UNITED STATES DISTRICT COURT`
DISTRICT OF MASSACHUSETTS

S.R.C., a minor child, by her next friends, JOHN COBBETT-WALDEN and JENNIFER LEE LAURENZA, Plaintiff, v. STAVERNE MILLER in her official capacity as Commissioner of the MA Department of Children and Families, and DR. KIAME MAHANIAH, in his official capacity as Secretary of the MA Executive Office of Health & Human Services, Defendants.	)	Case No. 1:25-cv-12676-AK

MEMORANDUM OF LAW IN SUPPORT OF
INTERVENOR FATHER'S MOTION TO INTERVENE

Esvin O. Gregorio Cabrera ("Father")—the biological father of eight-year-old S.R.C. ("Child")—moves to intervene as a defendant in this case. The injunctive and declaratory relief that Plaintiffs seek in this action would upend the Massachusetts Juvenile Court's final order directing the Department of Children and Families ("DCF") to return Child to Father's custody and would deprive Father of his fundamental right to the care and custody of Child. Father's constitutionally protected rights, and Child's reciprocal rights to family integrity, are squarely at stake. Intervention is necessary to ensure that the parent most directly affected by this action is

heard in defense of his and his daughter's fundamental liberty interests and the lawful state-court reunification order.

BACKGROUND

Father is Child's biological father. The Juvenile Court, in a care and protection proceeding that has reached its final disposition, found that Father is a fit parent and ordered DCF to transition Child to Father's custody in Guatemala, consistent with DCF's permanency goal of reunification. In reaching its decision, the Juvenile Court found that Father (a) was consistent with visits, (b) attended Child's medical appointments, (c) showed insight into Child's educational needs, (d) completed parenting and ESOL courses, (e) has stable employment and housing, (f) has identified professional support to meet Child's needs, and (g) has the financial resources to support Child. *See* Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction ("Defendants' Opp.") (Doc. No. 22) at 4–5. Also, despite the testimony of Child's foster father at the evidentiary hearing on DCF's motion to return Child to Father's custody, the Juvenile Court found that "there is no credible evidence" that Father cannot keep Child "safe, well-cared for, loved, and happy." *Id.*

Plaintiffs contend that they are not asking this Court to alter the Juvenile Court's decision awarding custody to Father, *see* Plaintiffs' Reply to Defendants' Opposition to Motion for Preliminary Injunction ("Plaintiffs' Reply") (Doc. No. 31) at 2, but that is the actual effect of the relief they seek. Notably, Plaintiffs appear to concede that under the Juvenile Court's decision awarding him custody, Father would have every right to bring Child to live with him in Guatemala if he had the ability to travel to the United States. But because Father lacks that ability, Plaintiffs seek to take unfair advantage of that fact by claiming that Child's constitutional rights would somehow be violated if DCF were to facilitate Child's travel to Guatemala, an act they characterize as "deportation" or "exile." As Plaintiffs would have it, Father's constitutional right to the care

and custody of Child turns on which party happens to travel with Child to Guatemala. Under their formulation, if Father could travel to the United States, he would enjoy his full constitutional and court-ordered right to the custody of his daughter. But if DCF facilitates Child's travel, Father's rights are effectively rendered meaningless. This Court should allow Father's motion to intervene so that he may oppose Plaintiffs' motion for injunctive relief and protect his legal interests in the care and custody of Child, which are directly jeopardized by Plaintiffs' action.[1]

LEGAL STANDARD

Rule 24 "should be liberally construed," *Clark v. Sandusky*, 205 F.2d 915, 919 (7th Cir. 1953), and "[a]ny doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors," *Fed. Sav. & Loan Ins. V. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993). This rule of construction "serves both efficient resolution of issues and broadened access to the courts." *United States v. City of Los Angeles*, 288 F.3d 391, 397–98 (9th Cir. 2002).

[1] Father attaches as **Exhibit 1** his proposed Opposition to Plaintiffs' Motion for Preliminary Injunction. Rule 24(c) states that a motion to intervene must be "accompanied by a pleading that sets out the claim or defense for which intervention is sought." The purpose of that provision is simply "to place the other parties on notice of the position, claim, and relief sought by the intervenor." *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 297 F. Supp. 3d 261, 265 (D. P.R. 2017) (citation omitted). The First Circuit has "eschewed overly technical readings of Rule 24(c)…." *Paeje Invs. LLC v. Garcia-Padilla*, 845 F.3d 505, 515 (1st Cir. 2017). Indeed, it has held that "denial of a motion to intervene based solely on the movant's failure to attach a pleading, absent prejudice to any party, constitutes an abuse of discretion." *Id.* (citation omitted); *see also City of Bangor v. Citizens Communications Co.*, 532 F.3d 70, 95 n.11 (1st Cir. 2008). Since the critical and time-sensitive issue presently before the Court is Plaintiffs' motion for preliminary injunctive relief, Father is submitting a proposed Opposition to that motion instead of a formal answer to the Complaint or motion to dismiss. This memorandum and the proposed Opposition properly notify the parties of Father's position and defenses in this case. However, if the Court prefers that Father submit a proposed responsive pleading in addition to the proposed Opposition, Father respectfully requests leave to do so. *See WJA Realty Ltd. P'ship v. Nelson*, 708 F. Supp. 1268, 1272 (S.D. Fla. 1989) ("Failure to file an accompanying pleading … may be rectified by the later filing of such a pleading").

