

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

JOSEPH MORRIS, individually and on behalf
of all others similarly situated

v.

PATRICIA COYNE-FAGUE, in her capacity
as the Director of the State of Rhode Island
Department of Corrections, successor to
ANTHONY TRAVISONO

Case Number: 4192

RICHARD PAIVA

v.

RHODE ISLAND DEPARTMENT OF
CORRECTIONS¹

Case Number: 17-MC-00014-JJM

**MOTION TO DESIGNATE SUCCESSOR CLASS REPRESENTATIVE
AND SUCCESSOR CLASS COUNSEL**

Richard Paiva, a member of the class of inmates at the Adult Correctional Institutions, as certified by the Court in the above-captioned Morris v. Travisono, Case No. 4192, hereby moves, pursuant to Rules 23 and 24 of the Federal Rules of Civil Procedure, to be designated as successor class representative and that his counsel, Lynette Labinger and Sonja Deyoe, be designated as successor class counsel in Case Number 4192.

In support of the Motion, movant states as follows:

¹ Based upon a review of the initial filing of Paiva, ECF 2 in case 17-mc-0014-JJM, *pro se* litigant Paiva identified A.T. Wall, the then-current Director of the Department of Corrections, and not “Rhode Island Department of Corrections” as defendant. The caption, as created by the Court for docketing, has instead listed the “Rhode Island Department of Corrections” as party defendant.

1. Morris v. Travisono was commenced in 1969. After the filing of an amended complaint, the case proceeded on behalf of a class of all current and future inmates of the Adult Correctional Institutions (“ACI”), with a subclass of inmates at the Behavioral Correctional Unit (“BCU”) seeking declaratory and injunctive relief. *Rodi v. Ventetuolo*, 941 F.2d 22, 23 (1st Cir. 1991); *Morris v. Travisono*, 310 F.Supp. 857, 859 (D.R.I. 1970). Officials in charge of the predecessor state agency to the Department of Corrections were named as defendants and are hereinafter collectively referred to as “the Department.”²

2. A settlement was reached in the form of a consent judgment on April 20, 1972, after notice to the class. The terms of the settlement were incorporated in the Court’s judgment, which further specified that the terms would be promulgated by the State pursuant to its Administrative Procedures Act. The settlement terms became known as the “Morris Rules.” The full text of the Morris Rules appears as an Appendix to *Morris v. Travisono*, 499 F.Supp. 149, 151, 161-174 (D.R.I. 1980).

3. The case was commenced by attorneys associated with Rhode Island Legal Services, including attorneys John Donahue (deceased) and Cary Coen (retired). At various times thereafter, other Rhode Island attorneys appeared on behalf of the Plaintiff class or to assert the protections of the Morris Rules on behalf of individual class members, including attorneys Richard Boren, Robert Mann, and Thomas Angelone.

4. In 1974, after the Department suspended the Morris Rules in response to an emergency and declined to reinstate them once the emergency had passed, this Court issued a permanent injunction prohibiting the Department from continuing the suspension of the Morris

² Discussion of the history of proceedings and claims is based upon entries in the docket of Case 4192 as well as descriptions in published decisions of this Court and the First Circuit Court of Appeals, as cited.

Rules. *Morris v. Travisono*, 373 F.Supp. 177 (D.R.I. 1974). The First Circuit Court of Appeals affirmed. 509 F.2d 1358 (1st Cir. 1975). The First Circuit observed that the Morris Rules had been adopted as part of a judgment of the court and that “[t]he district court acted within its power and did not err in concluding that injunctive relief was necessary and proper to enforce its declaratory judgment and decree of April 20, 1972. 28 U.S.C. § 2202.” 509 F.2d at 1362 (footnote omitted). “[S]tate officials may not unilaterally disregard [the court’s] judgments.” *Id.*

5. In 1979, class member John Carillo moved to adjudge the officials of the Department in contempt of the Morris Rules concerning his confinement “in some form of segregated or isolated confinement since June 22, 1973.” *Morris v. Travisono*, 499 F.Supp. 149, 150 (D.R.I. 1980). The Court consolidated consideration of his motion with his independent suit, case number 77-283. The Department opposed reliance on the Morris Rules on the basis of changes in precedent and improvements at the ACI. The Court treated the opposition as a formal motion to vacate the 1972 Consent Judgment adopting the Morris Rules and, after detailed consideration, denied the motion to vacate. 499 F.Supp. at 153-157. Finding violation of “several provisions of the Morris Rules,” 499 F.Supp. at 157, the Court gave the Department thirty days to come into compliance or face a finding of contempt. 499 F.Supp. at 159, 161. In 1982, the Court also found that the continued confinement of Carillo violated the Eighth Amendment and 42 U.S.C. §1983 and ordered Carillo’s reintegration into the general population. The Department appealed. The First Circuit affirmed the district court’s relief based on violation of the Morris Rules, expressly declining to reach the constitutional issue. *Morris v. Travisono*, 549 F.Supp. 291 (D.R.I. 1982), *aff’d*, 707 F.2d 28 (1st Cir. 1983).

