

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

LASHAWN JONES, KENT)
ANDERSON, STEVEN DOMINICK,)
ANTHONY GIOUSTAVIA, JIMMIE)
JENKINS, GREG JOURNEE,)
RICHARD LANFORD, LEONARD)
LEWIS, EUELL SYLVESTER and)
MARK WALKER, on behalf of)
themselves and all others similarly)
situated,)

Civil Action No. 2:12-cv-00859
Section I
Judge Lance M. Africk
Magistrate Judge Shushan

Plaintiffs,)

UNITED STATES OF AMERICA)

UNITED STATES' MOTION TO
INTERVENE PURSUANT TO THE
CIVIL RIGHTS OF INSTITUTIONALIZED
PERSONS ACT, 42 U.S.C. § 1997

Applicant for Intervention,)

v.)

MARLIN GUSMAN,)
Sheriff, Orleans Parish,)

Defendant.)

UNITED STATES' UNOPPOSED MOTION TO INTERVENE

The United States of America moves to intervene, pursuant to Rule 24, Federal Rules of Civil Procedure, in the above styled case, *Jones v. Gusman*, No. 2:12-cv-00859 (LMA) (E.D. La., filed Apr. 2, 2012). Pursuant to Rule 24(c), the United States has attached its Complaint in Intervention against Defendant Sheriff Marlin Gusman. In support, the United States submits that:

1. On September 11, 2009, following an extensive investigation, the United States formally notified Defendant Sheriff Marlin Gusman of its findings of serious constitutional violations regarding the conditions of confinement at the Orleans Parish Prison ("OPP") pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997. CRIPA gives the Department of Justice authority to seek a remedy for a pattern or practice of conduct that violates the constitutional rights of prisoners in adult detention and correctional facilities. The United States'

letter of findings detailed numerous constitutional deficiencies, including: inadequately protecting prisoners from harm, including physical harm from excessive use of force by staff and inmate-on-inmate violence; inadequate mental health care, including poor suicide prevention practices; deficiencies in medication management; and serious risks posed by inadequate environmental and sanitation conditions.

2. On April 23, 2012, the United States sent Defendant a letter re-enforcing its finding and detailing current constitutional deficiencies at OPP necessitating emergency action, including inadequate protection from violence and sexual assault; inadequate suicide prevention; inadequate mental health care and access to medical care; and inadequate services to limited English proficient (“LEP”) prisoners in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

3. Since issuing its letter of findings, the United States has engaged in good faith negotiations with Defendant to develop a comprehensive reform plan to remedy the unconstitutional conditions.

4. On January 18, 2012, Plaintiffs in this action filed a Complaint for Injunctive and Declaratory Relief, alleging that unconstitutional conditions at OPP subject youths to imminent and serious risk of bodily harm or death. *J.J. v. Gusman*, No. 2:12-cv-138 (E.D. La., filed Jan. 18, 2012). On April 2, 2012, Plaintiffs filed a class action on behalf of the men, women and youth imprisoned at OPP to protect them from abusive and unconstitutional conditions of confinement and dangers similar to those outlined in the United States’ September 2009 letter of findings and April 2012 letter regarding emergency conditions. (Complaint, ECF No. 1.) The cases were consolidated into the current matter before this Court on April 30, 2012. (Order, ECF No. 13.)

5. CRIPA provides that the United States may intervene in any action seeking relief from egregious or flagrant conditions of confinement that deprive prisoners “of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing them to suffer grievous harm” where the Attorney General has reasonable cause to believe that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights. 42 U.S.C. § 1997c.

6. Given the overlap between the United States' investigation and the subject matter of this litigation, both the parties and the United States believe it would be most efficient to resolve Plaintiffs' claims and the United States' investigation with a single, comprehensive remedy.

7. Pursuant to 42 U.S.C. § 1997c, the Attorney General certifies to this Court that all prerequisites to filing this Motion to Intervene have been met. The Attorney General certifies that:

- a. Pursuant to 42 U.S.C. § 1997c(b)(1)(A), notice was provided to Defendant Sheriff, and his chief legal officer, at least 15 days previous to this Motion to Intervene. This notice included the: (1) alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities; (2) supporting facts giving rise to the alleged conditions, including the dates and time period during which the alleged conditions and pattern or practice of resistance occurred; and (3) minimum measures which the Attorney General believes may remedy the alleged conditions and the alleged pattern or practice of resistance 42 U.S.C. § 1997c; and
- b. Pursuant to 42 U.S.C. § 1997c(b)(1)(B), the Attorney General believes that such intervention by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States; and
- c. The Attorney General has the "reasonable cause to believe" set forth in 42 U.S.C. § 1997c(a)(1).

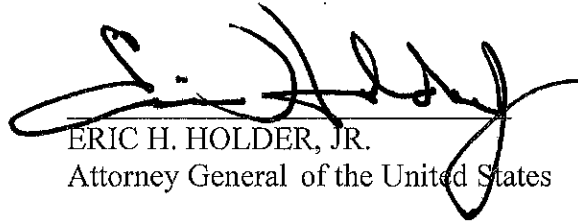
8. Pursuant to Local Rule 7.6, the undersigned counsel of record certifies that on September 13, 2012, both parties' counsel represented to the United States that they consent to the United States' Motion to Intervene.

9. As such, the United States moves this Court for intervention of right, pursuant to Rule 24(a)(2), and alternatively for permissive intervention, pursuant to Rule 24(b).

WHEREFORE, the United States respectfully requests that this Court grant this Motion to Intervene and enter an order:

- a. Granting the United States' Motion to Intervene;
- b. Adding the United States to Case No. 2:12-cv-00859 as a full party plaintiff-intervenor;
- c. Ordering the Clerk of the Court to enter the United States' Complaint in Intervention, and allowing it to proceed on its claim stated therein.

Respectfully submitted this 23rd day of September, 2012.



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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

LASHAWN JONES, et al.,)	
)	
Plaintiffs,)	
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UNITED STATES OF AMERICA)	
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Applicant for Intervention,)	
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v.)	
)	Civil Action No. 2:12-cv-00859
MARLIN GUSMAN,)	Section I
Sheriff, Orleans Parish,)	Judge Lance M. Africk
)	Magistrate Judge Shushan
Defendant.)	
)	

ORDER

Currently pending before the Court is the Motion to Intervene of Proposed Intervenor the United States of America, pursuant to Rule 24 of the Federal Rules of Civil Procedure. Dkt. _____. This Court finds that the requirements of Rule 24 have been met. Specifically, under Rule 24(a), the Court finds that: (a) the United States' Motion to Intervene is timely and that granting the Motion will not result in undue delay or prejudice to the adjudication of the original parties' rights; (b) the United States has a significantly protectable interest relating to the transaction that is the subject of this action; (c) the United States' interests may be impaired and impeded by the disposition of this action; and (d) the United States' interest may not be adequately represented by the existing parties to the lawsuit. Under Rule 24(b), the Court finds that: (a) the United States has a conditional right to intervene pursuant to federal statute, (b) its claims are substantially similar to Plaintiffs' claims, (c) the United States' Motion to Intervene is timely; and (d) granting the Motion will not result in undue delay or prejudice to the adjudication of the original parties' rights. Having found that the requirements of

Rule 24 have been met, the Court will grant the Motion to Intervene.