Rule 24(a)(2) mandates intervention as of right when the applicant: (1) moves timely; (2) asserts an interest relating to the property or transaction that is the subject of the action; (3) is so situated that disposing of the action may as a practical matter impair or impede the ability to protect that interest; and (4) shows that the interest is not adequately represented by existing parties. *See* Fed. R. Civ. P. 24; *United Nuclear Corp. v. Cannon*, 696 F.2d 141, 143–44 (1st Cir. 1982). Father satisfies all four elements. Alternatively, Father also satisfies the requirements for permissive intervention. Under Rule 24(b), the Court may permit intervention by anyone who "has a claim or defense that shares with the main action a common question of law or fact," considering whether intervention will unduly delay or prejudice the adjudication of the original parties' rights.

ARGUMENT

A. Father Is Entitled to Intervention as of Right under Rule 24(a)(2).

1. Father's Intervention is timely.

There is no bright-line rule to determine whether a motion to intervene is timely. Instead, courts must decide the question on a case-by-case basis, examining the "totality of the relevant circumstances." *Banco Popular de Puerto Rico v. Greenblatt*, 964 F.2d 1227, 1230 (1st Cir. 1992). One "highly relevant circumstance" is the status of the case at the time when intervention is attempted; "[t]he more advanced the litigation, the more searching the scrutiny which the motion must withstand." *Id.*

Here, Father's intervention is timely. The case, filed less than 45 days ago, is still in its infancy, with only the Complaint filed and a motion for preliminary injunction briefed. No discovery has been conducted, and Father seeks prompt intervention so as to be heard on a key defense he has to Plaintiffs' claims and to Plaintiffs' Motion for Injunctive Relief; namely, that they lack standing as Child's purported "next friends" to pursue the injunctive relief that would

directly affect Father's custodial rights and his child's welfare, because he is Child's proper representative, not them.[2] *See Geiger v. Foley Hoag LLP Ret. Plan*, 521 F.3d 60, 64 (1st Cir. 2008) (granting motion to intervene nine months after intervenor learned of case filed where "the case had not progressed beyond the initial stages when the motion [to intervene] was filed"). Father learned of this litigation shortly after its filing, but needed time to coordinate, identify, and engage counsel remotely while living in Guatemala, which he has now done. Additionally, new perspectives on the central issues before the Court continue to come in; just this month, multiple organizations sought leave to file amicus briefs in support of the Defendants' (and Father's) positions. *See* Doc. No. 30 (Children's Law Center of Massachusetts) and Doc. No. 34 (Committee for Public Counsel Services). Accordingly, no party will be prejudiced by Father's immediate participation. To the contrary, his participation will help the Court adjudicate issues that uniquely implicate his and his daughter's fundamental rights.

2. Father has a direct, significantly protectable interest in the care, custody, and control of his child.

While the type of interest sufficient to intervene as of right is "not amenable to precise and authoritative definition, a putative intervenor must show at a bare minimum that it has a significantly protectable interest, that is direct, not contingent." *Varsity Wireless, LLC v. Town of Boxford*, No. CV 15-11833-MLW, 2016 WL 11004357, at *5 (D. Mass. Sept. 9, 2016) (citing *Pub. Serv. Co. of New Hampshire v. Patch*, 136 F.3d 197, 205 (1st Cir. 1998)).

Here, the father's interest in the care, custody, and control of his child is **the** central subject of this action. The Supreme Court has long recognized the fundamental liberty interest of parents in the care, custody, and control of their children. *See Prince v. Massachusetts*, 321 U.S. 158, 166

[2] Father also adopts by reference the defenses and arguments made by Defendants in their Opposition to Plaintiffs' Motion for Preliminary Injunction. *See* Doc. No. 22 at 6–20.

(1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (explaining family integrity interest as "perhaps the oldest of the fundamental liberty interests recognized"). These rights are not diminished by Father's immigration status or physical location. The Juvenile Court has already determined that reunification with Father is appropriate and has directed transition consistent with that determination.

