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ATTORNEYS FOR APPLICANT FOR
INTERVENTION

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA
B DIVISION

HAYES WILLIAMS, <u>et al.</u> ,)	
)	
Plaintiffs,)	Case No. 92-001-B
)	
UNITED STATES OF AMERICA,)	
)	
Applicant for Intervention,)	
)	
v.)	
)	
BRUCE N. LYNN, <u>et al.</u> ,)	
)	
Defendants.)	
)	

MEMORANDUM IN SUPPORT OF UNITED STATES'
MOTION TO INTERVENE AS PLAINTIFF

The United States has moved to intervene as of right in the class action lawsuit of Williams v. Lynn ("Williams II") to enforce the constitutional rights of inmates of the Louisiana State Penitentiary at Angola ("Angola").

BACKGROUND

Pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. §1997 et seq., the United States investigated conditions of confinement at Angola on October 29-31, 1990. By letter of May 13, 1991, the United States notified

Williams & U.S. v. Lynn



PC-LA-006-003

the Governor and other appropriate state officials of its findings that conditions of confinement at Angola including inadequate medical care, violated the constitutional rights of the inmates. See Exhibit A (Findings Letter of May 13, 1991). With regard to medical care at Angola, the United States found that health care at Angola was dangerously deficient. Among other things, Angola lacked: (1) adequate access to the health care system through sick call, (2) an organized health care delivery system that included proper diagnosis and treatment by qualified health care professionals in adequately staffed clinics, (3) a properly staffed and functioning infirmary for acute care, (4) proper care of chronic diseases such as diabetes, hypertension, HIV, and tuberculosis, (5) adequate pharmacy staff, storage space for medicines and appropriate pill call procedures, (6) adequate physical therapy and radiology services, (7) sufficient follow-up care after admission to an outside hospital, (8) an appropriate medical record keeping system, (9) proper separation of security from the medical care delivery system, and (10) proper quality assurance and peer review systems.

After issuing its findings, the United States attempted to work with the State of Louisiana on a voluntary basis without litigation to remedy the unconstitutional conditions of confinement. On February 12-14, 1992, the United States again

investigated Angola to assess Angola's efforts to remedy the unconstitutional conditions. Angola, however, had not improved conditions of confinement and medical care was still inadequate. Through its medical expert, Dr. Michael Puisis, the United States found that the problems listed earlier in its May 13, 1991 findings letter still existed. In his report of June 29, 1992, that the United States released to the Defendants, Dr. Puisis concluded that serious deficiencies existed in the medical care delivery system at Angola that caused serious harm to the inmates. Dr. Puisis stated that every single medical chart he reviewed demonstrated that medical care at Angola was inadequate and caused harm and often death to the inmates. Dr. Puisis gave the State a list of thirty-two (32) recommendations to improve medical care at Angola. See Exhibit B (Dr. Puisis Report on Medical Care Issues, June 29, 1992).

Recently, the United States became aware of an investigation of medical care by Dr. Armond Start on August 30-31, 1993, and again on November 19-20, 1993. Dr. Start has investigated medical care in other jails and prisons for the United States and the United States has confidence in his investigative methodology and reports. Dr. Start's report of January 3, 1994, was sharply critical of medical care at Angola. Dr. Start concluded that State officials and the Louisiana Department of Public Safety and Corrections have been and are currently deliberately indifferent to the basic health care needs of the inmate population at Angola. Dr. Start's report was the third negative review of

medical care at Angola since 1990. As in the other reports, Dr. Start stated that (1) access to care is inadequate through the sick call procedures, (2) inadequate care is given to those inmates that made the clinic through the sick call procedures, (3) staffing is insufficient in numbers, inadequately trained, and poorly supervised, (4) support services are nonexistent, (5) record keeping is grossly deficient, (6) pharmacy services are grossly inadequate, (7) chronic and acute health care is inadequate, (8) quality assurance and peer review is nonexistent, and (9) security has overwhelming and improper control over the medical services. See Exhibit C (Declarations of Dr. Armond H. Start).

On April 27-30, 1994, the United States investigated Angola in the area of medical care through its experts Dr. Michael Puisis (from the previous 1992 investigation) and Ms. Gretchen Geller, a registered nurse with a background in correctional care. Both Dr. Puisis and Ms. Geller have extensive experience in prison medical care. See Exhibit D and E (Curriculum vitae of Dr. Michael Puisis and Ms. Gretchen Geller). Both experts confirmed every point listed in Dr. Start's report and found that medical care at Angola is seriously inadequate. Dr. Puisis found that many of the same problems that existed during his 1992 investigation still exist and that the State has ignored nearly all of his 1992 recommendations. Ms. Geller found that nursing care at Angola is seriously deficient.

The current report by Dr. Start and the recent investigation by the United States demonstrate that the State of Louisiana has repeatedly and deliberately ignored findings of unconstitutional medical care and has failed to voluntarily correct conditions violating the constitutional rights of inmates. Indeed, the United States has found that Angola fails to satisfy constitutional standards on three separate occasions in 1990, 1992, and 1994.

In June, 1994, the United States advised the Governor of the State of Louisiana by letter of its intention to seek leave to intervene as plaintiff in this lawsuit pursuant to Section 5 of CRIPA, 42 U.S.C. §1997c. See Exhibit F.

