

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

CITY OF YOUNGSTOWN	)	CASE NUMBER 4:03 CV 2329
26 SOUTH PHELPS STREET	)	
YOUNGSTOWN, OHIO 44503	)	JUDGE BATCHELDER
	)	JUDGE DOWD
Intervenor	)	JUDGE POLSTER
	)	
vs.	)	<b><u>COMPLAINT IN INTERVENTION</u></b>
	)	
NATHANIEL ROBERTS, INDIVIDUALLY	)	
AND ON BEHALF OF THE	)	
CERTIFIED CLASS, ET AL.	)	
	)	
Plaintiffs	)	
	)	
and	)	
	)	
COUNTY OF MAHONING, ET AL.	)	
	)	
Defendants	)	

Intervenor, the City of Youngstown, Ohio ("Youngstown"), for its complaint against Plaintiffs (the "Prisoners") and Defendants ("Mahoning County Government"), alleges as follows:

1. This is an action by Youngstown in opposition to the imposition of prisoner release orders pursuant to 18 U.S.C. §3626 and for a declaratory judgment pursuant to 28 U.S.C. §2201 and 28 U.S.C. §2202 with respect to the claims described below.

2. The Prisoners are a group of people who were or are incarcerated inmates in the jails of Mahoning County, Ohio.

3. Mahoning County Government includes Mahoning County, the Mahoning County Commissioners and the Mahoning County Sheriff.

4. On November 14, 2003, the Prisoners filed a Complaint pursuant to 42 U.S.C. §1983 against Mahoning County Government under this case number.

5. On December 13-15, 2004, a trial was conducted between the Prisoners, who had been certified as a class, and Mahoning County Government.

6. On March 10, 2005, a single district court judge, Judge Dowd, found that the Prisoners had met their burden of proof; preponderance of the evidence, that their class members were being denied due process of law and/or not to be subjected to cruel and unusual punishment, and were being denied their constitutional right of access to the courts, and therefore found against Mahoning County Government and found that the Prisoners were entitled to receive attorney fees and costs from Mahoning County Government.

7. On March 24, 2005, Mahoning County Government requested the appointment of a three-judge panel and the imposition of a prisoner release order.

8. On March 28, 2005, the Prisoners joined in Mahoning County Government's request for a three-judge panel and the imposition of a prisoner release order.

9. On March 28, 2005, Mahoning County Government sent a letter to the judges of the Mahoning County Court of Common Pleas asking them to put in place a judicial release mechanism as soon as possible because it was concerned that the federal court would not enter a prisoner release order quickly enough to allow it to avoid the cost of housing prisoners in other facilities pursuant to the requirements of Section 341.12 of the Ohio Revised Code.

10. On March 28, 2005, Vincent Nathan was appointed to serve as Special Master during the remedial phase of this litigation.

11. On March 30, 2005, the judges of the Mahoning County Court of Common Pleas, as a group, issued an Order adopting an "Emergency Release Policy" which ordered the release of prisoners, including prisoners sentenced or ordered held in lieu of bond by Youngstown's Municipal Court Judges, other area municipal court judges and county court judges.

12. Mahoning County Government released hundreds of prisoners, engaged in massive layoffs of jail personnel, closed down the Mahoning County Minimum Security Jail and most of the Mahoning County Justice Center, and entered into an agreement with the Prisoners to house only 296 inmates due to understaffing.

13. On May 3, 2005, a sales tax levy, the previous failure of which was the purported reason why Mahoning County Government had to engage in such draconian measures to avoid its obligation under

State law; Sections 341.01, 341.12, 341.13 and 341.14 of the Ohio Revised Code, to adequately provide for the confinement of all prisoners committed to the county jail who are charged with or convicted of violating the Ohio Revised Code, was passed by the voters of Mahoning County.

14. Special Master Vincent Nathan, however, reported to the Court in his Fourth Report of Special Master that merely directly addressing the particular problems that were the source of constitutional violations by requiring that the jail be adequately staffed and funded was insufficient, and that the focus of the litigation should be on solutions that address the underlying causes of crowding in the jail such as by permanently reducing the number of people jailed and, therefore, changes to the entire criminal justice system were needed.