Accordingly, on this ____ day of _____, 2012, in the United States District Court for the Eastern District of Louisiana, it is ORDERED:

1. That the United States' Motion to Intervene BE, and hereby IS, GRANTED;
2. That the United States shall be added as Plaintiff-Intervenor to the suit *Jones v. Gusman*, No. 2:12-cv-00859 (LMA);
3. That the Clerk of this Court enter the United States' Complaint in Intervention in these proceedings;
4. That the Clerk of this Court transmit a copy of this Order to all parties and counsel of record.

Judge Lance M. Africk

United States District Judge

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

LASHAWN JONES, KENT)	
ANDERSON, STEVEN DOMINICK,)	
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themselves and all others similarly)	
situated,)	
)	
Plaintiffs,)	
)	
UNITED STATES OF AMERICA)	COMPLAINT IN INTERVENTION
)	
Applicant for Intervention,)	FOR VIOLATIONS OF:
)	
)	THE CONSTITUTION, and
v.)	
)	TITLE VI OF THE CIVIL RIGHTS
MARLIN GUSMAN,)	ACT OF 1964
Sheriff, Orleans Parish,)	
)	
)	
Defendant.)	

COMPLAINT IN INTERVENTION

1. Defendant ORLEANS PARISH SHERIFF is engaging in a pattern or practice of violating the constitutional rights of prisoners at the Orleans Parish Prison (“OPP”). Defendant’s deliberate indifference to these constitutional rights causes OPP prisoners serious harm from, *inter alia*, violent and sexual assaults by OPP staff and other prisoners; suicide and self harm; unaddressed serious mental health and medical needs; and hazardous environmental conditions. Additionally, Defendant discriminates against Latino prisoners by failing to provide minimal limited English proficiency services. Accordingly, this Complaint sets out claims of Defendant’s unlawful conduct for: (1) a pattern or practice of violating OPP prisoners’ Eighth and Fourteenth

Amendment rights and (2) discrimination against OPP Latino prisoners in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

2. The United States alleges the following, based on information and belief:

I. JURISDICTION AND VENUE

3. The United States is authorized to bring this action pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997c, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (“Title VI”).

4. The Attorney General certifies that all pre-filing requirements specified by 42 U.S.C. § 1997c have been met. The Attorney General’s certificate is attached to, and incorporated in, this Complaint in Intervention.

5. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 & 1345. This Court may grant the relief sought in this action pursuant to 28 U.S.C. §§ 2201 & 2202.

6. Venue is proper in this district. The acts and omissions giving rise to this action occurred in the Eastern District of Louisiana. 28 U.S.C. § 1391(b).

II. DEFENDANT

7. Defendant ORLEANS PARISH SHERIFF operates OPP, and is responsible for the safety, care, custody, and control of prisoners incarcerated in OPP, as well as the actions of OPP staff. The Sheriff, Marlin N. Gusman, is sued only in his official capacity as ORLEANS PARISH SHERIFF.

8. Defendant ORLEANS PARISH SHERIFF receives federal financial assistance, including from the United States Department of Justice (“United States”). As a recipient of federal funds, the ORLEANS PARISH SHERIFF is responsible for ensuring that OPP will comply with Title VI and its implementing regulations.

9. Defendant is legally responsible for the operation, maintenance, and conditions of OPP, and for the safety and health of prisoners incarcerated at OPP.

10. At all relevant times, Defendant has acted or failed to act, as alleged herein, under color of state law.

III. BACKGROUND

11. OPP is an institution within the meaning of 42 U.S.C. § 1997.

12. OPP currently houses approximately 2500 to 2900 prisoners consisting of a large number of pre-trial detainees and prisoners serving short misdemeanor sentences. OPP operates seven jail buildings and employs a staff of approximately 450 security officers. OPP houses prisoners in six of the buildings, namely the Temporary Detention Center (“TDC”), original Orleans Parish Prison Jail, Templeman V, Conchetta, the Broad Street work-release facility, and eight windowless tents constructed with FEMA financial assistance (“the Tents”). OPP also operates a seventh building, the Intake Processing Center (“IPC”), which does not house prisoners.

13. The United States sent Defendant a findings letter on September 11, 2009, and an update to its findings letter on April 23, 2012. These letters detailed the unconstitutional conditions at OPP, including those alleged in this Complaint. The United States’ September 11, 2009 letter also notified Defendant of the minimal measures necessary to remedy the unconstitutional conditions at OPP. The United States’ April 23, 2012 letter further advised Defendant that OPP’s limited English proficiency (“LEP”) services violate Title VI and its implementing regulations. Defendant has failed to take basic steps to correct, and remains deliberately indifferent to, the known unlawful deficiencies described in the United States’ letters and elsewhere.

IV. FACTUAL ALLEGATIONS

A. OPP Fails to Protect Prisoners from Harm

14. The Constitution requires Defendant to protect prisoners from violence inflicted by OPP staff and other prisoners. Defendant has failed to take minimum reasonable measures to protect prisoners from harm, and is deliberately indifferent to the obvious and substantial risk of harm to prisoners, caused by OPP staff and other prisoners.

15. OPP prisoners suffer serious harm and risk of serious harm from OPP's failure to take reasonable measures to protect prisoners from excessive use of force and sexual misconduct by OPP staff. These failures have resulted in the following instances of harm to prisoners, as shown by Defendant's own documentation:

- a. In September 2011, an OPP deputy forced a prisoner to perform oral sex. The inmate was placed in handcuffs, removed from his cell, and taken into a closet, where he was forced to perform oral sex.
- b. In July 2011, correctional officers beat a prisoner in the Tents, as shown on OPSO video. Officers involved in the beating then attempted to cover up the beating by failing to accurately report the facts surrounding the incident.
- c. In August 2010, a prisoner committed suicide one day after an officer beat him. Officers pepper sprayed the prisoner inside his cell multiple times, opened his cell door, and physically assaulted him.

16. OPP prisoners suffer serious harm and risk of serious harm from Defendant's failure to take reasonable measures to protect prisoners from physical and sexual violence by other prisoners. As a result, OPP prisoners suffer high rates of serious prisoner-on-prisoner violence and sexual assaults. In 2011, OPP reported over 65 incidents of prisoner-on-prisoner

assaults. In many of these incidents, OPP staff ignored requests for help or protections from prisoners.

