

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LADDY CURTIS VALENTINE and	§	
RICHARD ELVIN KING, individually and	§	
on behalf of those similarly situated,	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:20-cv-01115
	§	
BRYAN COLLIER, in his official capacity,	§	
ROBERT HERRERA, in his official capacity,	§	
And TEXAS DEPARTMENT OF CRIMINAL	§	
JUSTICE,	§	
Defendants.	§	

**DEFENDANTS’ OPPOSITION TO
RAMSEY UNIT PLAINTIFFS’ MOTION TO INTERVENE**

Defendants Bryan Collier (“Collier”), Robert Herrera (“Herrera”), and the Texas Department of Criminal Justice (“TDCJ”) (collectively, “Defendants”) file this opposition to the motion to intervene filed by the Ramsey Unit Plaintiffs. In support, Defendants offer the following:

I. BACKGROUND

On June 10, 2020, proposed intervenors John Anthony Saenz, Troy Robeson, Larry Gross, Rudy Rodriguez, Richard A.A. Lyon, Edward Patrick Smyth, Oliver Latura Leverett, Leyton Douglas Baugh, Bradon Johnson, Savorge Lee Curl, David Vega Morales, Demarcus Johnson, Pedro Gallegos, Earl McBride, Jr., Jerry Johnson, Hiram Carrasquillo, Brice Chatman, and Marshall Ray Armstrong (collectively, the “Ramsey Plaintiffs”) filed a motion to intervene in this case with a complaint asserting a putative class action suit against Collier, Warden Katherine Pitman, and TDCJ (“Ramsey Defendants”). ECF No. 140. Warden Pitman is not a party to the *Valentine* case involving claims of individuals housed at TDCJ’s Pack Unit in Navasota, Grimes County, Texas (“Pack Plaintiffs”). The Ramsey Plaintiffs allege that TDCJ officials have not taken

adequate steps to prevent a COVID-19 outbreak at the Ramsey Unit in Rosharon, Brazoria County, Texas, located in the Southern District of Texas, Galveston Division. *See generally*, ECF No. 140. The Ramsey Plaintiffs bring three claims against the Ramsey Defendants: (1) deliberate indifference to a substantial risk of serious harm in violation of the Eighth Amendment (2) Americans with Disabilities Act; and (3) right to access the courts under the First and Fourteenth Amendments. *Id.* at 2. The *Valentine* case includes no access to courts claim.

While there may be some general commonalities with some of the claims asserted by the Ramsey and the Pack Plaintiffs, the respective units and the offenders they house are very different. The complications that would arise from these differences would outweigh any benefit provided by intervention.

II. ARGUMENT AND AUTHORITIES

Intervention is inappropriate in this case. Federal Rule of Civil Procedure 24 governs (a) interventions of right and (b) permissive interventions. *See* FED. R. CIV. P. 24. The Ramsey Plaintiffs seek permissive intervention under Rule 24(b). ECF No. 140 at 1. In support of this motion, Ramsey Defendants attach Exhibit A: Declaration of Oscar Mendoza.

A. Permissive Intervention Standard

Rule 24(b) provides that a court may, upon “timely application,” permit intervention “when an applicant’s claim or defense and the main action have a question of law or fact in common.” FED. R. CIV. P. 24(b). Permissive intervention is “wholly discretionary with the [district] court . . . even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied.” *Kneeland v. National Collegiate Athletic Ass’n*, 806 F.2d 1285, 1289 (5th Cir. 1987) (quoting *New Orleans Public Service, Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452,

470 – 71 (5th Cir.) (en banc), *cert. denied*, 469 U.S. 1019 (1984) (internal citations omitted); *Bush v. Viterna*, 740 F.2d 350, 359 (5th Cir. 1984).

In considering a request for permissive intervention, it is proper to consider whether the movants will significantly contribute to the full development of the underlying factual interests in the suit. *United Gas Pipe Line Co.*, 732 F.2d at 472. A court may properly deny permissive intervention when, despite the presence of common questions of law or fact, the complicating effect of adding additional issues and parties outweighs any advantage of a single disposition of common issues. *SEC v. Everest Mgmt. Corp.*, 475 F.2d 1236, 1240 (2d Cir. 1972). The Fifth Circuit rarely, if ever, reverses a district court’s decision denying permissive intervention. *Kneeland*, 806 F.2d at 1290.