6. Upon information and belief, the Department has unilaterally abandoned the Morris Rules, including procedures for determining disciplinary confinement and limitation of

disciplinary confinement to 30 days, without seeking relief from this Court, and inmate Richard Paiva has been subjected to determination by one-member panels on eight separate occasions and imposition of disciplinary confinement in excess of 30 days on three separate occasions in violation of the requirements of the Morris Rules.

7. “The appropriate vehicle for enforcement of the consent decree is an action for contempt brought before the court responsible for the decree. See, e.g., *DeGidio v. Pung*, 920 F.2d 525, 534 (8th Cir.1990); *Green v. McKaskle*, 788 F.2d 1116, 1123 (5th Cir.1986).” *Martel v. Fridovich*, 14 F.3d 1, 3 n. 4 (1st Cir. 1993). See also *In re Richard Lee Paiva*, No. 17-1511 (1st Cir. 12/21/18) (“Even assuming Morris is a closed case, that event in and of itself would not necessarily bar a motion to address a claimed violation of an injunction if the injunction has not expired or been terminated.”)

8. In conformance with Rules 70 and 71 of the Federal Rules of Civil Procedure and cited precedent, class member Richard Paiva, proceeding *pro se*, initiated this action under the caption of *Morris v. Travisono*, case number 4192, and not as an independent proceeding, and correctly styled it as an action to adjudge in contempt and for further relief to enforce the consent judgment in *Morris*, which has neither expired nor been terminated. (ECF 2)

9. The class is entitled to seek to enforce the Court’s judgment and permanent injunction to the benefit of all class members. Upon information and belief, the original class representative, Joseph Morris, is deceased. The matter having been certified to proceed as a class on behalf of current and future inmates of the ACI, “[w]hen mootness of the named plaintiff’s claims occurs, intervention by absentee members is freely allowed in order to substitute them as class representatives.” *Rubenstein*, 1 *Newberg on Class Actions* §2:17 (footnote omitted).

10. Class member Paiva has demonstrated--through his thoroughness, perseverance, comprehensive knowledge of the applicable law, and his personal injury and standing as a class member who has been injured by the Department's abandonment of the Morris Rules--that he is a suitable successor class representative and should be allowed to intervene and should be granted status as representative of the Morris class to seek to enforce the judgment of the Court through contempt proceedings. Class member Paiva's interests do not conflict with the interests of the Morris class.

11. It is not clear from the court docket which of the many attorneys associated with the litigation were designated class counsel. Undersigned counsel has conferred with attorney Cary Coen, who commenced the litigation, as well as attorneys Robert Mann, Richard Boren, and Thomas Angelone, each of whom appeared at various times on behalf of the plaintiff class or individual class members before this Court and/or the First Circuit Court of Appeals, to determine if any is prepared to continue as class counsel. Each has indicated that he is not available to continue to serve as class counsel, and each has advised that he has no objection to the designation of undersigned counsel to serve as successor class counsel on behalf of the Morris class.

12. Counsel requesting to be designated as successor Class Counsel are Lynette Labinger, Esq., and Sonja Deyoe, Esq., serving as cooperating counsel for the American Civil Liberties Union Foundation of Rhode Island. Each attorney possesses the qualifications to serve as counsel to the Morris class. Attorneys Labinger and Deyoe are qualified members of the Rhode Island bar. Attorney Labinger has been a member of the Rhode Island bar for over forty years. Attorney Deyoe has been a member of the Rhode Island bar for nineteen years. The attorneys have each handled, successfully, many constitutional law cases, and have previously been appointed class counsel in the Rhode Island state and/or federal courts. Proposed successor Class

Counsel do not have any known conflicts with the members of the class.

13. For convenience of electronic docketing, movant suggests that all pleadings continue to be filed in the matter under case 17-mc-0014.

WHEREFORE, Richard Paiva, a member of the class of inmates at the Adult Correctional Institutions, as certified by the Court in the above-captioned *Morris v. Trivisono*, Case No. 4192, respectfully prays that the Court issue an order formally granting him leave to intervene as party plaintiff for the purpose of seeking enforcement of the judgment and permanent injunction of the Court in *Morris v. Trivisono*, that he be designated as successor class representative and that his counsel, Lynette Labinger and Sonja Deyoe, be designated as successor class counsel in Case Number 4192, proceeding under the caption by convenience of 2017-mc-0014.

By his attorneys,

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CERTIFICATION

I hereby certify that on November 22, 2019, a true copy of this document was delivered electronically using the CM/ECF system to all counsel of record.

/s/ Lynette Labinger
Lynette Labinger #1645