

1 IN THE UNITED STATES DISTRICT COURTS
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3 AND THE NORTHERN DISTRICT OF CALIFORNIA
4 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
5 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

6
7 RALPH COLEMAN, et al.,
8 Plaintiffs,

9 v.

10 ARNOLD SCHWARZENEGGER,
11 et al.,
12 Defendants.

NO. CIV S-90-0520 LKK JFM P
THREE-JUDGE COURT

13 MARCIANO PLATA, et al.,
14 Plaintiffs,

15 v.

16 ARNOLD SCHWARZENEGGER,
17 et al.,
18 Defendants.

NO. C01-1351 TEH
THREE-JUDGE COURT

**ORDER GRANTING MOTIONS
TO INTERVENE FILED ON
SEPTEMBER 14, 2007**

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20 By order filed August 17, 2007, the Court set a deadline of September 14, 2007, for
21 the filing of motions to intervene. On September 14, 2007, motions to intervene were filed in
22 this action by: five California counties (“County Intervenors”); thirteen Republican state
23 senators (“Senate Republican Intervenors”); the County of Sonoma, its Sheriff/Coroner,
24 District Attorney, and Chief Probation Officer (“Sonoma County Intervenors”); twelve city
25 police chiefs (“Police Chief Intervenors”); fifteen county sheriffs, eleven county probation
26 officers, five city police chiefs, and one city chief of corrections (“Sheriff, Probation, Police
27 and Corrections Intervenors”); and the California Correctional Peace Officers’ Association
28 (“CCPOA”). In addition, five California district attorneys (“new District Attorney

1 Intervenor”) moved collectively to intervene with the district attorneys whose motion to
2 intervene was granted in the Court’s August 17, 2007 order.

3 The County Intervenor, Senate Republican Intervenor, Police Chief Intervenor,
4 new District Attorney Intervenor, and Sheriff, Probation, Police and Corrections Intervenor
5 all meet the statutory criteria for intervention as of right under 18 U.S.C. § 3626(a)(3)(F),
6 which confers standing to oppose “the imposition or continuation in effect” of a prisoner
7 release order and the right to intervene in “any proceeding relating to such relief” on:

8 [a]ny State or local official including a legislator or unit of
9 government whose jurisdiction or function includes the
10 appropriation of funds for the construction, operation, or
11 maintenance of prison facilities, or the prosecution or custody of
persons who may be released from, or not admitted to, a prison as
a result of a prisoner release order

12 18 U.S.C. § 3626(a)(3)(F). Accordingly, these motions to intervene will be granted pursuant
13 to Federal Rule of Civil Procedure 24(a)(1), which provides for intervention as of right
14 “when a statute of the United States confers an unconditional right to intervene.”

15 The Police Chief Intervenor and Sheriff, Probation, Police and Corrections
16 Intervenor also move to consolidate their pleadings with each other and with the pleading of
17 the Sheriff and Probation Intervenor whose motion to intervene was granted by the Court’s
18 August 17, 2007 order. Good cause appearing, this motion will be granted. All of these
19 intervenors are represented by the same counsel and shall be represented by one counsel in
20 all proceedings, including the September 24, 2007 hearing.

21 Similarly, the Court finds good cause to grant the new District Attorney Intervenor’s
22 motion to intervene with the district attorneys who were granted intervenor status by this
23 Court’s August 17, 2007 order. As with the Sheriff and Probation Intervenor, all District
24 Attorney Intervenor shall be represented by one counsel in all proceedings, including the
25 September 24, 2007 hearing. The District Attorney Intervenor shall also amend their
26 intervention pleading to include the new District Attorney Intervenor.

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1 The Sonoma County Intervenors also meet the statutory criteria for intervention as of
2 right under 18 U.S.C. § 3626(a)(3)(F). As noted above, the Sonoma County Intervenors
3 bring their motion on behalf of the County of Sonoma and its Sheriff/Coroner, District
4 Attorney, and Chief Probation Officer. Good cause appearing, the Sonoma County
5 Intervenors will be directed to show cause at the September 24, 2007 hearing why their
6 intervention pleading should not be severed and the County of Sonoma's pleading
7 consolidated with the County Intervenors, the Sonoma County District Attorney's pleading
8 consolidated with the District Attorney Intervenors, and the Sonoma County Sheriff/Coroner
9 and Chief Probation Officer's pleading consolidated with the Sheriff and Probation
10 Intervenors.