B. Vast Differences in Fact Issues Between Ramsey and Pack Plaintiffs

The Ramsey Plaintiffs’ proposed intervention will not contribute to the development of the relevant factual issues in this case. In its current configuration, this civil action seeks to enjoin TDCJ from subjecting prisoners to unconstitutional conditions at the Pack Unit. The Ramsey Plaintiffs complain about conditions that are specific to the Ramsey Unit. Although the two prisons are operated under the same TDCJ written policies, they are fundamentally different.

1. Demographics and Custody Levels

As the Court is aware, the Pack Unit is a geriatric facility that houses many offenders age 65 and older with medical needs and chronic conditions *See* Exhibit A at 3. The Pack Unit is a medium security, facility, which houses G1-G3 offenders. *Id.* On the other hand, the Ramsey Unit is a minimum-security prison that houses G1-G3 and G5 offenders, offenders in Safe Keeping and offenders in the Administrative Segregation Transition Program. *See* Exhibit A at 2.

The average age of offenders in the Ramsey Unit is approximately 45-50 years old. *Id.* at 2. This difference in custody levels the units house, is manifested in the Pack Unit not housing offenders in Safe Keeping, offenders in the Administrative Segregation Transition Program, or offenders in the G5 custody level.

2. Living Arrangements

The differences do not end with custody level and demographics. The living arrangements at the Ramsey Unit are entirely different from the living arrangements at the Pack Unit. Offenders at the Ramsey Unit are housed primarily in two-man cells. Each cell has access to a toilet, sink, and two bunks. *Id.* Pack Unit offenders, on the other hand, do not reside in two-man cells, instead they live in a semi-open dormitory style housing, with most dorms consisting of 50 beds or more. *Id.* at 3.

Additionally, the medical facilities available at the Ramsey Unit differ from those available at the Pack Unit. The Pack Unit provides routine and specialized medical health services. In-person medical care provided by the University of Texas Medical Branch (UTMB) is available 24-hours per day, seven days per week. *Id.* In contrast, the UTMB provides routine outpatient medical health services at the Ramsey Unit, including insulin administration and routine care, 12-hours per day, seven days a week. *Id.* Offenders in need of emergency medical care are transferred to Hospital Galveston or a local hospital by local EMS.

3. Security Protocol and Movement

There are also vast differences in inmate security protocols and movement of offenders housed at the Ramsey Unit and those housed on the Pack Unit. Pack Unit offenders are generally free to move about their dorms. *See Exhibit A* at 3. The offenders have access to a day room in their dorm, which has a television. *Id.* Offenders are not currently permitted to go to the chow hall,

the pill line, or medical department, without a sick-call pass; rather, meals and medications are brought to the dorm areas. *Id.*

On the other hand, Ramsey Unit offender movement is less restrictive. For example, offenders at the Ramsey Unit not on medical restriction are allowed to leave their cells when called out to go to the dayroom, take a shower, the pill window, and attend medical appointments with social distancing protocols enforced. *Id.* at 2. Offenders, while restricted to eating their meals on their respective cellblocks, on occasion are allowed to leave their cells to go to the dining hall to retrieve their sack lunches or hot meal trays. *Id.*

4. Different Claims

In addition to the factual differences between the Ramsey Plaintiffs' suit and the instant case, there are also differences in the legal claims. While the Ramsey Plaintiffs' claims and the Pack Plaintiffs' claims in this case overlap to some extent, the Ramsey Plaintiffs bring additional claims not present in this suit, specifically a First and Fourteenth Amendment access-to-courts claim, and an Eighth Amendment claim related to the alleged denial of inhalers to certain Ramsey Plaintiffs. ECF No. 140 at 2. Addressing these additional claims would needlessly complicate the current litigation, where no such claims have been brought.

The case currently pending before the Court deals specifically with how TDCJ's policies and procedures are being implemented at the Pack Unit. What is being done at the Ramsey Unit is not relevant to the facts at issue in this case. Therefore, allowing the Ramsey Plaintiffs to intervene in this case would not contribute to the development of the facts at issue. *See United Gas Pipe Line Co.*, 732 F.2d at 472. Moreover, intervention would inject irrelevant facts and make this litigation "unnecessarily more complex." *See Aransas Project v. Shaw*, 404 Fed. Appx. 937, 942 (5th Cir. 2010) (affirming denial of motion to intervene). Any advantage in resolving common issues

between the Pack Plaintiffs and the Ramsey Plaintiffs is significantly outweighed by the complicating factual and legal issues that would result from intervention. *SEC*, 475 F.2d at 1240. The Court, therefore, should not permit the Ramsey Plaintiffs to intervene in this case.