17. OPP's failure to provide reasonably safe conditions have resulted in the following instances of serious injury and harm to prisoners, as shown by OPP's own documentation:

- a. In March 2010, a 22-year-old prisoner died after he was attacked and stabbed by another prisoner at OPP;
- b. In June 2010, a prisoner suffered injuries to his back, lungs, and kidneys after he was stabbed 18 times at OPP; and
- c. In July 2010, a prisoner was taken to the emergency room after he was attacked and stabbed multiple times at OPP.

~~18. Defendant is subjectively aware of the ongoing serious harm and risk of serious harm from the United States' September 11, 2009 findings letter and April 23, 2012 update letter, yet fails to correct the known deficiencies.~~

19. Defendant is deliberately indifferent to the known harm and risk of harm by, *inter alia*, failing to maintain adequate security policies and procedures, deficient staffing and prisoner supervision, failing to classify and house prisoners based on objective risk of violence and victimization, inappropriate reliance on prisoners to provide security supervision, inadequate staff training, and failed systems of accountability.

20. Defendant is deliberately indifferent to inadequate staffing levels at OPP, which cause prisoners serious harm. Defendant fails to staff adequately densely populated housing pods and violence-prone buildings. As a result, rampant prisoner-on-prisoner violence goes unnoticed and unaddressed.

21. Defendant is deliberately indifferent to prisoners' safety by failing to implement a prisoner classification system that properly determines with whom each prisoner may be housed and the degree of supervision required for each prisoner. This failure causes poor supervision of violent prisoners, and the inappropriate commingling of violent prisoners with non-violent prisoners. Prisoner-on-prisoner physical and sexual assaults result.

22. Defendant is deliberately indifferent to prisoners' safety by relying on certain prisoners to perform security functions, giving prisoners inappropriate power and control over other prisoners and compromising safety.

23. Defendant is deliberately indifferent to prisoners' safety by failing to train staff adequately to prevent prisoner-on-prisoner violence and to use only reasonable force on prisoners.

24. Defendant is deliberately indifferent to prisoners' safety by failing to correct broken accountability measures. Defendant's substandard accountability measures at OPP, such as his use of force policies, investigation practices, and prisoner grievance system, fail to prevent, detect, or correct OPP staff's use of unconstitutionally excessive force.

B. OPP Fails to Provide Constitutional Suicide Protection and Mental Health Care

25. The Constitution requires Defendant to protect prisoners from suicide and self-harm and to provide adequate care for prisoners' serious medical and mental health care needs. Defendant has exhibited deliberate indifference to prisoners' serious medical and mental health care needs and to the obvious and substantial ongoing risk of prisoner suicide, self-harm, and untreated mental illness.

26. OPP prisoners suffer serious harm from Defendant's deliberate indifference to prisoners' serious mental health needs and to the ongoing risk of suicide and self-harm, as shown by Defendant's own documentation:

- a. In April 2010, a prisoner committed suicide after being placed in an isolation cell for erratic behavior. Less than one hour after being placed in the cell, the prisoner tied his shirt to the bars in the cell door and hanged himself;
- b. In August 2011, an OPP prisoner committed suicide by asphyxiation while on constant observation; and
- c. In August 2011, a prisoner with known mental illness and suicidal thoughts was inappropriately placed in general population. He was then moved to suicide watch and committed suicide one week later.

27. Defendant is subjectively aware of the ongoing serious harm and risk of serious harm from the United States' September 11, 2009 findings letter and April 23, 2012 update letter, yet fails to correct the known deficiencies.

i. Inadequate Suicide Prevention

28. Defendant is deliberately indifferent to the known harm and risk of harm by, *inter alia*, failing to implement adequate policies and procedures to treat and supervise prisoners with suicidal and self-harm tendencies, failing to hire adequate staff to implement such policies and procedures, continuing to house suicidal prisoners in cells with obvious suicide hazards, and failing to train staff adequately to monitor and supervise suicidal prisoners.

29. Defendant is deliberately indifferent by failing to provide comprehensive, basic training to correctional staff to identify and respond to prisoners who are at risk of suicide, self-harm, or untreated mental illness.

30. Defendant is deliberately indifferent by housing suicidal prisoners in suicide watch cells that exacerbate mental illness and contain suicide hazards. These hazards include protrusions that prisoners can use as tie-off points to commit suicide.

31. Defendant is deliberately indifferent by failing to timely or adequately evaluate prisoners for level of suicide risk and, based on risk, provide the appropriate supervision, or transfer to an outpatient mental health facility.

32. Defendant is deliberately indifferent by failing to adequately monitor, and provide meaningful treatment to, prisoners on suicide watch. This failure allows prisoners to commit suicide or engage in self-harm.

33. Defendant is deliberately indifferent by failing to employ adequate numbers of trained correctional staff to monitor prisoners on suicide watch.

34. Defendant is deliberately indifferent by failing to adequately evaluate prisoners before removing them from suicide watch and failing to implement any step-down program for prisoners being removed from suicide watch.

ii. Inadequate Mental Health Care

35. Defendant is deliberately indifferent to prisoners' serious mental health needs by, *inter alia*, continuing to use deficient: (1) screening and evaluation practices; (2) staffing; (3) assessment and treatment practices; and (4) quality assurance measures. Defendant is aware that these conditions exist and are causing harm to prisoners and fails to correct these conditions despite this knowledge. These deficient OPP practices cause prisoners serious harm and create an unreasonable risk of harm.

36. Defendant is deliberately indifferent to prisoners' serious mental health needs by failing to implement initial mental health screening and evaluation. OPP inappropriately relies

on untrained licensed practical nurses (“LPNs”) to perform duties outside the scope of their training and expertise, including mental health screenings and initial evaluations. Untrained LPNs fail to identify and refer prisoners with mental illness to the psychiatrist for treatment, causing harm to prisoners.

37. Defendant is deliberately indifferent to prisoners’ serious mental health needs by understaffing OPP’s mental health care services, and consequentially failing to provide minimal treatment for prisoners’ mental illnesses. OPP’s understaffing limits the psychiatrist primarily to writing prescriptions and occasionally providing reactive crisis care. The psychiatrist’s heavy workload prevents the psychiatrist from treating all prisoners with serious mental illness.

38. Defendant is deliberately indifferent to prisoners’ serious mental health needs by rarely ensuring adequate mental health assessments. This results in OPP not identifying and providing treatment to prisoners with mental illness. For those prisoners OPP does identify as having serious mental illness, OPP provides inadequate treatment that consists only of medications and reactions to crises.

39. Defendant is deliberately indifferent to prisoners’ serious mental health needs by failing to evaluate prisoners properly before prescribing prescription medications and failing to monitor properly these medications’ effects.

