

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.<sup>1</sup>

27 <sup>1</sup>In 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.<sup>2</sup>

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;

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24 <sup>2</sup>CCPOA 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/  
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STEPHEN REINHARDT  
UNITED STATES CIRCUIT JUDGE  
NINTH CIRCUIT COURT OF APPEALS

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14 Dated: 09/19/07


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

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18 Dated: 09/19/07

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

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