

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4            HABEAS CORPUS RESOURCE CENTER and  
5            THE OFFICE OF THE FEDERAL PUBLIC  
6            DEFENDER FOR THE DISTRICT OF  
7            ARIZONA,

8                                    Plaintiffs,

9                                    v.

10            UNITED STATES DEPARTMENT OF  
11            JUSTICE and ERIC H. HOLDER, IN  
12            HIS OFFICIAL CAPACITY AS UNITED  
13            STATES ATTORNEY GENERAL,

14                                    Defendants.

No. C 13-4517 CW

ORDER DENYING  
MOTION TO  
INTERVENE AND  
GRANTING MOTION TO  
FILE AMICUS BRIEF  
(DOCKET NO. 29)

United States District Court  
For the Northern District of California

15            Marc Klaas seeks to intervene or in the alternative file a  
16            brief as amicus curiae. After reviewing the papers, the Court  
17            DENIES the motion to intervene and GRANTS the motion to file a  
18            brief as amicus curiae.

19                                    BACKGROUND

20            On September 30, 2013, Plaintiffs Habeas Corpus Resource  
21            Center (HCRC) and the Office of the Federal Public Defender for  
22            the District of Arizona (FDO-AZ) brought an action for injunctive  
23            relief to set aside the September 23, 2013 Final Rule regarding  
24            Certification Process for State Capital Counsel System, 78 Fed.  
25            Reg. 58,160. The Final Rule was issued by Defendants United  
26            States Department of Justice (DOJ) and United States Attorney  
27            General Eric H. Holder on September 23, 2013 and was due to become  
28            effective on October 23, 2013. On October 18th, 2013, this Court

1 granted Plaintiffs' application for a temporary restraining order  
2 and order to show cause why a preliminary injunction should not  
3 issue. On November 4, 2013, Mr. Klaas filed a motion to intervene  
4 or in the alternative to file a brief as amicus curiae on the  
5 basis that he is the father of a murder victim in a potential  
6 federal habeas corpus case. On November 6, 2013, Plaintiffs filed  
7 an opposition to the motion to intervene.

8 LEGAL STANDARD

9 Mr. Klaas seeks to intervene pursuant to Federal Rule of  
10 Civil Procedure 24(a). Under Federal Rule of Civil Procedure  
11 24(a), a party has a right to intervene if: (1) the applicant has  
12 made a timely motion to intervene; (2) the applicant has a  
13 significant protectable interest relating to the property or  
14 transaction that is the subject of the action; (3) the applicant  
15 is situated such that the disposition of the action may impair or  
16 impede the applicant's ability to protect that interest; and (4)  
17 the applicant's interest is not adequately represented by existing  
18 parties. See Fed. R. Civ. P. 24(a)(2); Wilderness Soc. v. U.S.  
19 Forest Serv., 630 F.3d 1173, 1177 (9th Cir. 2011). To merit  
20 intervention as of right, a prospective intervenor must satisfy  
21 each Rule 24(a) requirement. See League of United Latin Am.  
22 Citizens v. Wilson, 131 F.3d 1297, 1302 (9th Cir. 1997).

23 DISCUSSION

24 The Court denies the motion because Mr. Klaas has not  
25 satisfied the substantive requirements of Rule 24(a)(2) for  
26 intervention as of right.

27 Under Rule 24(a) Mr. Klaas is required to demonstrate a  
28 "requisite legally protectable interest -- that is, a statutory,

1 contract, or constitutional interest in this litigation.” Nikon  
2 Corp. v. ASM Lithography B.V., 222 F.R.D. 647, 650 (N.D. Cal.  
3 2004). Mr. Klaas argues that he is a crime victim under 18 U.S.C.  
4 § 3771 and, accordingly, has a right to proceedings free from  
5 unreasonable delay in a habeas corpus case. 18 U.S.C.  
6 § 3771(a)(7).

7 Title 18 U.S.C. § 3771 is inapplicable to Mr. Klaas’s motion.  
8 The statute confers rights on victims in a “Federal habeas corpus  
9 proceeding arising out of a State conviction.” 18 U.S.C.  
10 § 3771(2)(A). As Mr. Klaas notes in his motion, no federal habeas  
11 corpus petition has yet been filed in the case. Mr. Klaas thus  
12 does not fall within the statute’s purview. Even if he did, 18  
13 U.S.C. § 3771(d)(3) prescribes specific mechanisms for enforcing a  
14 crime victim’s right to proceedings free from unreasonable delay.  
15 See 18 U.S.C. § 3771(d)(3) (providing that a crime victim may  
16 assert rights prescribed in the statute in a district court; if  
17 denied relief, the victim may petition the court of appeals for a  
18 writ of mandamus.). Because 18 U.S.C. § 3771 is limited to the  
19 remedies enumerated in its text, it does not serve as a basis for  
20 Mr. Klaas to invoke a free-standing legally protectable interest  
21 that satisfies Rule 24(a). Accordingly, this Court denies Mr.  
22 Klaas’s motion to intervene.

23 The Court will permit Mr. Klaas to file an amicus brief.  
24 “There are no strict prerequisites that must be established prior  
25 to qualifying for amicus status[.]” In re Roxford Foods Litig.,  
26 790 F. Supp. 987, 997 (E.D. Cal. 1991) (citations omitted).  
27 “District courts frequently welcome amicus briefs from non-parties  
28 concerning legal issues that have potential ramifications beyond

1 the parties directly involved[.]” NGV Gaming, Ltd. v. Upstream  
2 Point Molate, LLC, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005)  
3 (internal quotation marks and citation omitted). Accordingly, the  
4 Court will consider Mr. Klaas’s brief, which was submitted on  
5 November 4, 2013. (Docket No. 29-3.). Each side may respond to  
6 the amicus brief within seven days of this order, with a brief of  
7 no more than ten pages.

8  
9 IT IS SO ORDERED.

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11 Dated: 11/22/2013

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13 CLAUDIA WILKEN  
14 United States District Judge  
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