3. The disposition of this federal action could impair or impede Father's ability to protect his fundamental liberty interest in the care, custody, and control of his family.

An injunction barring DCF from effectuating the Juvenile Court's reunification plan would prolong or entrench separation between Father and Child, potentially alter permanency planning, and risk collateral consequences in the state proceedings. The First Circuit and other courts in Massachusetts have recognized that deportation alone does not establish unfitness and cannot be used to thwart reunification. *See, e.g.*, *Payne-Barahona v. Gonzales*, 474 F.3d 1, 2-3 (1st Cir. 2007) ("Nor does separation necessarily mean separation since the children could be relocated during their minority."); *Adoption of Posy*, 94 Mass. App. Ct. 748, 755 (2019). If the relief Plaintiffs seek were granted here, Father's ability to exercise his custody rights, and the child's ability to enjoy family integrity, would be materially, and permanently, impaired. *See Suboh v. Dist. Attorney's Off. Of Suffolk Dist.*, 298 F.3d 81, 91 (1st Cir. 2002) ("The child has a similar liberty interest in being in the care and custody of her parents.").

4. The existing parties do not adequately represent Father's distinct interests.

The burden to show that no other party adequately represents Father's interests is "not onerous: the intervenor need only show that 'representation **may** be inadequate, not that it **is**

inadequate." *Nextel Commc'ns of Mid-Atl., Inc. v. Town of Hanson*, 311 F. Supp. 2d 142, 151 (D. Mass. 2004) (citing *Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir.1992) (emphases added). Plaintiffs oppose reunification and seek to invalidate the Juvenile Court's reunification directives by preventing DCF from facilitating Child's transition to her father's custody in Guatemala. Defendants are state officials and agencies with broad institutional obligations; they do not stand in Father's shoes and thus cannot fully vindicate his specific constitutional and custodial interests, nor can they present the full facts uniquely tied to Father's fitness and his family life, the conditions of his home abroad, and the feasibility and appropriateness of the reunification at issue. This is because while DCF and EOHHS "have an interest in defending their decision," their interests and goals are not necessarily the same as Father's, as the government could "change or soften [its] position based on its broader geographic and institutional interests." *See Nextel*, 311 F. Supp. 2d at 153.

Moreover, while Defendants' positions are aligned with the Father's with regard to Plaintiffs' Motion for Injunctive Relief, DCF is an adverse party of the Father's in the Juvenile Court. *See generally Care and Protection of Sophie*, 449 Mass. 100 (2007). Finally, as foster parents of Child, Plaintiffs and DCF have a contractual relationship. Simply put, Father's perspective is indispensable to the Court's equitable and constitutional analysis.

Accordingly, because all Rule 24(a)(2) factors are satisfied, intervention as of right should be granted.

B. In the Alternative, Permissive Intervention Is Warranted under Rule 24(b).

At a minimum, the Court should exercise its discretion to permit intervention. Father's defenses and requested relief share common questions of law and fact with the main action, including whether federal injunctive relief may impede the Juvenile Court's reunification orders;

whether reunification with a fit, deported parent can be prevented through federal litigation by foster parent "next friends" given the constitutional principles of family integrity; whether immigration status alone may justify court-ordered separation; and whether the "next friends" have standing to sue in the first place. *See Morra v. Casey*, 960 F. Supp. 2d 335, 338 (D. Mass. 2013) (allowing motion to intervene under Rule 24(b) where the proposed intervenor's interest was "not sufficiently direct to support intervention as of right," because it "certainly relate[d] to the subject matter of this case."). Here, Father's participation will aid the Court's resolution of these issues by supplying essential facts, legal arguments grounded in family integrity jurisprudence, and practical considerations regarding implementation of the state court's reunification plan, all clearly relevant to the subject matter of this case.

CONCLUSION

Father satisfies all elements for intervention as of right, and, in the alternative, permissive intervention is warranted. The motion should be granted, the Proposed Opposition to Plaintiffs' Motion for Injunctive Relief deemed filed, and Father allowed to participate fully in all proceedings affecting his and his child's fundamental rights and the state court's reunification orders.

Respectfully submitted,

ESVIN O. GREGORIO CABRERA,

By his counsel,

/s/ Brian K. French

Brian K. French (#637856)
Luis A. Vargas Rivera (#710571) (*pro hac vice pending*)
NIXON PEABODY LLP
53 State Street
Exchange Place
Boston, MA 02109
617-345-1000

bfrench@nixonpeabody.com
lvargas@nixonpeabody.com

Dated: October 31, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2025, the above document was served on counsel of record for all parties via email and the CM/ECF system.

/s/ Brian K. French

Brian K. French