C. Intervention Untimely

In light of the unique circumstances under which this case is being litigated, as well as the expedited timeline for discovery and trial, the intervention of the Ramsey Plaintiffs is improper because it is not timely. The applicable timeliness factors are outlined in *Stallworth v. Monsanto Co.*, 558 F.2d 257, 263 (5th Cir. 1977). They include: (1) “[t]he length of time during which the would-be intervenor actually know[s] or reasonably should have known of his interest in the case before he petitioned to intervene”; (2) “the extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor’s failure to apply for intervention as soon as he actually new or reasonably should have known of his interest in the case”; (3) “[t]he extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied”; and (4) “[t]he existence of unusual circumstances militating either for or against a determination that the application is timely.” *Id.* at 264–66. The Fifth Circuit has explained that timeliness is not limited to chronological considerations; rather, it “is to be determined from all the circumstances.” *United States v. United Steel Corp.*, 548 F.2d 1232, 1235 (5th Cir. 1977) (quoting *NAACP v. New York*, 413 U.S. 345, 366 (1973)).

While it is true that the Ramsey Plaintiffs filed their motion to intervene less than three months after the original plaintiffs filed suit, this case is set for trial on July 13, 2020 – 11 days from today. ECF No. 88. Moreover, the parties have already participated in numerous hearings and status conferences, taken six depositions, and conducted discovery resulting in tens of thousands of documents. *Id.* Documents and information relevant to the Pack Unit are being

gathered, experts are finalizing reports, and depositions will continue in the coming days. This expedited timeline has created unusual circumstances militating against a determination that the Ramsey Plaintiffs' application for intervention is timely. *See Stallworth*, 558 F.2d 257, 264–66. To allow Ramsey Plaintiffs to intervene at this late stage would only further prejudice Defendants' right to due process.

Additionally, there is no prejudice that the Ramsey Plaintiffs would suffer if their application for intervention is denied. *See id.* The Ramsey Plaintiffs have applied for *in forma pauperis* filing status and can still maintain their separate suit. Since (1) the unusual circumstances of this case militate against a finding of timeliness and (2) the Ramsey Plaintiffs will suffer no prejudice if their application for intervention is denied, their application for intervention is not timely. The Court, therefore, should deny the Ramsey Plaintiffs' intervention.

III. CONCLUSION

Intervention is inappropriate in this case. Therefore, Defendants respectfully request that the Court deny the Ramsey Plaintiffs' Motion to Intervene.

Respectfully Submitted.

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Attorney General of Texas

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Deputy First Assistant Attorney General

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NOTICE OF ELECTRONIC FILING

I, CHRISTIN COBE VASQUEZ, Assistant Attorney General of Texas, certify that I have electronically submitted a true and correct copy of the foregoing for filing in accordance with the Court's electronic filing system, on July 1, 2020.

/ s/ Christin Cobe Vasquez
CHRISTIN COBE VASQUEZ
Assistant Attorney General

CERTIFICATE OF SERVICE

I, CHRISTIN COBE VASQUEZ, Assistant Attorney General of Texas, certify that a true and correct copy of the foregoing **Defendants' Opposition to Ramsey Unit Plaintiffs' Motion to Intervene** has been served electronically upon all counsel of record *via* the electronic filing system of the Southern District of Texas, on July 1, 2020.

/ s/ Christin Cobe Vasquez
CHRISTIN COBE VASQUEZ
Assistant Attorney General

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
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on behalf of those similarly situated,
*Plaintiffs,***

V.

**BRYAN COLLIER, in his official capacity,
ROBERT HERRERA, in his official capacity,
and TEXAS DEPARTMENT OF
CRIMINAL JUSTICE,
Defendants.**

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Civil Action No. 4:20-cv-01115

**DEFENDANTS' OPPOSITION TO
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EXHIBIT A

UNITED STATES DISTRICT COURT
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And TEXAS DEPARTMENT OF CRIMINAL	§	
JUSTICE,		
Defendants.		

