

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DWIGHT WILLIAMS, <i>et al.</i> ,	:	CIVIL ACTION
Plaintiffs	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, <i>et al.</i> ,	:	
Defendants	:	NO. 08-CV-1979

ORDER

AND NOW, this ____ day of ____, 2008, upon consideration of the Unopposed Motion to Intervene filed by Lynne Abraham, the District Attorney of the City and County of Philadelphia, it is hereby ORDERED that the Motion is GRANTED. Accordingly, the District Attorney is hereby permitted to intervene in this civil action.

BY THE COURT:

_____ U.S.D.J.

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**UNOPPOSED MOTION OF DISTRICT ATTORNEY LYNNE ABRAHAM TO
INTERVENE PURSUANT TO THE PRISON LITIGATION REFORM ACT**

TO THE HONORABLE R. BARCLAY SURRICK, JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA:

Lynne Abraham, the District Attorney of the City and County of Philadelphia, hereby
moves to intervene in this civil action and asserts as follows:

1. This motion is unopposed.
2. Counsel for the Plaintiffs, Jonathan Feinberg, Esquire, has authorized the undersigned to represent that the Plaintiffs do not oppose this intervention motion. Jeffrey Kolansky, Esquire, counsel for the City Defendants, has also authorized the undersigned to represent that the City Defendants do not oppose this intervention motion.
3. Lynne Abraham is the District Attorney of the City and County of Philadelphia. Under Pennsylvania law, she is responsible for the prosecution of persons accused of crimes committed in Philadelphia.

4. Plaintiffs' Complaint raises numerous allegations about overcrowding at the Philadelphia prisons and seeks declaratory and injunctive relief that, if granted, would limit the Philadelphia prison population.
5. Intervention in this case is authorized by the Prison Litigation Reform Act, 18 U.S.C. § 3626, and Fed. R. Civ. P. 24. Plaintiffs' Complaint seeks relief that would constitute a "prisoner release order" as defined by the Prison Litigation Reform Act (PLRA). 18 U.S.C. § 3626(g). The District Attorney seeks to intervene pursuant to Rule 24, which provides for intervention "as of right" where a "statute of the United States grants an unconditional right to intervene." Fed. R. Civ. P. 24(a)(1). The PLRA grants a statutory right of intervention to a prosecutor to oppose an order that would require the release or non-admission of detainees or other prisoners subject to criminal prosecution. 18 U.S.C. § 3626(a)(3)(F).
6. Under virtually identical circumstances, this Court previously granted the District Attorney's Motion to Intervene in Bowers v. City of Philadelphia, Civil Action No, 06-CV-3229, 2006 U.S. Dist. LEXIS 64651 (E.D. Pa. Sept. 8, 2006).

7. For the reasons set forth in the accompanying memorandum of law (which are incorporated herein by reference), the District Attorney respectfully requests that this Court grant the District Attorney intervention in this case.¹

Respectfully submitted,



Sarah V. Hart
Assistant District Attorney
Priya Travassos
Assistant District Attorney
Counsel for Lynne Abraham
Proposed Intervenor
District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107-3499
215-686-9607

Dated: May 14, 2008

¹ In this uncontested motion to intervene, the District Attorney is not including a proposed pleading. The City's response to the complaint is due 60 days after the filing of the complaint. The parties have agreed that the District Attorney's responses to the complaint and the Plaintiffs' simultaneously filed motion for class certification shall be due on the same date as the City's filings.

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**DISTRICT ATTORNEY’S MEMORANDUM OF LAW
IN SUPPORT OF UNOPPOSED MOTION TO INTERVENE**

Introduction

Lynne Abraham, the District Attorney of the City and County of Philadelphia, seeks to intervene in this civil action to oppose Plaintiffs’ requests for injunctive and other relief that would, if granted, have the purpose or effect of limiting the Philadelphia prison population. Because the parties do not oppose this intervention request, the District Attorney is limiting the briefing of this issue.¹

Background

Lynne Abraham is the District Attorney of the City and County of Philadelphia. Under Pennsylvania law, she is responsible for the prosecution of persons accused of crimes committed in Philadelphia. See 16 Pa.C.S.A. § 1402(a).

¹ However, an extensive discussion of the PLRA’s intervention requirements can be found in the District Attorney’s previous filings with this Court in the related Bowers litigation (Civil Action No. 06-3229). (See District Attorney’s Motion to Intervene & Reply to Plaintiffs’ Response to the Motion to Intervene, Document Nos. 9 & 18.) The District Attorney respectfully requests the opportunity to supplement this brief if this Court deems further briefing necessary to resolve this uncontested motion.

The named plaintiffs who filed this civil action are persons who have been, or continue to be, subject to criminal prosecutions by the Philadelphia District Attorney or are serving sentences imposed for crimes the Philadelphia District Attorney prosecuted. Plaintiffs' Complaint raises allegations relating to triple-celling in the Philadelphia Prison System (PPS) and purported overcrowding in PPS dormitories. The Complaint seeks declaratory and injunctive relief, a preliminary injunction, and attorneys fees. Specifically, Plaintiffs state that they may be seeking an order limiting the prison population that would require a three-judge panel pursuant to 18 U.S.C. § 3626(a)(3). (Plaintiffs' Complaint at p.11, ¶ 3.)