ARGUMENT

Fed. R. Civ. P. 24(a)(1) authorizes the United States to intervene in this action as of right. Fed. R. Civ. P. 24(a)(1) provides:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene....

The Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. §1997 et seq., confers an unconditional right to intervene. 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(a)(1).

In Davis v. Henderson, Civ. No. 77-423 (M.D. La. 1982), a case involving conditions at the Feliciana Forensic Facility in Louisiana, the court granted the United States' motion to intervene on the grounds that "such intervention is a matter of right" under Fed. R. Civ. P. 24(a)(1) and §1997c of CRIPA. (Order attached as Exhibit H). Likewise, in Canterino v. Wilson, 538 F. Supp. 62, 64 (W.D. Ky. 1982), the district court noted that the Civil Rights of Institutionalized Persons Act "expands the rights of the United States to bring or intervene in actions for vindication of inmates' constitutional rights. United States v. Elrod, 627 F.2d 813 (7th Cir. 1980)."

Courts have interpreted the "may intervene" language in other civil rights statutes to grant the United States an unconditional right to intervene under Fed. R. Civ. P. 24(a)(1). See Spangler v. United States, 415 F.2d 1242, 1244 (9th Cir. 1969), (where the court read the "may intervene" language in 42 U.S.C. §2000h-2 to provide the United States an unconditional right to intervene). See also Carter v. School Bd. of West Feliciana, 569 F. Supp. 568, 571 (M.D. La. 1983) (where the district court permitted the United States to intervene as of right under Fed. R. Civ. P. 24(a)(1) in a case involving the same statute, 42 U.S.C. §2000h-2). The United States is authorized to

intervene as of right in this action under Fed. R. Civ. P. 24(a)(1), pursuant to §1997c(a)(1) of CRIPA.

The United States has met all prerequisites to intervene as of right. Fed. R. Civ. P. 24(a)(1) requires only that the application for intervention be timely. Here intervention is timely and appropriate. First, intervention by the United States should not inordinately delay discovery. Second, by intervening, the United States will not duplicate efforts either in discovery or at trial. The United States intends to prepare and offer an expert in medical care, Dr. Puisis, an expert in nursing care, Ms. Geller, and other necessary witnesses. Dr. Puisis investigated Angola in February 1992 and found inadequate medical care at Angola. Dr. Puisis, therefore, provides a direct historical understanding of the problems of medical care at Angola that will not duplicate but will supplement Dr. Start's findings. Third, the trial date of September 12, 1994, is sufficiently distant that our participation will not delay the trial. In these circumstances, the United States has acted in a timely manner to intervene and the motion is timely and appropriate.

Under §1997c(a)(2) of CRIPA, the Attorney General may not intervene until at least 90 days after commencement of the underlying action. The initial Complaint in Williams II was filed on January 2, 1993. Because this motion is filed more than 90 days after the commencement of the Williams II litigation, the United States has met the requirement of §1997c(a)(2) of CRIPA.

Further, §1997c(b) of CRIPA requires that the Attorney General certify to the Court in the motion to intervene that she has notified, at least 15 days prior to the filing of the motion, the chief executive officer or chief legal officer of the appropriate local jurisdiction and the director of the institution of the United States' intention to intervene along with (i) the alleged conditions which deprive constitutional rights, (ii) the supporting facts giving rise to the alleged conditions, and (iii) the minimum measures she believes may remedy the alleged conditions. The Attorney General must also certify that she believes intervention by United States is of general public importance and will materially further vindication of rights protected by the Constitution. See 42 U.S.C. §§1997c(b)(1)(A) and (b)(1)(B). The Attorney General has provided the required certification of compliance with these requirements. See Certificate of the Attorney General, attached to the Motion to Intervene. In sum, the United States has met all pre-filing requirements.

Finally, intervention by the United States in the existing class action avoids the possibility of parallel actions regarding almost identical issues. The dictates of judicial economy require that the longstanding problems at Angola be addressed in a forum that includes all interested parties.

CONCLUSION

Because the deficiencies in medical care are long standing, implicate the serious medical needs of Angola's inmate

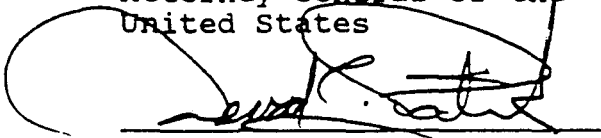
population, and violate the inmates' constitutional rights, the United States seeks to intervene as a party plaintiff in Williams v. Lynn, Case No. 92-001-B. Fed. R. Civ. P. 24(a)(1), in conjunction with Section 5 of CRIPA, 42 U.S.C. §1997c, authorizes the United States to intervene as of right. The United States has met all prerequisites to such intervention. The Court should therefore grant the Motion to Intervene and the United States should be named Plaintiff-Intervenor in this case.

Respectfully submitted,

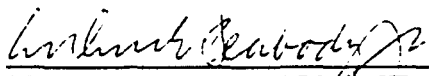
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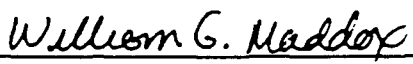
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