11 The counties who have jointly intervened as the County Intervenors are each
12 represented by their own county counsel. Good cause appearing, the County Intervenors
13 shall designate one lead counsel to represent them in all proceedings, including the
14 September 24, 2007 hearing.

15 Unlike the other proposed intervenors, CCPOA does not seek to intervene under 18
16 U.S.C. § 3626(a)(3)(F). Instead, it seeks intervention under Federal Rule of Civil Procedure
17 24, which provides for intervention as of right "when the applicant claims an interest relating
18 to the property or transaction which is the subject of the action and the applicant is so
19 situated that the disposition of the action may as a practical matter impair or impede the
20 applicant's ability to protect that interest, unless the applicant's interest is adequately
21 represented by existing parties." Fed. R. Civ. P. 24(a)(2).

22 A party seeking to intervene as of right must meet four
23 requirements: (1) the applicant must timely move to intervene;
24 (2) the applicant must have a significantly protectable interest
25 relating to the property or transaction that is the subject of the
26 action; (3) the applicant must be situated such that the disposition
27 of the action may impair or impede the party's ability to protect
28 that interest; and (4) the applicant's interest must not be
adequately represented by existing parties. *Donnelly* [*v.*
Glickman], 159 F.3d [405] at 409 [(9th Cir. 1998)]. Each of these
four requirements must be satisfied to support a right to
intervene. *League of United Latin Am. Citizens v. Wilson*, 131
F.3d 1297, 1302 (9th Cir.1997).

1 *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003). “Rule 24 traditionally receives
2 liberal construction in favor of applicants for intervention.” *Id.* (citing *Donnelly*, 159 F.3d at
3 409); *see also United States v. City of Los Angeles*, 288 F.3d 391, 397-98 (9th Cir. 2002).

4 CCPOA’s motion was timely filed. The Court turns, therefore, to the other three
5 requirements for intervention as of right.

6 The second requirement, that CCPOA has a “significant protectable interest” in this
7 action, is satisfied if:

8 (1) it asserts an interest that is protected under some law, and
9 (2) there is a ‘relationship’ between its legally protected interest
10 and the plaintiff’s claims.” *Donnelly*, 159 F.3d at 409. The
11 relationship requirement is met “if the resolution of the plaintiff’s
12 claims actually will affect the applicant.” *Id.* at 410. The
13 “interest” test is not a clear-cut or bright-line rule, because “[n]o
14 specific legal or equitable interest need be established.” *Greene*,
996 F.2d at 976. Instead, the “interest” test directs courts to make
a “practical, threshold inquiry,” *id.*, and “is primarily a practical
guide to disposing of lawsuits by involving as many apparently
concerned persons as is compatible with efficiency and due
process,” *County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th
Cir.1980) (internal quotation marks and citation omitted).

15 *United States v. City of Los Angeles*, 288 F.3d at 398. CCPOA claims an interest in this
16 litigation on the ground that:

17 its approximately 28,000 members guard the state prisons at the
18 heart of this Three-Judge Court proceeding. The severely
19 overcrowded prison conditions that led to the establishment of
20 this Three-Judge Court directly and profoundly affect every
21 CCPOA member while he or she is on the job. Likewise, the
relief under consideration by this Court – a cap on the State’s
prison population – would directly affect working conditions for
all CCPOA members.

22 CCPOA Proposed Intervention Pleading, filed September 14, 2007, ¶ 5. It is plain that
23 California’s prison guards are affected by the conditions of the prisons in which they work,
24 and that resolution of the plaintiffs’ request for relief from prison overcrowding will affect
25 the membership of the CCPOA. Consequently, CCPOA appears to have a “significantly
26 protectable interest” in the matters at bar.¹

27 ¹In addition, CCPOA claims that its membership has a right under the substantive due
28 process clause of the Fifth and Fourteenth Amendments to be “free of the extraordinary daily
risks and actual physical and mental harms” to which they are being subjected as a result of

1 The third requirement for intervention as of right is that a disposition by this Court
2 must “impair or impede” CCPOA’s ability to protect its interests. *Arakaki*, 324 F.3d at 1083.
3 As already noted, it is apparent that the membership of the CCPOA is significantly affected
4 by the conditions in California’s prisons. It is equally clear that the interests asserted by
5 CCPOA will be affected by this proceeding and, depending on the Court’s disposition, that
6 CCPOA’s ability to protect those interests may be impaired or impeded if they are not a party
7 to this proceeding.

