IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AMERICAN ACADEMY OF PEDIATRICS, *et al.*, *Plaintiffs,* vs. ROBERT F. KENNEDY, JR., in his official capacity as Secretary of the Department of Health and Human Services, *et al.*, *Defendants.*	Case No. 1:25-cv-11916 District Judge: Hon. William G. Young Magistrate Judge: Hon. M. Page Kelley

PLAINTIFFS' RESPONSE IN OPPOSITION TO JOSE PEREZ'S SECOND AMENDED MOTION TO INTERVENE AS DEFENDANT

Plaintiffs submit this response in opposition to Jose Perez's Second Amended Motion to Intervene as Defendant (the "Second Motion to Intervene"), ECF No. 84.

I. Perez Failed to Satisfy the Procedural Requirements to Intervene

The Court should strike the Second Motion to Intervene on procedural grounds because, as with his initial motion to intervene (the "Original Motion to Intervene"), ECF No. 57, and his first amended memorandum in support of his Original Motion to Intervene, ECF No. 68, Perez failed to confer with undersigned counsel concerning Plaintiffs' position regarding the Amended Motion to Intervene prior to filing it, or otherwise attempt in good faith to resolve or narrow the issue presented in the Motion as required by Local Rule 7.1(a)(2).

Perez failed to comply with the notice and pleading requirements of Federal Rule of Civil Procedure 24(c) insofar as Perez has not served Plaintiffs with a copy of a pleading (*i.e.*, answer to the Amended Complaint, ECF No. 63) that sets out the defenses for which Perez seeks to intervene. Additionally, the Court should strike his Second Motion to Intervene, ECF No. 57,

because Perez filed it without leave to do so, even after the Court denied his Original Motion to Intervene, *see* ECF No. 81, and he cited no authority permitting him to file an amended motion without permission. *See generally*, ECF No. 68.

Plaintiffs are prejudiced by Perez's Second Motion to Intervene because they are required to expend resources to respond to Mr. Perez's request despite that the Court already dispensed with his underlying request. Additionally, entertaining Mr. Perez's Second Motion to Intervene deprives Plaintiffs of the benefit of finality with respect to the Court's rulings, and undermines the spirit of efficiency espoused in the Federal Rules of Civil Procedure, as set forth by the very first rule: "These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. For these reasons, Perez's Second Motion to Intervene, ECF No. 84, should be stricken.

II. Perez Failed to Satisfy the Substantive Requirements to Intervene

If the Court entertains Perez's Second Motion to Intervene in light of his *pro se* status, the Court should, at a minimum, deny Perez's Second Motion to Intervene because Perez has failed to establish that he has a right to intervene or that permissive intervention is appropriate. On the contrary, his own allegations, as amended in his Second Motion, are quite plain that he lacks a cognizable legal interest at risk in the litigation, that the government adequately represents his interests such that participating in this litigation as a party is unnecessary and poses a distraction to the narrow legal issues before the Court.

A. Perez Failed to Show a Right to Intervene

Substantively, Perez has not established a right to intervene under Federal Rule of Civil Procedure 24(a) because nothing in his Second Motion to Intervene establishes that Perez has a statutory right to intervene under Rule 24(a)(1) or that Perez has any cognizable legal interest at risk that the existing parties do not adequately represent under Rule 24(a)(2).

"To meet the standard for intervention as of right, the proposed intervenor 'must demonstrate that: (i) its motion is timely; (ii) it has an interest relating to the property or transaction that forms the foundation of the ongoing action; (iii) the disposition of the action threatens to impair or impede its ability to protect this interest; and (iv) no existing party adequately represents its interests.'" *Mullane v. Portfolio Media, Inc.*, 2020 WL 1931525, at *3 (D. Mass. Feb. 8, 2020), *report and recommendation adopted*, 2020 WL 1967562 (D. Mass. Mar. 23, 2020) (quoting *Ungar v. Arafat*, 634 F.3d 46, 50 (1st Cir. 2011)). Perez fails the second, third, and fourth requirements.

As to prongs two (interest) and three (risk of injury), Perez's claims fail. As to interest, Perez asserts that he is a "74 years old geriatric patient and disabled Viet Nam (sic) veteran who requires a well[-]managed healthcare system—that is definitely a legally protected interest" and that "he has been forced to forgo influenza vaccinations until the defendants procedures are normalized." ECF No. 84 at ¶ 36. As to injury, Perez's Second Motion to Intervene makes broad and diffuse claims against the existing Defendants: that "Defendants have allowed unnecessary, dangerous vaccines and type III equipment into the marketplace" and yet seeks to intervene as a defendant "to seek judicial review in order restore the integrity of the system" which he claims "has been corrupted to such an extent that healthcare consumers are forced to play Russian roulette with their lives." ECF No. 84 at ¶ 46. Both his stated interest and his stated injury are outside the scope of this litigation.

