title VII employer liability." *Ibid.* The court further explained that, under the Supremacy Clause, the "relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Ibid.* (quoting *Felder v. Casey*, 487 U.S. 131, 138 (1988)).

Just as "state law demarcations of particular offices cannot be used to cut off the (federal) Title VII rights of state and local employees," *King*, 594 F.3d at 309, they cannot be used to cut off the federal constitutional and statutory rights of detainees with serious mental-health and medical needs. This Court should reject Sheriff Hutson's argument that she is not bound by her predecessor's agreements in this litigation, including his agreement to facilitate the construction of Phase III.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's denial of the Sheriff's motion to terminate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 26, 2024, I electronically filed the foregoing BRIEF FOR UNITED STATES AS APPELLEE with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Elizabeth P. Hecker
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CERTIFICATE OF COMPLIANCE

The attached BRIEF FOR UNITED STATES AS APPELLEE does not exceed the type-volume limitation imposed by Federal Rules of Appellate Procedure 32(a)(5)(A) and 32(a)(7)(B)(i).

The brief was prepared using Microsoft Office Word for Microsoft 365 and contains 8061 words of proportionally spaced text. The typeface is 14-point Times New Roman font.

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Date: January 26, 2024