Federal Intervention Requirements

Intervention as of Right Under Fed. R. Civ. P. 24 (a). The Rules of Civil Procedure provide for intervention "as of right" and permissive intervention. Fed. R. Civ. P. 24. The District Attorney seeks to intervene "as of right" pursuant to Rule 24(a). In applicable part, Rule 24 provides that "[u]pon timely application anyone shall be permitted to intervene in any action: (1) when a statute of the United States confers an unconditional right to intervene...." The District Attorney's request to intervene as of right is based on a Federal statute and is timely filed.

The Federal Prison Litigation Reform Act (PLRA). The PLRA grants state and local prosecutors the right to intervene in Federal Court actions where persons subject to criminal prosecution seek an order requiring their release or non-admission to a prison. 18 U.S.C. § 3626(a)(3)(F). The PLRA broadly defines a "prisoner release order" to include orders that *explicitly* direct the release or nonadmission of prisoners as well as those that can *indirectly* lead to prison population limits or releases. See 18 U.S.C. §

3626(g)(4) (defining a “prisoner release order” to include “any order, temporary restraining order or preliminary injunction that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison). The PLRA also makes clear that prosecutors have the right to intervene at all stages of this litigation, including the beginning of the litigation, when there are “proceedings related to” a prisoner release order. 18 U.S.C. § 3626 (a)(3)(F).

Why Intervention is Appropriate in this Case

Here, the District Attorney is entitled to intervene because her “jurisdiction or function” includes the prosecution of persons who “may be released from” a “prison” pursuant to a “prisoner release order.” See 18 U.S.C. § 3626(g)(4) (defining a “prisoner release order”). Under the plain language of the PLRA, the District Attorney is entitled to intervene where persons subject to prosecution “*may* be released from, or not admitted to, a prison as a result of a prisoner release order....” 18 U.S.C. § 3626(a)(3)(F). Thus, where, as here, the litigation may result in direct or indirect population limits, the PLRA grants intervention rights.

By using the phrase “proceedings relating to,” Congress chose to grant prosecutors expansive intervention rights throughout the litigation.² The words “relating

² The term “proceeding” is commonly understood in the legal community to include an entire lawsuit. Obale v. Attorney General of the United States, 453 F. 3d 151, 156 n.3 (3d. Cir. 2006) (interpreting the word “proceeding” according to its “ordinary meaning” as the “regular and orderly progression of a lawsuit, including all acts between the time of commencement and the entry of judgment”); see also 28 U.S.C. § 455 (defining “proceeding” in judicial disqualification statute to include “pretrial, trial, appellate review, or other stages of the litigation”).

to” are very broad.³ Courts have deemed legal issues to be “related” when they arise from a core set of facts and lack distinct legal theories.⁴ Based on a common sense reading of the “deliberately expansive language chosen by Congress,” this Court has previously held that the District Attorney is entitled to intervene in proceedings that “have bearing on or have some association with [a prisoner release order].” Bowers v. City of Philadelphia, Civil Action No, 06-CV-3229, 2006 U.S. Dist. LEXIS 64651, at *24-25 (E.D. Pa. Sept. 8, 2006). Given the nature of Plaintiffs’ Complaint, it would be extremely difficult to find any portion of this litigation not “related” to a request to release prisoners or limit the prison population.

³ The Oxford English Dictionary defines “relate” as “to establish a causal connection between” and defines “relate to” as “have reference to” and “concern.” Courts frequently resort to these dictionary definitions for statutory interpretation purposes. See Shaw v. Delta Air Lines, 463 U.S. 85, 96-97 (1983) (interpreting statutory language of “relates to” in accordance with a dictionary definition to mean “has a connection with or reference”); United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Mem’l Hosp., 995 F.2d 1179 (3d Cir. 1995) (same). Cf. Black’s Law Dictionary 1291 (7th ed. 1999) (in bankruptcy matters, a “related proceeding” is “a proceeding that involves a claim that will affect the administration of the debtor’s estate (such as a tort action between the debtor and a third party) but that does not arise under bankruptcy law and could be adjudicated in state court”).

⁴ See, e.g., Hensley v. Eckerhart, 461 U.S. 424, 434 (1983) (in case addressing “related” claims for civil rights attorney fee purposes, describing “unrelated claims” as “distinctly different claims for relief that are based on different facts and legal theories”); Lerman v. Joyce Int’l, 10 F.3d 106, 114 (3d Cir. 1993) (finding legal theories “related” where they were based on “overlapping facts”); Citizens Council of Delaware County v. Brinegar, 741 F.2d 584 (3d Cir. 1984) (finding that plaintiffs’ claims were “substantially related to each other” because they relied on the essential legal theory that the defendants had violated two federal statutes).

Conclusion

For these reasons, the District Attorney respectfully requests that this Court grant this uncontested motion to intervene.

Respectfully submitted,



Sarah V. Hart
Assistant District Attorney
Priya M. Travassos
Assistant District Attorney
Counsel for Lynne Abraham
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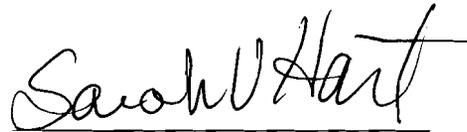
Certificate of Service

The undersigned hereby certifies that a copy of the District Attorney’s Unopposed Motion to Intervene and Memorandum of Law was served by first-class mail on this date to the following counsel:

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May 14, 2008