DECLARATION OF OSCAR MENDOZA

Pursuant to 28 U.S.C. § 1746, I, Oscar Mendoza, declare as follows:

1. “My name is Oscar Mendoza. I am over 18 years of age, of sound mind, have never been convicted of a felony or crime of moral turpitude, and can make this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. I am the Deputy Executive Director of the Texas Department of Criminal Justice (“TDCJ”). I have held this position since August 2016. I began my employment with the TDCJ in 1979 as a correctional officer. I have held uniformed correctional positions of Sergeant, Lieutenant, Captain, and Major. Additionally, I have served as an Assistant Warden of two prisons and Warden of six prisons. I served as a Regional Director within the Correctional Institutions Divisions (CID), where I was responsible for the administrative, operational, and management oversight of 11 prisons and eight wardens. I also served as Deputy Director for Management Operations with the CID of TDCJ, the division with direct responsibility to manage and operate TDCJ’s various prison units to include the Ramsey and Pack Units. Further executive level

promotions include serving as Director for Administrative Review & Risk Management Division and Director for Private Facility Contract Monitoring/Oversight Division. In my role as Deputy Executive Director, I help to oversee the daily operations and oversight of the TDCJ, including the CID, and I report directly to TDCJ's Executive Director. In my role as Deputy Executive Director, and in prior leadership roles I have also been involved in and continue to be involved in regular interaction with correctional agency managers from other states, including through the American Correctional Association, Texas Corrections Association, CoreCivic, and Management & Training Corporation.

3. As the Deputy Executive Director for TDCJ, I am familiar with the offender demographics, housing structure, custody level, and other unique features of the various units within the CID.

4. The W. F. Ramsey Unit is a minimum-security unit located in Rosharon, Texas. It houses approximately 1,600 male offenders, with various custody levels, including G1-G3 and G5 offenders, as well as offenders in Safe Keeping and the Administrative Segregation Transition Program. The average age of offenders at the Ramsey Unit is 45-50 years old. The unit contains cellblock and dormitory style housing but consists primarily of cellblock housing with two offenders per cell.

5. Each two-man cell contains access to a toilet, sink, and two bunks. Offenders have unlimited access to hand soap and running water when confined in their cells.

6. Offenders not on medical restriction are allowed to leave their cells when called out to go to the dayroom, take a shower, the pill window, and attend medical appointments with social distancing protocols enforced. Offenders, while restricted to eating their meals on their respective

cellblocks, on occasion are allowed to leave their cells to go to the dining hall to retrieve their sack lunches or hot meal trays.

7. The Ramsey Unit provides routine outpatient medical health services, including insulin administration and routine care. In-person medical care is available 12 hours per day, seven days a week and is provided by the University of Texas Medical Branch. Offenders in need of emergency medical care are transferred to Hospital Galveston or a local hospital by local EMS.

8. The Wallace Pack Unit is significantly different than the Ramsey Unit by way of offender demographics, housing structure, and logistics.

9. The Pack Unit is a geriatric facility that houses a large number of offenders age 65 and older and offenders with medical needs and chronic conditions. The Pack Unit is a medium-security unit. Pack Unit offenders live in a semi-open dormitory style housing rather than in two-man cells; most dorms consist of 50 beds or more.

10. Pack Unit offenders are generally free to move about their dorms. However, all meals and most medications are brought to the offenders at their dorm area. Offenders are allowed to leave their dorm areas with a sick-call pass or when called out to take a shower.

11. The Pack Unit provides routine and specialized medical health services. In-person medical care is available 24 hours per day, seven days a week and is provided by the University of Texas Medical Branch.

12. The Ramsey and Pack Units are different in terms of offender population, housing structure, and custody levels. These differences create different issues with respect to how the units respond to COVID-19, the precautionary measures they implement, how they implement the measures, and the challenges they face.

13. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 3, 2020

Signature

A handwritten signature in blue ink, appearing to read "Sam M. [unclear]", written over a horizontal line.

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ORDER

On this day, the Court considered the Ramsey Unit Plaintiffs' Motion to Intervene, and any response thereto. After considering the motion and pleadings of the parties, the Court is of the opinion that the motion is not meritorious. Therefore, it is

ORDERED that the Ramsey Unit Plaintiffs' Motion to Intervene is **DENIED**.

Signed this ____ day of _____, 2020.

HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE