IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF LOUISIANA

HAYES WILLIAMS, et al, Plaintiffs, v. JOHN McKEITHEN, et al, Defendants, UNITED STATES OF AMERICA, Amicus Curiae.	Civil No. 71-98-B 98-947
IN RE: JUVENILE FACILITIES	Civil No. CH 97-MS-001-B
IN RE: TALLULAH CORRECTIONAL CENTER FOR YOUTH	Civil No. CH 97-0665-B-M1
IN RE: JETSON CORRECTIONAL CENTER FOR YOUTH	Civil No. CH 97-0666-B-M1
IN RE: SWANSON CORRECTIONAL CENTER FOR YOUTH	Civil No. CH 97-0667-B-M1
IN RE: LOUISIANA TRAINING INSTITUTE - BRIDGE CITY	Civil No. CH 97-0668-B-M1
BRIAN B., et al., Plaintiffs, v. RICHARD STALDER, et al., Defendants.	Civil No. 98-886-B-M1

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THE UNITED STATES OF AMERICA,	Civil No. 98-947-B-1
Plaintiff,	
v.	
THE STATE OF LOUISIANA, et al.	
Defendants.	

UNITED STATES' MEMORANDUM IN RESPONSE TO DEFENDANTS' OPPOSITION TO CLASS CERTIFICATION IN BRIAN B. v. STALDER

At the Court's request, the United States submits this memorandum to respond to arguments raised in the memoranda filed by the State Defendants and by Trans-American Development Associates, Inc. and James R. Brown and in opposition to class certification in Brian B. v. Stalder.

The proposed class in the Brian B. matter includes all youth who are now, or in the future will be, incarcerated at the Tallulah Correctional Center for Youth in Tallulah, Louisiana ("Tallulah"). Plaintiffs have brought a civil action pursuant to 42 U.S.C. § 1983 alleging violations of the civil and constitutional rights of juveniles at Tallulah. The United States' complaint pursuant to the Civil Rights of Institutional Persons Act ("CRIPA"), 42 U.S.C. § 1997, and 42 U.S.C. § 14141, the Violent Crime Control and Law Enforcement Act of 1994, raises similar concerns.

As an initial matter, it is important to distinguish the United States' action from the Brian B. class action. CRIPA grants the Attorney General authority to institute a civil

action, in the name of the United States, in the appropriate federal district court for such equitable relief as appropriate to obtain the minimum corrective measures necessary to insure the full enjoyment of the constitutional rights of those residing in a covered facility. 42 U.S.C. § 1997a(a). The Attorney General's authority extends to initiating suit "`for or in the name of the United States,' in order to represent the national interest in securing constitutionally adequate care for institutionalized citizens." H.R. Conf. Rep. No. 897, 96th Cong., 2d Sess. 13 (1980). The authority delegated to the Attorney General, however, does not supplant actions brought by aggrieved persons pursuant to 42 U.S.C. § 1983. In fact, Congress noted that the enactment of CRIPA was "not intended to expand or restrict the existing rights of plaintiffs other than the United States." H.R. Conf. Rep. No. 897, 96th Cong., 2d Sess. 11 (1980). Similar authority has been granted to the Attorney General pursuant to 42 U.S.C. § 14141(b) to seek appropriate relief for violations of rights protected by the Constitution or federal law "for or in the name of the United States."

For these reasons, the United States may maintain civil actions for the enforcement of CRIPA and § 14141 and may seek equitable relief for a group of aggrieved individuals. The class certification requirements of Rule 23 do not apply to these kind of claims. See General Telephone Company of the Northwest v. EEOC, 446 U.S. 318 (1980) (EEOC may seek classwide relief without being certified as the class representative under Rule 23);

Donovan v. University of Texas, 643 F.2d 1201 (5th Cir. 1981) (Secretary of Labor may seek class wide relief without Rule 23 certification).

The United States has no objection to class certification in Brian B. We agree with plaintiffs that class certification does not run afoul of Fifth Circuit precedent. In fact, certification of the Brian B. class promotes two of the primary purposes underlying Fed. R. Civ. P. 23 -- the avoidance of both duplicative litigation and inconsistent standards. See Goff v. Menke, 672 F.2d 702, 704 (8th Cir. 1982).

The cases cited by defendants in their oppositions to class certification are inapposite. For example, in Gillespie v. Crawford, 858 F.2d 1101 (5th Cir. 1988), the Fifth Circuit barred a Texas inmate's suit seeking equitable relief where a class wide consent decree already existed in Ruiz v. Estelle, 679 F.2d 1115 (5th Cir. 1982) (class action challenging conditions of confinement in Texas prisons) and the inmate was a class member. The court reasoned that:

> Permitting multiple courts to entertain equitable claims and issue decrees that might affect the Texas prison system would require other courts to become familiar with the Ruiz decree, the current problems of the Texas prison system, and the possible disruptive effect of the exercise of equitable powers over matters covered by the Ruiz decree. Moreover, if separate suits for equitable relief are filed in other districts than that in which Ruiz is pending, even with respect to problems not encompassed by the relief granted in Ruiz, the court's orders may hobble the effect of the Ruiz court's continuing decree over the Texas prison system and its power both to enforce and to modify that decree.