40. Defendant is deliberately indifferent to prisoners’ serious mental health needs by failing to formulate, document and implement treatment plans for prisoners with mental illnesses.

41. Defendant is deliberately indifferent to prisoners’ serious mental health needs by failing to employ a quality assurance system that monitors high-risk, high-volume, and problem-prone aspects of mental health care.

42. Defendant is deliberately indifferent to prisoners' serious mental health needs by failing to follow, measure, and document the quality and timeliness of critical mental health processes such as assessments, suicide prevention evaluations, suicide management, medication management, and treatment services.

C. OPP Provides Unconstitutional Medical Care

43. The Constitution requires Defendant to provide prisoners with adequate care for their serious medical needs. Defendant has exhibited deliberate indifference to OPP prisoners' serious medical needs. OPP prisoners suffer serious harm from Defendant's failure to provide treatment for their serious medical needs.

44. Defendant is subjectively aware of the ongoing serious harm and risk of serious harm from the United States' September 11, 2009 findings letter and April 23, 2012 update letter, yet fails to correct the known deficiencies.

45. Defendant is deliberately indifferent to prisoners' serious medical needs by failing to implement an adequate sick call process or medication administration system.

46. OPP's sick call process fails to adequately collect, process, and track prisoners' sick call requests. This failure causes prisoners harm from unnecessary delays before treatment, and unanswered sick call requests that result in no treatment for the prisoner's serious medical need.

47. Defendant's medication administration process inappropriately allows prisoners to self-administer many of their own medications.

48. The inappropriate medication practice causes harm and risk of harm to prisoners from under and over medication, including from powerful psychotropic drugs.

D. OPP Subjects Prisoners to Unconstitutional Physical Plant Conditions

49. The Constitution requires Defendant to provide prisoners with a minimal civilized measure of life's necessities, including protection from environmental and fire safety hazards. Defendant has failed to take minimum reasonable measures to protect prisoners from environmental and fire safety hazards, and is deliberately indifferent to the resulting harm and risk of harm to prisoners.

50. OPP prisoners suffer harm and risk of harm from OPP's substandard environmental health and sanitation conditions.

51. Defendant is subjectively aware of the ongoing serious harm and risk of serious harm from the United States' September 11, 2009 findings letter and April 23, 2012 update letter, yet fails to correct the known deficiencies.

52. Defendant is deliberately indifferent to prisoners' safety by maintaining OPP in a state of disrepair, causing illness and injury to prisoners. Broken floor tiles, toilets, sinks, showers, water leaks, mold, and electrical hazards exist throughout OPP. Poor ventilation exacerbates harm from OPP's elevated prisoner cell temperatures.

53. Defendant is deliberately indifferent to prisoners' safety by serving prisoners unsanitary food. Prisoners serve food, with bacteria-prone temperatures, prepared in unsanitary food service areas. This food service practice subjects prisoners to food-borne illnesses. Defendant is deliberately indifferent to prisoners' health and safety by housing prisoners in units without operational smoke or alarm systems and without implementation of appropriate fire watches.

E. OPP Unlawfully Discriminates Against Latino Limited English Proficient Prisoners

i. Unlawful Discrimination

54. Defendant is aware of OPP prisoners who are LEP and of what is necessary to provide meaningful LEP assistance and services in the correctional context.

55. Defendant is aware of the discriminatory treatment of Latino LEP prisoners at OPP, yet it allows OPP to continue to operate in a discriminatory manner and fails to take basic measures to address and correct this discrimination.

56. Defendant's failure to provide language assistance at OPP denies Latino LEP prisoners the services, programs, and activities that OPP makes available to non-LEP prisoners.

57. For example, Defendant's failure to provide LEP assistance prevents Latino LEP prisoners from meaningful access to the intake, processing, housing, and medical services, at each of the OPP facilities.

58. Defendant lacks a sufficient number of LEP competent Spanish speaking staff at OPP.

59. Defendant conducts OPP's intake process almost exclusively in English, leaving Latino LEP prisoners uninformed about the intake and classification process, and OPP's general rules.

60. Defendant fails to translate important OPP documents, including documents regarding prisoner rights and access to services, into Spanish for Latino LEP prisoners. OPP staff members regularly ask Latino LEP prisoners to sign important forms written in English without the aid of appropriate language assistance.

61. For example, Defendant does not make OPP grievance forms available in Spanish. Grievance forms provide the means for prisoners to report misconduct by a detention officer.

62. OPP security staff routinely issue commands and make announcements only in English. Some of these are basic announcements informing prisoners, among other things, when it is time for them to go outdoors, receive clothing, use the telephone, be released from a 48-hour immigration hold, or eat.

63. OPP security officers use Spanish-speaking prisoners to interpret for them, but OPP makes no determination whether these prisoners have the language competency to interpret.

64. The use of prisoner interpreters risks not only inaccuracy, but also may give the prisoner-interpreter access to personal or private information about the LEP prisoner and presents a security and safety risk in a correctional setting.

ii. Federal Funding

65. At all relevant times described in paragraphs 1-69, Defendant has been and continues to be a recipient of federal financial assistance from DOJ, either directly or through another recipient of federal financial assistance.

66. Title VI and its implementing regulations prohibit intentional discrimination on the grounds of race, color, or national origin in any of a grant recipient's or subrecipient's operations, and they also prohibit methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the grant recipient's or subrecipient's operations as respects individuals of a particular race, color, or national origin.

67. Through an April 23, 2012, letter and other means, the United States advised Defendant that OPP's LEP services violate Title VI and its implementing regulations.

68. Since the April 23, 2012, letter, the United States has made concerted efforts to secure Defendant's voluntary compliance with Title VI and its implementing regulations.

69. The United States has determined that Defendant's compliance with Title VI and its implementing regulations cannot be secured by voluntary means without court ordered remedies.

V. VIOLATIONS

FIRST CLAIM:

DEFENDANT'S PATTERN AND PRACTICE OF VIOLATING PRISONERS' CONSTITUTIONAL RIGHTS

70. The United States re-alleges and incorporates by reference the allegations set forth in paragraphs 1-533, above.

71. The Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, authorizes the United States to seek equitable and declaratory relief to remedy a pattern or practice of Defendant depriving prisoners confined to OPP of any rights, privileges, or immunities secured or protected by the Constitution.

72. Defendant is, has been, or should have been aware of the deficiencies alleged in paragraphs 1-533, but has failed to take effective measures to remedy these deficiencies. These failures amount to deliberate indifference to the safety and health of OPP prisoners, in violations of the rights, privileges, and immunities of those prisoners that the Constitution secures and protects. *See* U.S. Const. Amend. VIII & XIV. This deliberate indifference caused and continues to cause the violations of constitutional rights alleged.