15. In response to the Special Master's fourth report, a Working Group was formed to examine options and propose solutions to the "dysfunctional criminal justice system" that Special Master Nathan had found existed in Mahoning County.

16. Mahoning County Government has still not adequately staffed the jail or opened up most of its closed jail facilities and there is no indication that the Mahoning County Commissioners intend to take action to provide sufficient funds for the operation of its two jail facilities including adequately staffing them.

17. On May 25, 2006, Judge Dowd issued an Order finding that because Youngstown and its municipal court judges would not consent to the prisoner release order issued by the common pleas judges of

Mahoning County and were considering continuing to challenge it in state court litigation, "...the central issue of population control to prevent future overcrowding remains unresolved" and, therefore, ordered the matter of determining a prisoner release order be referred to a three-judge court.

18. The jail facilities under the control of Mahoning County Government; the Mahoning County Justice Center and the Mahoning County Minimum Security jail, are capable of constitutionally housing 660 inmates when adequately staffed.

19. The jail facilities under the control of Mahoning County Government are not crowded at the present time as they contain far fewer inmates than they are capable of housing.

20. The jail facilities under the control of Mahoning County Government are currently understaffed, not overcrowded.

21. Municipal and county courts in Mahoning County that commit prisoners to the custody of the Mahoning County Sheriff have had no options so far in the remedial stage of this litigation other than to "voluntarily" consent to a prisoner release order issued by the common pleas judges of Mahoning County or face the prospect of a federal prisoner release order.

22. 18 U.S.C. §3626(a)(3)(F) grants standing to any unit of government whose jurisdiction or function includes 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 to oppose the imposition or continuation in effect of such relief and to seek termination of such relief.

23. 18 U.S.C. §3626(a)(3)(F) grants a right to intervene in any proceedings relating to prisoner release orders to any unit of government whose jurisdiction or function includes 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 to oppose the imposition or continuation in effect of such relief and to seek termination of such relief.

24. 18 U.S.C. §3626(a)(3)(F) creates a cause of action that may be asserted by any unit of government whose jurisdiction or function involves 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 in any proceeding relating to prisoner release orders.

25. Youngstown is a unit of government in that it is a chartered municipality located in the County of Mahoning and State of Ohio.

26. This Court has already acknowledged and accepted jurisdiction of this case.

27. The jurisdiction and function of Youngstown includes the prosecution of individuals who are accused of or convicted for violations of criminal law and are sentenced or ordered held in the jail facilities of Mahoning County and committed to the custody of the Mahoning County Sheriff for confinement.

28. A prisoner release order regarding the jail facilities of Mahoning County, Ohio, may and likely would cause the release or non-admission to said jail facilities of persons who were

prosecuted by Youngstown.

29. Prisoner release orders are a form of prospective relief.

30. Prisoner release orders can only be issued by a three-judge court that has been convened at the request of a party or a Federal judge.

31. The three-judge court cannot, pursuant to 18 U.S.C. §3626(a)(3)(E), enter a prisoner release order until and unless the court finds by clear and convincing evidence that crowding is the primary cause of the violation of a Federal right and that no other relief will remedy the violation of a Federal right.

32. The findings that are a prerequisite to a prisoner release order pursuant to 18 U.S.C. §3626(a)(3)(E) can only be made upon the demonstration of clear and convincing evidence in proceedings before the three-judge court in which intervenors may participate and oppose the imposition of a prisoner release order by contesting the establishment of any or all of the necessary criteria.

33. The three-judge court must make a de novo determination as to whether both of the criteria in 18 U.S.C. §3626(a)(3)(E) are satisfied based solely on evidence presented to the three-judge court.

34. The determination is to be based on whether the criteria is satisfied currently, not at the time of the original complaint or at the time of trial.

35. There have been no findings by clear and convincing evidence in this case that crowding is the primary cause of the

violation of a Federal right in the jails of Mahoning County and that no relief other than a prisoner release order will remedy the violation of a Federal right.

36. There have been no proceedings before the three-judge court in which any evidence was presented.

37. Understaffing is not a permissible basis for the imposition of a prisoner release order pursuant to 18 U.S.C. §3626.

38. Lack of funds may not be the main factor in determining the remedial measures to be used to remedy an underlying constitutional violation.

39. The simplest, least intrusive and narrowest method to correct the underlying constitutional violations in this matter is to order Mahoning County Government to adequately staff and fund the jail.

40. The imposition of a prisoner release order in this matter would extend further than necessary to correct the violation of a Federal right, is not the least intrusive means necessary to correct the violation of the Federal right, and is not narrowly drawn.

41. The entry of a prisoner release order in this matter would cause the Mahoning County Sheriff to violate State or local law and; federal law does not require that such relief be ordered, the relief is not necessary to correct the violation of a Federal right or other relief will correct the violation of a Federal



right.

42. The Court has not previously entered an order for less intrusive relief that has failed to remedy the deprivation sought to be remedied through the prisoner release order.

43. Mahoning County Government has not had a reasonable time to comply with previous court orders.

44. The requirements and criteria necessary to permit the imposition or continuation in effect of prisoner release orders pursuant to 18 U.S.C. §3626 have not been satisfied and, therefore, no prisoner order, regardless of how it is framed or characterized, may be entered in this matter and Youngstown is entitled, pursuant to 18 U.S.C. §3626, to demand that no prisoner release order be entered.

45. A three-judge court has been convened to consider imposing prisoner release orders.

46. Youngstown is an interested party to this action.

47. Youngstown opposes the imposition or continuation in effect of prisoner release orders in this case.

48. The Prisoners have requested or do not oppose the imposition or continuation in effect of prisoner release orders in this case.

49. Mahoning County Government has requested or does not oppose the imposition or continuation in effect of prisoner release orders.

50. An actual controversy exists between Youngstown and the Prisoners regarding prisoner release orders.

51. An actual controversy exists between Youngstown and Mahoning County Government regarding prisoner release orders.

WHEREFORE, Youngstown requests that a judgment be entered that:

That the Court declare and issue findings that the requirements of Subparagraph E of 18 U.S.C. §3626 of the United States Code for the issuance of a prisoner release order have not been established.

That the court declare and issue findings that it has not been shown by clear and convincing evidence that crowding is the primary cause of violation of a Federal right in this matter and no other relief will remedy the violation of the Federal right.

That the Court enter a finding that no release order may be entered absent an evidentiary hearing to determine if the requirements of 18 U.S.C. §3626 are met.

That the Court enter an order finding that the requirements of 18 U.S.C. §3626 for issuance of a prisoner release order are not met and that no prisoner release order may be entered.

That the Court enter an order for relief that is less intrusive than a prisoner release order, comports to State law and that is not impermissibly based mainly on considerations of what the Mahoning County Government represents it can afford.

That the Court enter an order for relief requiring that the Mahoning County Commissioners allocate sufficient funds to the Sheriff to adequately operate and staff the jail facilities under his control at full capacity.

Or in the alternative, that the Court order an evidentiary hearing before the three-judge panel and require Plaintiffs or any party seeking a prisoner release order to establish by clear and convincing evidence that the requirements of 18 U.S.C. §3626 for issuance of a prisoner release order are met.

That if Youngstown prevails on any of its claims, the Court enter an award of attorney fees against Mahoning County Government as the original suit in this matter was filed to vindicate the violation of Federal constitutional rights by Mahoning County Government and all subsequent proceedings in this case are the consequence of those underlying constitutional violations by Mahoning County Government.

That the Court order any and all additional relief to which Youngstown may be entitled.

Respectfully submitted,

/s/ Anthony J. Farris  
ANTHONY J. FARRIS  
DEPUTY LAW DIRECTOR

/s/ Iris Torres Guglucello  
IRIS TORRES GUGLUCELLO  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing COMPLAINT IN INTERVENTION was electronically filed on this 2nd day of August, 2006. Notice of this filing will be sent by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Anthony J. Farris  
ANTHONY J. FARRIS  
DEPUTY LAW DIRECTOR