Gillepsie, 858 F.2d at 1103.

The concerns voiced in Gillespie -- the avoidance of duplicative or inconsistent decisions -- are absent here. The proposed class action in Brian B. requests equitable relief aimed at curing problems at the Tallulah Correctional Center for Youth. The scope of such relief surpasses that currently provided for in Williams, which primarily addresses staffing ratios, overcrowding, and fire safety issues. Furthermore, the coordination of Williams and Brian B. by the Court would guard against inconsistent directives. Finally, the proposed class action more effectively preserves judicial resources than the alternative proposed by defendants whereby juveniles at Tallulah would be forced to intervene individually and request broader relief than currently provided for in Williams. See State Defendants' Memorandum in Opposition to Certification at 4.

Defendants Trans American and James R. Brown also contend that the proposed class fails to satisfy the requirements of Fed. R. Civ. P. 23.[1] This contention should be rejected. First, plaintiffs assert that systemic problems infect the Tallulah facility. Such claims satisfy Rule 23's commonality requirement. "The commonality test is met when there is `at least one issue whose resolution will affect all or a significant number of the

[1]Fed. R. Civ. P. 23(a) provides: "One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

putative class members.'" Forbush v. J.C. Penny Co., 994 F.2d 1101, 1105 (5th Cir. 1993) (quoting Stewart v. Winter, 669 F.2d 328, 335 (5th Cir. 1982)). Although there are particular factual differences in the incidents alleged, such incidents stem from the infirmities which exist at Tallulah.

Second, like commonality, the threshold requirements for typicality are not high. Shipes v. Trinity Indus., 987 F.2d 311, 316 (5th Cir. 1993). As with commonality, a strong similarity of legal theories will satisfy the typicality requirement despite factual differences. The "typicality" requirement focuses on the similarity of the legal and remedial theories behind the putative class' claims. Jenkins v. Raymark Indus., 782 F.2d 468, 472 (5th Cir. 1986). Typicality is established when the claims of the named plaintiffs are typical of the claims of the class and are so interrelated with those of the class that the interests of the class will be fairly and adequately protected. The named plaintiffs in Brian B. have suffered from the same practices and policies that injure or will injure the class. The harm to the named plaintiffs and to the class members is substantially the same. The typicality requirement is clearly satisfied.

Third, the Brian B. class members are adequately represented by the named plaintiffs. The interests of the named plaintiffs are functionally identical to the interests of the members of the class they seek to represent. We disagree with the contention of Defendants Trans-American and James R. Brown that the juvenile-on-juvenile violence claim creates a conflict in representing the

class. The juvenile-on-juvenile violence claim is part of the overall claim that the defendants fail to take adequate steps to provide reasonable safety to juveniles. None of the proposed class members is a defendant in this action; it is the named defendants' actions, not the juveniles' conduct, that will be on trial in this case. See also, Langley v. Coughlin, 715 F. Supp. 522, 561 (S.D.N.Y. 1989) (that several inmates have been presumably unwitting agents for creating some of the alleged unconstitutionally permissible conditions did not demonstrate a legally cognizable conflict between them and other class members which would preclude certification). As such, the interests of the proposed class members are not in conflict for they seek to vindicate the same legal rights.

CONCLUSION

For these reasons, the United States has no objection to class certification in Brian B.

Respectfully submitted,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

Steven H. Rosenbaum
Chief
Special Litigation Section

Robinsue Frohboese
Deputy Chief
Special Litigation Section

Judith C. Preston
Iris Goldschmidt
Kevin K. Russell
Andrea M. Picciotti-Bayer
Trial Attorneys
Special Litigation Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66400
Washington, D.C. 20035-6400
(202) 514-6258

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CERTIFICATE

I hereby certify that copies of the foregoing United States' Memorandum in Response to Defendant's Opposition to Class Certification in Brian B. v. Stalder have this day been telefaxed and mailed by overnight mail, postage prepaid, to the following:

Keith B. Nordyke
June Denlinger
Nordyke and Denlinger
427 Mayflower St.
Baton Rouge, LA 70802

David J. Utter
Juvenile Justice Project of Louisiana
822 Camp Street
New Orleans, LA 70130

Richard Curry
McGlinchey, Stafford and Lange
One American Place
Suite 900
Baton Rouge, LA 70825

Richard T. Simmons, Jr.
Hailey, McNamara, Hall, Larmann & Papale
Suite 1400
One Galleria Blvd.
Metairie, LA 70001

Washington, D.C., this 4th day of December, 1998.

ANDREA M. PICCIOTTI-BAYER
TRIAL ATTORNEY