73. Unless restrained by this Court, Defendant will continue to engage in the acts and omissions set forth in paragraphs 1-533, that deprive persons confined in OPP of the rights, privileges, and immunities of those prisoners that the Constitution secures and protects.

**SECOND CLAIM:
DEFENDANT'S TREATMENT OF LATINO LEP PRISONERS
VIOLATES TITLE VI**

74. The United States re-alleges and incorporates by reference the allegations set forth in paragraphs 1-69, above.

75. Title VI authorizes the United States to seek declaratory and equitable relief to ensure that no person is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal funding on the ground of race, color, or national origin.

76. The DOJ's Title VI implementing regulations prohibit methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the grant recipient's or subrecipient's operations as respects individuals of a particular race, color, or national origin.

77. Defendant received and continues to receive federal financial assistance for Defendant's programs and activities.

78. Defendant or Defendant's agents have excluded LEP Latino prisoners from participation in, denied LEP Latino prisoners the benefits of, and subjected LEP Latino prisoners to discrimination under their programs and activities relating to the operations of OPP on the basis of those prisoners' race, color, and national origin.

79. This treatment of Latino LEP prisoners by Defendant or Defendant's agents is unjustified and has an adverse disparate impact/discriminatory effect on Latinos.

80. Defendant's discrimination against LEP prisoners violates Title VI and the DOJ's Title VI implementing regulations.

VI. PRAYER FOR RELIEF

81. WHEREFORE, the United States prays that the Court will:

82. Declare that Defendant's acts and omissions constitute a pattern or practice of conduct that deprives OPP prisoners of rights, privileges, or immunities secured or protected by the Constitution;

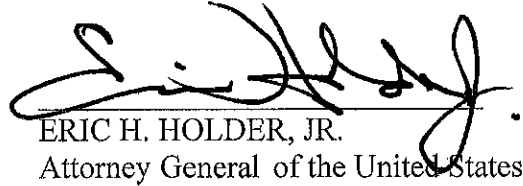
83. Enjoin Defendant and Defendant's agents from continuing these acts and omissions, and order Defendant to take such remedial actions as will ensure lawful conditions of confinement at OPP;

84. Declare that Defendant has excluded persons from participation in, denied persons the benefits of, or subjected persons to discrimination under programs or activities receiving federal financial assistance, on the basis of race, color, or national origin, in violation of Title VI;

85. Enjoin Defendant and Defendant's agents from engaging in any of the discriminatory acts forming the Title VI violation, and order Defendant to take such remedial action as will eliminate such discrimination; and

86. Order such other relief as the interests of justice may require.

Respectfully submitted this 23rd day of September, 2012.

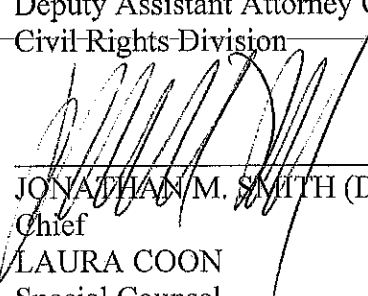


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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LASHAWN JONES, KENT)
ANDERSON, STEVEN DOMINICK,)
ANTHONY GIOUSTAVIA, JIMMIE)
JENKINS, GREG JOURNEE,)
RICHARD LANFORD, LEONARD)
LEWIS, EUELL SYLVESTER and)
MARK WALKER, on behalf of)
themselves and all others similarly)
situated,)
)
)
Plaintiffs,)
)
UNITED STATES OF AMERICA)
)
Applicant for Intervention,)
)
)
v.)
)
MARLIN GUSMAN,)
Sheriff, Orleans Parish,)
)
Defendant.)

Civil Action No. 2:12-cv-00859
Section I
Judge Lance M. Africk
Magistrate Judge Shushan

MEMORANDUM OF LAW
IN SUPPORT OF UNITED STATES'
UNOPPOSED MOTION TO
INTERVENE PURSUANT TO THE
CIVIL RIGHTS OF INSTITUTIONALIZED
PERSONS ACT, 42 U.S.C. § 1997

**MEMORANDUM OF LAW IN SUPPORT OF UNITED STATES' UNOPPOSED
MOTION TO INTERVENE**

The United States of America, pursuant to Rule 24, Federal Rules of Civil Procedure, submits this Memorandum of Law in support of its Unopposed Motion to Intervene in the above-styled case, *Jones v. Gusman*, No. 2:12-cv-00859 (LMA) (E.D. La., filed Apr. 2, 2012).

I. INTRODUCTION

The Orleans Parish Prison ("OPP") is a violent and dangerous institution. The United States has found reasonable cause to believe that prisoners confined to OPP are subject to physical assaults by others prisoners and staff, including sexual assaults, denied access to necessary medical and mental health care for serious conditions, and subjected to unsafe physical plant conditions. The United States and Defendant Sheriff Marlin Gusman have negotiated an agreement that will resolve

the concerns of the United States as well as those raised by the parties to this litigation. Upon being granted leave to intervene in this case, the United States and Defendant will submit the proposed agreement to the Court and request that it be entered as an injunction.

On February 12, 2008, the United States formally notified the City of New Orleans that the Department of Justice (“Department”) was opening an investigation of conditions of confinement at OPP pursuant to the Civil Rights of Institutionalized Persons Act (“CRIPA”), 42 U.S.C. § 1997. CRIPA gives the Department authority to seek a remedy for a pattern or practice of conduct that violates the constitutional rights of prisoners in adult detention and correctional facilities.

On September 11, 2009, the United States issued a public findings letter concluding that numerous conditions and practices at OPP violated the constitutional rights of prisoners. More specifically, the Department found that prisoners were not adequately protected against harm, including harm from excessive use of force by staff and prisoner-on-prisoner violence due to inadequate supervision; that prisoners did not receive adequate mental and medical health care, including proper suicide prevention; that prisoners faced serious risks posed by inadequate fire safety precautions; and that the physical plant caused harm and posed an unreasonable risk of serious harm to prisoners’ health and safety.

On April 23, 2012, the United States sent Defendant a letter detailing current deficiencies at OPP necessitating emergency action, including inadequate protection from violence and sexual assault; inadequate suicide prevention; inadequate mental health care and access to medical care; and inadequate services to limited English proficient (“LEP”) prisoners in violation of Title VI of the Civil Rights Act of 1964 (“Title VI”). The Defendant has not, despite notice of the problems and minimally necessary steps necessary to remedy the problems, resolved the findings.

On April 2, 2012, Plaintiffs filed this class action on behalf of the men, women and youth imprisoned at OPP to protect them from abusive and unconstitutional conditions of confinement and dangers substantially similar to many of the conditions outlined in the United States' September 2009 letter of findings and April 2012 letter regarding emergency conditions. (Complaint, ECF No. 1)¹

CRIPA provides that the United States may intervene in any action seeking relief from egregious or flagrant conditions of confinement that deprive prisoners "of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing them to suffer grievous harm," where the Attorney General has reasonable cause to believe that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights. 42 U.S.C. § 1997c.

Given the overlap between the United States' CRIPA investigation and the subject matter of this litigation, both Plaintiffs and Defendant believe it would be most efficient to resolve Plaintiffs' claims and the United States' CRIPA investigation with a single, comprehensive remedy. Indeed, Plaintiffs invited the United States to intervene in this action and Defendant supports the United States' intervention. The parties and the United States have already engaged in negotiations regarding a mutually agreeable, global settlement. Intervention by the United States in this matter will serve the interests of judicial economy and will facilitate much needed reforms at OPP in the fastest and most efficient manner.

As such, the United States moves this Court for intervention of right, pursuant to Rule 24(a)(2), and alternatively for permissive intervention, pursuant to Rule 24(b). The parties consent to the United States' intervention in this case.

¹ This matter was consolidated with a previously filed complaint for Injunctive and Declaratory Relief, which alleged that unconstitutional conditions at OPP subject youths to imminent and serious risk of bodily harm or death. (ECF No. 13)

II. APPLICABLE LEGAL STANDARDS

A. CRIPA

CRIPA provides:

Whenever an action has been commenced in any court of the United States seeking relief from egregious or flagrant conditions which deprive persons residing in institutions of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing them to suffer grievous harm and the Attorney General has reasonable cause to believe that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may intervene in such action upon motion by the Attorney General.

42 U.S.C. § 1997c.

The United States has met each of the conditions required in order to intervene pursuant to CRIPA. First, more than 90 days have expired since the April 2, 2012 commencement of this action.

42 U.S.C. § 1997c(a)(2). Second, the United States' Complaint in Intervention includes a certification by the Attorney General that the United States has provided Defendant with at least 15 days' written notice of: (a) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities; (b) the supporting facts giving rise to the alleged conditions, including the dates and time period during which the alleged conditions and pattern or practice of resistance occurred; and (c) the minimum measures which the Attorney General believes may remedy the alleged conditions. 42 U.S.C. § 1997c(b)(1)(A). The Department's September 2009 findings letter and April 2012 letter of current deficiencies satisfy these requirements. In addition, the certification affirms that the Attorney General believes that intervention by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the

Constitution or laws of the United States. 42 U.S.C. § 1997c(b)(1)(B). Finally, the Attorney General has personally signed the United States' Motion to Intervene, Complaint in Intervention, and certification. 42 U.S.C. § 1997c(b)-(c).

B. Intervention Pursuant to Federal Rule of Civil Procedure 24

Rule 24 of the Federal Rules of Civil Procedure provides for two types of intervention – “Intervention of Right” and “Permissive Intervention.” Rule 24(a)(2), which sets forth the requirements for intervention as of right, states in relevant part, that:

On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2). Rule 24(b) provides for permissive intervention. Under that provision:

On timely motion, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact.

Fed. R. Civ. P. 24(b)(1). The rule further instructs that “[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.” Fed. R. Civ. P. 24(b)(3).

III. DISCUSSION

“Federal courts should allow intervention where no one would be hurt and the greater justice could be attained.” *Doe # 1 v. Glickman*, 256 F.3d 371, 375 (5th Cir. 2001) (citing *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir.1994)). This Court should grant the United States' Motion to Intervene. The United States satisfies both the requirements to intervene as of right and for permissive intervention. First, this Court should permit the United States to intervene as of right

because (1) the United States has timely filed its Motion to Intervene; (2) it has a significant, legally protectable interest in the proceedings; (3) that interest may be impaired by the disposition of the case; and (4) the existing parties may not adequately protect the United States' interest in ensuring that OPP provides constitutional conditions and compliance with federal law with regard to all of its prisoners. In the alternative, this Court should grant the United States' permissive intervention under Federal Rule of Civil Procedure 24(b). The motion is timely, the United States has a conditional right to intervene pursuant to CRIPA, the United States' CRIPA claims share common questions of law and fact with the current action, and it will not unduly delay or prejudice the adjudication of the case.

“Rule 24 represents ‘an accommodation between two potentially conflicting goals: to achieve judicial economies of scale by resolving related issues in a single lawsuit, and to prevent the single lawsuit from becoming fruitlessly complex or unending.’” *United States v. Texas E. Transmission Corp.*, 923 F.2d 410, 413 (5th Cir.1991) (quoting *Smuck v. Hobson*, 408 F.2d 175, 179 (D.C.Cir.1969) (*en banc*)). The United States' intervention in this matter will serve both goals.

A. The United States Is Entitled to Intervention of Right

A Court should grant a timely motion for intervention as of right under Rule 24(a) where the movant has a “direct, substantial, and legally protectable interest” in the subject matter of the litigation; the denial of intervention could significantly impair or impede the movant's ability to protect this interest; and the movant's protectable interests may not be adequately represented by the existing parties. *Edwards v. City of Houston*, 78 F.3d 983, 999 (5th Cir. 1996); *New Orleans Public Service, Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984) (*en banc*). Each of these requirements must be met to intervene as of right. *Haspel & Davis Milling & Planting Co. Ltd. v. Board of Levee Commissioners of New Orleans*, 493 F.3d 570, 577-78 (5th Cir. 2007). However, “the inquiry under subsection (a)(2) is a flexible one, which focuses on the particular facts and

circumstances surrounding each application.... [and] intervention of right must be measured by a practical rather than technical yardstick.” *Texas E. Transmission Corp.*, 923 F.2d at 413 (quoting *United States v. Allegheny-Ludlum Indus., Inc.*, 517 F.2d 826, 841 (5th Cir.1975), *cert. denied*, 425 U.S. 944 (1976)).

1. The United States’ Motion for Intervention Is Timely

In *Stallworth v. Monsanto Co.*, 558 F.2d 257 (5th Cir.1977), the Fifth Circuit established four factors to consider when evaluating the timeliness of a motion to intervene: (1) the length of time during which the movant actually knew or reasonably should have known of its interest in the case before petitioning for leave to intervene; (2) the extent of the prejudice that the existing parties to the litigation may suffer as a result of the movant’s failure to apply for intervention as soon as it actually knew or reasonably should have known of its interest in the case; (3) the extent of the prejudice that the movant may suffer if its petition for leave to intervene is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely. *Id.* at 264-66. Timeliness is to be determined from an analysis of all the relevant circumstances. *Corley v. Jackson Police Dep’t*, 755 F.2d 1207, 1209 (5th Cir.1985) (citing *NAACP v. New York*, 413 U.S. 345, 366, 93 S.Ct. 2591, 2603, 37 L.Ed.2d 648 (1973)). “Accordingly, these factors merely comprise a framework for the analysis of this threshold consideration.” *Id.*; *Edwards*, 78 F.3d at 1000 (“There are no absolute measures of timeliness.”).