8 Finally, the Court considers whether CCPOA’s interests are adequately represented by
9 the plaintiff classes. Three factors are considered “in determining the adequacy of
10 representation: (1) whether the interest of a present party is such that it will undoubtedly
11 make all of a proposed intervenor’s arguments; (2) whether the present party is capable and
12 willing to make such arguments; and (3) whether a proposed intervenor would offer any
13 necessary elements to the proceeding that other parties would neglect.” *Id.* at 1086 (citing
14 *California v. Tahoe Reg’l Planning Agency*, 792 F.2d 775, 778 (9th Cir.1986)). CCPOA
15 asserts that it will provide evidence of the impact of prison overcrowding “on the welfare of
16 both prisoners and correctional officers” and that it is uniquely situated to put this evidence
17 in an historical context, as well as to provide evidence of causation as required by 18 U.S.C.
18 § 3626(a)(3)(E)(i). CCPOA Mot. to Intervene at 13. The Court agrees with CCPOA that,
19 while the interests of the plaintiff classes and those of CCPOA overlap, they are also
20 distinctly different. The interests of CCPOA are thus not adequately represented by the
21 plaintiff classes.

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25 the overcrowded conditions in California’s prisons. CCPOA Proposed Intervention Pleading
26 ¶ 11. At the September 24, 2007 hearing, the parties shall be prepared to address the extent
27 to which this claim will be litigated, if at all, in these proceedings. Recognizing that
28 CCPOA’s interests give rise to CCPOA’s right to intervene does not answer the question of
the extent to which its separate interests will be at issue in these proceedings. Our ruling as
to CCPOA’s interest is not final, but subject to review and reconsideration by the Court, as is
CCPOA’s right to intervene.

1 For the foregoing reasons, the Court finds that CCPOA is entitled to intervene in this
2 action as of right pursuant to Federal Rule of Civil Procedure 24(a)(2). Accordingly,
3 CCPOA's motion to intervene will be granted.²

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. The County Intervenors' September 14, 2007 motion to intervene is GRANTED,
6 and these intervenors shall designate one lead counsel to speak on behalf of all five counties
7 in all proceedings before this Court;

8 2. The Senate Republican Intervenors' September 14, 2007 motion to intervene is
9 GRANTED;

10 3. The Sonoma County Intervenors' September 14, 2007 motion to intervene is
11 GRANTED;

12 4. The Sonoma County Intervenors are ORDERED TO SHOW CAUSE at the
13 September 24, 2007 hearing as to why their intervention pleading should not be severed and
14 the County of Sonoma's pleading consolidated with the County Intervenors, the Sonoma
15 County District Attorney's pleading consolidated with the District Attorney Intervenors, and
16 the Sonoma County Sheriff/Coroner and Chief Probation Officer's pleading consolidated
17 with the Sheriff and Probation Intervenors;

18 5. The CCPOA's September 14, 2007 motion to intervene is GRANTED;

19 6. The new District Attorneys Intervenors' September 14, 2007 motion to intervene is
20 GRANTED, and these intervenors shall be represented in all proceedings by the same
21 counsel as all other District Attorney Intervenors;

22 7. The Police Chief Intervenors' September 14, 2007 motion to intervene is
23 GRANTED;

24 ²CCPOA apparently also meets the criteria for permissive intervention. Permissive
25 intervention is allowed under Federal Rule of Civil Procedure 24(b) "where the intervenor
26 raises a claim that has questions of law or fact in common with the main case, shows
27 independent grounds for jurisdiction, and moves to intervene in a timely fashion. *Venegas v.*
28 *Skaggs*, 867 F.2d 527, 529 (9th Cir.1989), *aff'd*, 495 U.S. 82, 110 S. Ct. 1679, 109 L. Ed. 2d
74 (1990). The decision to grant or deny this type of intervention is discretionary, subject to
considerations of equity and judicial economy. *Id.* at 530-31." *Garza v. County of Los*
Angeles, 918 F.2d 763, 777 (9th Cir. 1990).

1 8. The Sheriff, Probation, Police and Corrections Intervenor's September 14, 2007
2 motion to intervene is GRANTED; and

3 9. The motion of the Police Chief Intervenor and the Sheriff, Probation, Police and
4 Corrections Intervenor to consolidate their pleadings with those of the other Sheriff and
5 Probation Intervenor is GRANTED, and all of these intervenors shall be represented by one
6 counsel in all proceedings.

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8 **IT IS SO ORDERED.**

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10 Dated: 09/19/07

/s/


STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

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14 Dated: 09/19/07




LAWRENCE K. KARLTON
SENIOR UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF CALIFORNIA

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18 Dated: 09/19/07



THELTON E. HENDERSON
SENIOR UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

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