

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
SHELBY COUNTY, ALABAMA,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	
	)	
ERIC H. HOLDER, JR.,	)	
in his official capacity as ATTORNEY	)	Civil Action No. 1:10-0651 (JDB)
GENERAL OF THE UNITED STATES,	)	
	)	
<i>Defendant, and</i>	)	
	)	
EARL CUNNINGHAM, BOBBY PIERSON,	)	
BOBBY LEE HARRIS, <i>et al.,</i>	)	
	)	
<i>Defendant-Intervenors.</i>	)	
	)	
_____	)	

**REPORT OF ATTORNEY GENERAL AND DEFENDANT-INTERVENORS  
IN RESPONSE TO THE COURT’S ORDER OF AUGUST 25, 2010**

Pursuant to this Court’s Order of August 25, 2010, Dkt. No. 29, Defendant Attorney General of the United States (“Attorney General”) and Defendant-Intervenors respectfully submit the following report. This Court’s Order required that the Defendant and Defendant-Intervenors “shall submit a report discussing what steps they will take to avoid duplication of effort and to reduce redundant filings.”

Following this Order, the Attorney General and Defendant-Intervenors (“Defendants”) conferred via teleconferences. Defendants agree to work together to the greatest extent possible to avoid duplication and promote litigation efficiency and have considered specific coordination steps. After discussing a variety of possible options, Defendants collectively have agreed upon the recommendations contained herein. The efforts to limit duplication proposed here generally

parallel those proposed by the Attorney General and the intervening defendants in their Report in *Nw. Austin Mun. Utility Dist. v. Gonzales*, No. 06-1384, Dkt. No. 49 (D.D.C. Nov. 28, 2006).

**I. Limitations on Discovery**

Defendants will coordinate in advance of serving written discovery and deposition requests to avoid duplicative requests. Defendants further propose the following procedural limitations designed to reduce redundant discovery requests:

- A. *Written Discovery*. Defendants propose that for the purposes of the limits on written discovery under Fed. R. Civ. P. 33, 34, and 36 and the Local Rules of this Court (interrogatories, requests for production of documents, and requests for admissions), the Defendant-Intervenors are and will be treated collectively as a single party. Thus, for example, absent leave of the Court, Defendant-Intervenors will collectively serve no more than 25 written interrogatories on any other party, as provided by Rule 33(a).
- B. *Depositions*. Defendant-Intervenors will be subject to the ordinary numerical limitations on depositions under Fed. R. Civ. P. 30(a) (more than 10 depositions requires leave of court), as if they were a single party. Only one attorney will ask questions on behalf of Defendant-Intervenors at any deposition, and although Defendants do not propose a strict numerical limit on the number of lawyers who may attend at any deposition, they will ensure that their attendance does not place unreasonable burdens on the conduct of the deposition. Defendants will coordinate to minimize the possibility that any deposition might exceed the ordinary time constraints imposed by Fed. R. Civ. P. 30(d) (seven-hour limitation absent party stipulation or leave of court).

## **II. Efforts to Reduce Duplicative Filings**

In an effort to avoid burdening the Court with duplicative filings, counsel for the Attorney General and Defendant-Intervenors will confer to the extent possible consistent with their obligations to their clients, in advance of any filing in this Court, to determine whether a consolidated filing may be made on behalf of all Defendants. However, Defendant-Intervenors may determine that because they have different interests or they have different facts to present or different legal arguments to make on any issue, that they will file separately when necessary to represent effectively their clients' interests. To avoid duplicative filings to the extent possible, counsel for Defendants will confer and indicate in their filings whenever possible where the Attorney General and Defendant-Intervenors adopt or concur in the position taken by the other. However, there will be times—in particular during the dispositive briefing period—where it would be impracticable for all Defendants to file consolidated briefs addressing the merits. This proposal is not intended to govern the parties' briefing or other actions in any other matter.

## **III. Coordinating Counsel for Defendant-Intervenors**

With respect to the coordination of efforts among counsel, Defendant-Intervenors believe that a natural separation of interests exists between the government and Defendant-Intervenors in this case. Defendant-Intervenors believe that it would further efficiency for one counsel to serve as a coordinating counsel for purposes of communications with the several co-counsel representing Defendant-Intervenors. Defendant-Intervenors accordingly propose to designate a coordinating counsel to serve as a primary contact for Defendant-Intervenors. Defendant-Intervenors propose to make this designation prior to the September 10, 2010, status conference. In some situations, Defendant-Intervenors may need to designate an additional or different

counsel, but in such circumstances, Defendant-Intervenors, while remaining mindful of the Court's efficiency concerns, would notify the Court and the other parties.

The Defendant-Intervenors believe that their interests may at times differ from the interests of the Defendant Attorney General. Indeed the potential divergence of interests between the Defendant Attorney General and Defendant-Intervenors was a central element cited in the intervention motions filed in this case. Accordingly, Defendant-Intervenors do not propose that the coordinating counsel for Defendant-Intervenors (as described above) be empowered to speak for the Attorney General, and likewise do not propose that the Attorney General be empowered to speak on behalf of the Defendant-Intervenors.

Likewise, the Attorney General agrees that the designation of a single counsel to speak for all Defendants in this case would be impractical, but he will coordinate with the Defendant-Intervenors to the greatest extent possible.

This 3<sup>rd</sup> day of September, 2010.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, September 3, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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