The United States’ application for intervention is timely. Although the United States had knowledge of Plaintiffs’ case from the time it was filed, it has only recently become clear that both the parties are amenable to resolving this case and the United States’ investigation through a single remedy. The United States has been engaged in settlement discussions with Defendant for an extended period, including meetings in June and July of this year. On September 7, 2012,

representatives from Plaintiffs contacted the Department and requested that the United States consider intervening in the current lawsuit achieve a global settlement remedying abusive and unconstitutional conditions of confinement at OPP. The United States thereafter discussed a potential intervention with Defendant and received his support. Following these discussions, the United States immediately prepared to move for intervention, including obtaining the Attorney General's certification and signature on these papers. Such proceedings have progressed in a very timely manner. *See, e.g., Espy*, 18 F.3d at 1205 (motion found timely when made within two months of becoming aware that interests were affected); *Association of Professional Flight Attendants v. Gibbs*, 804 F.2d 318 (5th Cir.1986) (five month lapse found not unreasonable).

Given that a global settlement is preferred by and to the benefit of both the United States and the original parties in this matter, and will serve the interests of judicial economy by achieving the most efficient resolution to Plaintiffs' and the United States' claims, the original parties to the litigation will not suffer any prejudice as a result of the timing of the United States' motion.

2. The United States Has a Protectable Interest

The United States has a "direct, substantial, legally protectable" interest in these proceedings. *New Orleans Public Service, Inc.*, 732 F.2d at 463. The interest must be "one which the *substantive law* recognizes as belonging to or being owned by the applicant." *Id.* at 464 (emphasis in original); *Ross v. Marshall*, 426 F.3d 745, 757 (5th Cir. 2005). An entity has such an interest where it "would have standing to raise the claim." *United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1185 (3d Cir. 1994); *see also United States v. 936.71 Acres of Land*, 418 F.2d 551, 556 (5th Cir.1969). "This 'interest test' is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Espy*, 18 F.3d at 1207.

The United States satisfies the significantly protectable interest test. The United States bases

its claims here on the same facts and conditions asserted by plaintiffs. Its interest thus relates directly to the subject of the existing litigation. CRIPA gives the United States standing to institute civil litigation to obtain equitable relief “to insure the minimum corrective measures necessary to insure the full enjoyment of such rights, privileges, or immunities” secured or protected by the Constitution or laws of the United States for individual confined to a correctional facility. 42 U.S.C. § 1997a. Courts have previously recognized that a government agency has an interest sufficient to support intervention in cases in which, as here, the subject of the suit comes within the scope of the agency’s duties. *See Harris v. Pernsley*, 820 F.2d 592, 602 (3d Cir. 1987); *Blowers v. Lawyers Coop. Publ’g Co.*, 527 F.2d 333, 334 (2d Cir. 1975) (instructing courts to take a “hospitable attitude” toward “allowing a government agency to intervene in cases involving a statute it is required to enforce”). As the United States is tasked with insuring the “full enjoyment” of OPP’s prisoners’ rights to constitutional conditions of confinement, it has a significantly protectable interest in the current litigation, in which Plaintiffs seek to enforce those same rights.

3. This Case May Threaten the United States’ Ability To Protect Its Interest

To establish the third requirement for intervention as of right, an applicant must demonstrate that disposition of the action “may realistically impair” the movant’s interest. *Texas E. Transmission Corp.*, 923 F.2d at 413. The United States satisfies this requirement because this case threatens its ability to protect its sovereign interest in the protection and enforcement of OPP prisoners’ constitutional rights and protections under federal law. Intervention will allow the United States to resolve its OPP investigation, as well as this litigation, in an effective and efficient manner, which will conserve resources and best serve judicial economy. In contrast, allowing the current litigation to proceed without the United States will impede the United States’ ability to settle with Defendant and increase the likelihood that the United States will need to file a separate, duplicative lawsuit to

protect its interests. Given the substantially similar claims contained in Plaintiffs' complaint and the United States' CRIPA findings, an unfavorable ruling here could preclude the use of factual and legal arguments in a separate CRIPA case brought by the United States to resolve its current investigation. *See Southeast Recovery Group, LLC v. BP America, Inc.*, 278 F.R.D. 162, 167 (E.D. La. 2012) (stating that intervention was appropriate where United States' interest in a criminal investigation could be impaired by discovery based on the same facts at issue in the civil litigation). Moreover, an adverse ruling here could negatively impact the Department's ability to bring CRIPA enforcement actions nationally. The Fifth Circuit has frequently analyzed this factor by evaluating the effect of *stare decisis* on a prospective intervenor's rights. *See Espy*, 18 F.3d at 1207; *Texas E. Transmission Corp.*, 923 F.2d at 413; *Woolen v. Surtran Taxicabs, Inc.*, 684 F.2d 324 (5th Cir.1982); *see also Brody ex rel. Sugzdinis v. Spang*, 957 F.2d 1108, 1123 (3d Cir. 1992) (stating that such a "*stare decisis* effect" may be sufficient on its own to satisfy the third factor); *Smith v. Pangilinan*, 651 F.2d 1320, 1324-25 (9th Cir. 1981) (finding Attorney General, charged with administering immigration, had protected interest in construction and application of immigration law, and that Attorney General had right to intervene because of a possible *stare decisis* impairment).

4. The Existing Parties May Not Adequately Represent the United States' Interest

The existing parties to this class action lawsuit do not represent the United States' interests adequately, satisfying the final requirement for intervention as of right. The burden of establishing inadequacy of representation is "minimal." *Edwards*, 78 F.3d at 1005 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Moreover, an applicant need not demonstrate a certainty that the existing parties will inadequately represent its interests, only that such representation "may be" inadequate. *Id.* When evaluating an application to intervene, courts consider representation inadequate where the applicant's interests, though similar to those of an

existing party, “diverge sufficiently that the existing party cannot devote proper attention to the applicant’s interests.” *Brody*, 957 F.2d at 1123.

