KLAYMAN v. OBAMA et al Doc. 100

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

LARRY KLAYMAN, et al.,)
Plaintiffs,) Civil Action No. 1:13-cv-00851-RJL
v.)
BARACK OBAMA, President of the United States, <i>et al.</i> ,)))
Defendants.)
)
LARRY KLAYMAN, et al.,)
Plaintiffs,) Civil Action No.) 1:13-cv-00881-RJL
)
BARACK OBAMA, President of the United States, <i>et al.</i> ,)
Defendants.)))

GOVERNMENT DEFENDANTS' OPPOSITION TO MOTION TO INTERVENE FILED BY TIMOTHY DEMITRI BROWN

The Government Defendants¹ hereby respond to Timothy Demitri Brown's "Motion to Join, Request for Leave" (13-851, ECF No. 95; 13-881, ECF. No. 69 ("Brown Mot.")), which the Government Defendants construe as a motion to intervene pursuant to Federal Rule of Civil Procedure 24. Mr. Brown filed this motion without making any showing as to why he is entitled to intervene under Rule 24(a) or (b). The Government Defendants therefore do not believe that the motion merits serious consideration by this Court and oppose the relief sought.

¹ The "Government Defendants" are defendants Barack Obama, President of the United States, Eric Holder, Attorney General of the United States, and General Keith B. Alexander, Director of the National Security Agency (NSA), insofar as they are sued in their official capacities, together with defendants NSA and the United States Department of Justice.

Mr. Brown's motion consists of the allegation that he "has been personally victimized by the unlawful surveillance of the U.S. Government," and attaches documents that appear to reference a 1998 court-ordered pen register—activity that predates the alleged programs challenged in this matter. *See* Brown Mot. at 3-4.

Rule 24(a) and (b) "both require that a motion to intervene be timely filed, and the Court considers 'time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant's rights, and the probability of prejudice to those already parties in the case." *Kifafi v. Hilton Hotel Ret. Plan*, 2004 WL 3619156, at *6 (D.D.C. Sept. 27, 2004) (quoting *Smoke v. Norton*, 252 F.3d 468, 471 (D.C. Cir. 2001)). Permissive intervention under Rule 24(b)(1)(A)—the more likely putative basis for the instant motion—may apply to movants who have "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(A).

The aforementioned factors weigh heavily against permitting Mr. Brown to intervene in this case. He waited nine months to file his motion, does not articulate a single reason why intervention is appropriate, and alleges harm that occurred over fifteen years ago, unconnected to any activity being challenged in the instant cases. Relatedly, because his one-sentence allegation does not share a "common question of law or fact" with the claims raised in these actions and, in any event, is not supported by any independent jurisdictional basis, Mr. Brown is not eligible for permissive intervention under Rule 24(b)(1)(A). *See EEOC v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998). Finally, Mr. Brown's motion is not accompanied by a pleading, as required by Rule 24(c). For all these reasons, his motion should be denied.

² Mr. Brown has not identified any statute that provides him an unconditional or conditional right to intervene in this action, *see* Fed. R. Civ. P. 24(a)(1), (b)(1), and counsel for the Government Defendants are aware of none.

Dated: March 24, 2014 Respectfully submitted,

STUART F. DELERY Assistant Attorney General

JOSEPH H. HUNT Director, Federal Programs Branch

ANTHONY J. COPPOLINO Deputy Branch Director

/s/ Bryan Dearinger

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Counsel for the Government Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2014, I did cause true and correct copies of the foregoing instrument, Government Defendants' Opposition to Motion to Intervene Filed by Timothy Demitri Brown to be electronically filed using the CM/ECF system for the United States District Court for the District of Columbia and served by U.S. mail on the following person:

TIMOTHY DEMITRI BROWN R10979-035 FLORENCE ADMAX U.S. PENITENTIARY Inmate Mail/Parcels PO BOX 8500 FLORENCE, CO 81226

/s/ Bryan Dearinger
BRYAN DEARINGER
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Civil Division, Federal Programs Branch