

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2832
Summary Calendar

DAVID RUIZ, ET AL.,
Plaintiffs,
UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

versus

JAMES A. COLLINS, Director,
Texas Department of Criminal
Justice, Institutional Division,
ET AL.,
Defendants-Appellees,

versus

ALTON SIMMONS and FREDDY HURLEY,
Movants-Appellants.

Appeal from the United States District Court
For the Southern District of Texas
(CA-H-78-987)

(August 13, 1993)

Before POLITZ, Chief Judge, KING and WIENER, Circuit Judges.

PER CURIAM:*

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion

Alton Simmons and Freddy Hurley, both Texas prisoners, appeal the denial of their motion to intervene in **Ruiz v. Collins**, then an ongoing class action concerning conditions of incarceration imposed on prisoners by the Texas Department of Corrections.¹ We affirm.

Simmons and Hurley allege that Texas prison officials failed to comply with consent decree provisions relating to conditions of administrative segregation, law library access, retaliation for exercise of the right to court access, and health care. Simmons and Hurley further allege that counsel for the plaintiff class -- unresponsive to attempts to bring these claims to their attention -- failed adequately to represent them. Expressing confidence in the ability of counsel to protect the interests of the **Ruiz** plaintiff class and noting the potential for damage to effectiveness of the class action from intervention, the district court denied the motion, holding that Simmons and Hurley had to pursue their claims for injunctive relief through counsel for the plaintiff class or alternatively seek money damages in an action under 42 U.S.C. § 1983. Simmons and Hurley timely appealed.

To intervene as of right under Fed.R.Civ.P. 24(a)(2), a party must (1) file a timely application; (2) have an interest in the property or transaction that is the subject of the action; (3) be so situated that disposition, may as a practical matter, impair or impede the ability to protect that interest; and (4) demonstrate

should not be published.

¹ A final judgment rendered by the district court has since terminated the **Ruiz** class action.

the inadequate representation of that interest by the parties.² In **Gillespie v. Crawford**,³ we held that individual Texas prisoners asserting equitable claims arising from conditions of incarceration must proceed through counsel for the **Ruiz** plaintiff class or intervene in that litigation. Recognizing potential for damage to the effectiveness of the **Ruiz** litigation, we since have limited language in **Gillespie** concerning intervention to "circumstances in which serious matters in the class action are being overlooked, and the district court must deal with those matters."⁴ Likewise, we have held that district courts enjoy discretion to evaluate the claims made in a prisoner's **Ruiz** intervention petition and to determine that the petition fails to meet the four factors required by Rule 24(a)(2).⁵ The district court here found that counsel for the plaintiff class adequately represented Simmons and Hurley in their claims for equitable relief, and left them free to pursue damage actions under 42 U.S.C. § 1983. We find neither error nor abuse of discretion in that ruling.

The judgment of the district court is AFFIRMED.

² E.g., **New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.**, 732 F.2d 452 (5th Cir. 1984) (*en banc*).

³ 858 F.2d 1101 (5th Cir. 1988) (*en banc*).

⁴ **Ruiz v. Lynaugh**, No. 89-2069, slip op. at 5 (5th Cir. Sept. 8, 1989).

⁵ **Id.**