The Fifth Circuit recognizes a presumption of adequate representation when the would-be intervenor has the same ultimate objective as a party to the lawsuit. *Edwards*, 78 F.3d at 1005; *see Kneeland v. National Collegiate Athlete Ass’n*, 806 F.2d 1285 5th Cir. 1987) (denying movants’ motion for intervention on the grounds that would-be intervenors and defendants had the same ultimate objective to prevent disclosure of documents). While it is true that Plaintiffs, the United States, and even Defendant share the same ultimate goal of constitutional conditions at OPP, the United States is tasked with remedying conditions of confinement that deprive prisoners “of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing them to suffer grievous harm.” 42 U.S.C. § 1997c. This goal extends beyond the claims of the individual class members, and indeed the United States’ proposed Complaint in Intervention includes allegations not included in Plaintiffs’ complaint. As such, it cannot be claimed that the parties’ similar objectives equate to adequate representation of the United States’ interest. *Espy*, 18 F.3d at 1208 (holding that intervention is appropriate where “the government must present the broad public interest, not just the [concerns of the parties.]”); *see also Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489, 1499 (9th Cir. 1995) (holding that intervention applicants that have “more narrow, parochial interests” than the government, have interests unprotected by the government); *Natural Resources Defense Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977) (holding that government and individual interests may not coincide where government is “broadly concerned with implementation and enforcement of the settlement agreement” and individuals are “more narrowly focused”).

The United States is charged by statute with representing the public interest on a national scale. While this responsibility may overlap somewhat with plaintiffs' interests, its interests can and do diverge significantly from theirs. Although the United States recognizes that the Plaintiffs are seeking class certification in this case, the United States' interests nevertheless extend beyond class members' claims regarding their safety and well-being to include ensuring that OPP provides comprehensive constitutional conditions and complies with federal laws regarding the services required for all prisoners. *See JLS, Inc. v. PSC of West Virginia*, 321 Fed. Appx. 286, 291 (4th Cir. 2009) (explaining that "even when a governmental agency's interests appear aligned with those of a particular private group at a particular moment in time, the 'government's position is defined by the public interest, not simply the interests of a particular group of citizens.'") (quoting *Feller v. Brock*, 802 F.2d 722, 730 (4th Cir. 1986)).

In the case at hand, the allegations stated in the United States' CRIPA findings letter of 2009 and April 2012 letter of current deficiencies encompass, but are broader than, the claims stated in Plaintiffs' class complaint. For example, the United States has alleged that OPP is in violation of its Title VI obligations by failing to provide meaningful access for Latino and other national origin minority LEP prisoners to the intake, processing, housing, and medical services at each of the OPP facilities. OPP's lack of meaningful LEP services has a discriminatory effect on Latino prisoners. Title VI authorizes the United States to initiate civil litigation against a recipient of federal assistance, like OPP, whose program or activity violates Title VI by discriminating on the basis of race, color, or national origin, including language access procedures that have a discriminatory effect. 42 U.S.C. § 2000d-1; 28 C.F.R. § 42.108; 28 C.F.R. § 42.104(a); 28 C.F.R. § 42.104(b)(2) (prohibiting discriminatory effect); *see also N.Y. Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995). Plaintiffs have not included similar allegations in their complaint. The United States is tasked

with representing the interests of all OPP prisoners who may be impacted by unconstitutional conditions. *United States v. City of Miami*, 614 F.2d 1322, 1332 (5th Cir. 1980), *aff'd in part, vacated and remanded in part on reh'g*, 664 F.2d 435 (noting that any tendency to seek affirmative relief that goes too far in a Title VII case is likely to be constrained when the Justice Department represents the plaintiff, because it represents the interests of all citizens). Plaintiffs therefore cannot – and should not – be expected to make all of the United States' arguments. This lack of identity of arguments and ultimate objectives is sufficient to satisfy the minimal burden of demonstrating inadequacy of representation. *See Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 973-74 (3d Cir. 1998) (concluding that federal government agency and private businesses seeking to intervene had “interests inextricably intertwined with, but distinct from” each other and thus government's representation of private interests would be inadequate).

The Fifth Circuit has long relied on the presumption that where an existing party to a lawsuit is a government entity charged by law with representing the interests of a private applicant for intervention, the government's representation will be adequate. *Hopwood v. Texas*, 21 F.3d 603, 605 (5th Cir.1994). This is because the government generally is required to represent both the public interest and individuals' interests by law, while individuals have only their own “narrower” or “parochial” views to advocate. *See Trbovich*, 404 U.S. at 538-39. The presumption thus does not hold in the reverse situation, as individual litigants are not tasked with the responsibility of – and therefore cannot be expected to – represent adequately the public interest on behalf of the government. Accordingly, Plaintiffs here cannot and should not be expected to represent the public interest on behalf of the United States.

B. The United States Is Entitled to Permissive Intervention

Should the Court decline to grant the United States intervention of right, it should, in its discretion, nevertheless grant the United States permissive intervention. Permissive intervention is appropriate where a movant “is given a conditional right to intervene by a federal statute; or has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1). A court, in exercising its discretion, “must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

Permissive intervention “is wholly discretionary with the [district] court ... even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied.” *New Orleans Public Service, Inc.*, 732 F.2d at 470-71 (quoting 7C C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 1913, at 376-77 (2d ed. 1986)). In acting on a request for permissive intervention, the district court may consider, among other factors, whether the movants’ interests are adequately represented by other parties, *id.* at 472, and whether intervention will unduly delay the proceedings or prejudice existing parties, Fed.R.Civ.P. 24(b). In addition, it is proper to consider whether movants will “significantly contribute to full development of the underlying factual issues in the suit.” *New Orleans Public Services Inc.*, 732 F.2d at 472.

The United States’ CRIPA claims clearly share common questions of fact and law with the Plaintiffs’ claims that Defendant is violating the constitutional rights of prisoners at OPP by subjecting them to abusive and unconstitutional conditions of confinement.

In addition, the United States has a conditional right to intervene pursuant to CRIPA. As discussed above, the United States has met each of the conditions required for intervention under CRIPA. 42 U.S.C. § 1997c.

Finally, both parties and the United States agree that, in contrast to a resulting delay or prejudice to the original parties, permitting intervention will allow for the most efficient and effective method of resolving this litigation. The United States and the parties are ready to propose a settlement to the Court to resolve this litigation, if the United States is permitted to intervene. As such, intervention is likely to provide the quickest relief to OPP prisoners while conserving the most judicial resources and saving the parties and the United States from expending additional time and money on unnecessary litigation.

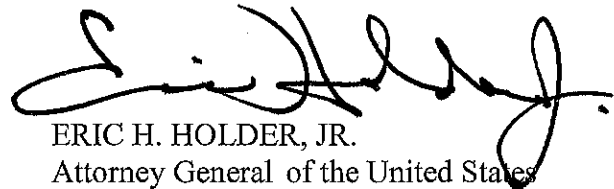
Permissive intervention is appropriate because the United States has a conditional right to intervene, its claims are substantially similar to Plaintiffs' claims, and intervention will serve the interests of judicial economy by permitting the most efficient resolution of Plaintiffs' and the United States' claims.

IV. CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court grant its Motion to Intervene.

Respectfully submitted this 23 day of September, 2012.

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