

2021 WL 6103180

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United States District Court, C.D.  
California, Western Division.

Kelvin Hernandez ROMAN, et al., Petitioners-Plaintiffs,  
v.

Alejandro MAYORKAS, et al., Respondents-Defendants.

ED CV 20-00768 TJH (PVC)

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Signed 10/15/2021

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#### Order

Terry J. Hatter, Jr. Senior United States District Judge

[1278]

\*1 The Court has considered proposed intervenor Martin Vargas' motion for limited intervention, together with the moving and opposing papers.

On April 13, 2020, Petitioners-Plaintiffs filed this action, challenging the constitutionality of the conditions of their confinement while detained at the Adelanto Processing Center ["Adelanto"] in light of the COVID-19 pandemic.

On June 18, 2020, Magistrate Judge Pedro V. Castillo issued a revised stipulated protective order ["the Protective Order"], which protects documents in this case that contain, *inter alia*, personal information of class members, including health and criminal histories, as well as sensitive government and law enforcement information.

On March 8, 2021, Martin Vargas Arellano, a class member, died after he was released from Adelanto. On March 23, 2021, the Court ordered the Special Master to investigate Arellano's death. With the consent of the Special Master and the Court, the parties engaged in discovery regarding Arellano's death. On July 16, 2021, the Special Master issued his Report and Recommendation, which was accepted by the Court on August 8, 2021.

Martin Vargas, now, moves for limited intervention.

Vargas is Arellano's son and successor in interest. Apparently, he is engaged in a pre-litigation investigation of the circumstances surrounding his father's death. If he is granted intervention, Vargas intends to move the Court to modify the Protective Order so as to permit him access to sealed documents, specifically deposition transcripts and discovery produced during the Special Master's investigation into Arellano's death. The Government opposed the motion to intervene, while Petitioners-Plaintiffs filed a notice of non-opposition.

### Permissive intervention

Generally, a person who has “a claim or defense that shares with the main action a common question of law or fact” may seek permissive intervention. Fed. R. Civ. P. 24(b)(1)(B). Typically, before allowing permissive intervention, the Court must determine whether: (1) It has an independent ground for jurisdiction over the movant's claim; (2) The movant's motion is timely; and (3) There is a common question of law and fact between the movant's claim and the main action. *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992).

Permissive intervention is, also, an appropriate means by which a non-party may seek to modify a protective order. *Beckman*, 966 F.2d at 473. In such situations, the typical requirements for permissive intervention are relaxed.

### Independent Ground for Jurisdiction

The Court need not evaluate whether there is an independent jurisdictional basis because the intervenor is asking the Court “only to exercise that power which it already has, *i.e.*, the power to modify the protective order.” *Beckman*, 966 F.2d at 473.

### Timeliness

When considering the timeliness of a motion to intervene, the Court must consider: “(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay.” *San Jose Mercury News, Inc. v. U.S. Dist. Ct.–N. Dist. (San Jose)*, 187 F.3d 1096, 1100–01 (9th Cir. 1999). Here, Vargas's motion is timely, *see Beckman*, 966 F.2d at 471, and the potential for prejudice against the Government is very low.

### Common Question of Law and Fact

\*2 The common question of law and fact requirement is satisfied where the proposed intervenor is engaged in similar litigation involving the same parties, and, there is “a sufficiently strong nexus between the action in which the prospective intervenor seeks to intervene and the parallel action.” *Beckman*, 966 F.2d at 474. When intervening to obtain access to documents, “the collateral litigant must demonstrate the relevance of the protected discovery to the collateral proceedings and its general discoverability therein.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1132

(9th Cir. 2003). Indeed, courts “strongly favor[ ] access to discovery materials to meet the needs of parties engaged in collateral litigation.” *Foltz*, 331 F.3d at 1131. If the intervenor satisfies the burden of relevance and discoverability, the Court must, then, balance the relevance against the opposing party's reliance on the protective order. *Foltz*, 331 F.3d at 1133. However, Vargas has not yet engaged in collateral litigation. Rather, he is merely engaged in a pre-litigation investigation.

Consequently, Vargas failed to establish his right to intervene. *See Beckman*.

### Public Access

As an alternative theory raised for the first time in his reply brief, Vargas argued that he should be allowed to intervene pursuant to the federal common law right of access to judicial records. The Ninth Circuit has recognized that the right of access to public records extends to pretrial documents filed in civil cases. *San Jose Mercury News*, 187 F.3d at 1102. However, that right of access applies only to documents that have been filed with the Court, and not to “discovered, but not yet admitted” documents. *Foltz*, 331 F.3d at 1134.

Further, the right of public access is not absolute; it is heavily dependent on the relationship between the material and the case. *Foltz*, 331 F.3d at 1135. If the material was attached to a motion that was unrelated to the merits of a case, the Court need only find that good cause exists to keep the material from becoming public. *Ctr. for Auto Safety v. Chrysler Grp., L.L.C.*, 809 F.3d 1092, 1097 (9th Cir. 2016). However, if the material was attached to a motion that was more than tangentially related to the merits of a case, the Court must find compelling reasons that a certain document should not be made public. *Ctr. for Auto Safety*, 809 F.3d at 1101. This consideration involves a conscientious balancing of the right of access against the consequences of making the material public. *Ctr. for Auto Safety*, 809 F.3d at 1097.

Here, the Court cannot determine whether Vargas has a right to obtain any of the materials he seeks because he has not yet filed his motion to modify the protective order. Specifically, because Vargas did not inform the Court as to which discovery and documents he seeks, the Court cannot, now, undertake the required conscientious balancing.

Accordingly,

**It is Ordered** that the motion for limited intervention be, and hereby is, **Denied** without prejudice.

**All Citations**

Not Reported in Fed. Supp., 2021 WL 6103180

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