This lawsuit relates solely to whether the Directive is a lawful administrative action. While the Directive will no doubt harm Americans grievously, Perez has not set out how his life or safety, as a 74-year-old man, is directly at risk if the Court determines that the Directive is unlawful. Perez has simply not made the requisite showing that he has "an interest distinct from that of any other citizen or taxpayer." *E.g.*, *President and Fellows of Harvard Coll. v. U.S. Dep't of Homeland Sec.*, 2025 WL 1869319, at *1 (D. Mass. July 7, 2025) (denying intervention where the would-be-intervenor sought to protect his "strong interest in the proper and effective interpretation and application of the First Amendment, Due Process Clause, and Administrative Procedure Act in relation to coordinated conspiracy and validated violations of the Hatch Act.").

Furthermore, Perez's real gripe appears to be with Pfizer, Inc. ("Pfizer") and its marketing decisions; and, by extension how some of the Defendants have interacted with Pfizer in connection with those marketing decisions. ECF No. 84 at ¶¶ 20–26. Pfizer is not a party to this litigation, and its marketing decisions are far afield of the litigation's limited inquiry. *See generally*, Amended Compl., ECF No. 63. Even assuming *arguendo* that some of the evidence regarding the legality of the Directive may include statements Pfizer made about Covid or its Covid vaccine generally, the Court should nevertheless deny intervention because Perez's primary attack (ostensibly that Pfizer—again, a non-party—committed fraud) is not coterminous with the causes of action *sub judice*. *E.g.*, *Mullane*, 2020 WL 1931525 at *5.

As to the fourth requirement for intervention as of right, Perez has not established that none of the existing defendants adequately represent his purported interest. Where "the intervenor's ultimate objective matches that of the named party, a rebuttable presumption of adequate representation applies." *B. Fernandez & HNOS v. Kellogg USA, Inc.*, 440 F.3d 541, 546 (1st Cir. 2006). As to the subject matter of the litigation, Perez's stated position is "that the covid19

'vaccination' must be removed in its entirety from the marketplace—he is extremely happy that pregnant ladies and children have been excluded from having to be 'vaccinated.'" ECF No. 84 at ¶ 14. And while Defendants have not responded to the Amended Complaint yet, because the issues in this lawsuit are limited to whether the Directive complies with the legal requirements of the Administrative Procedure Act, Perez's objective and Government's vis-à-vis the Directive align perfectly. Perez has not demonstrated anything to rebut the presumption that the Government represents his interests adequately.[1] Accordingly, as in *President and Fellows of Harvard Coll.*, 2025 WL 1869319, at *1, the existing defendants represent Perez's interests adequately, and his Motion to Intervene should be denied.

B. Permissive Intervention is Not Appropriate.

Permissive intervention is also inappropriate. Without a right to intervene, as a civilian, the only avenue for permissive intervention available to Perez is under Rule 24(b)(1)(a) or (b). Because Perez has not identified a conditional right to intervene by federal statute (Rule 24(b)(1)(a)) or that Perez has standing to assert a defense with the main action on a common question of law or fact (Rule 24(b)(1)(b)), Perez failed to identify any grounds for permissive intervention under Rule 24(b)(1).

Practically, this case is already complex. The parties are a mix of individuals, professional organizations that represent thousands of medical professionals, government agencies and officials. Perez's participation in the lawsuit as a defendant will only decrease judicial efficiency and cause unnecessary delay to the proceedings. *See T-Mobile Northeast LLC v. Town of*

[1] To the extent Perez seeks to intervene to prevent Pfizer from perpetuating fraud, participating as a party is not required because the Government adequately represents his interest under Rule 24(a)(2). Indeed, according to Perez, the Government has already litigated the very issue of Pfizer's claims in marketing its Covid vaccine. ECF No. 68 at ¶ 19.

Barnstable, 969 F.3d 33, 41 (1st Cir. 2020) (denying permissive intervention where the would-be-intervenors failed to "articulate what, if anything, they would contribute to the vitality of the [defendant's] defense."); *see also Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 807 F.3d 472 (1st Cir. 2015) (upholding the district court's decision to deny a student's motion to intervene in a lawsuit by an organization challenging Harvard College's policy to consider race in its admission decisions, but permitting the student leave to file an amicus brief). The Court has already permitted Perez leave to file an *amicus* brief at the appropriate time, which represents a meaningful way for Perez to be heard in connection with this litigation, especially given his lack of cognizable legal interest in the narrow subject matter at issue. Finally, denying Perez's Second Motion to Intervene does not prejudice Perez at all because he remains free to sue any of the Defendants to the extent he believes himself to be redressably wronged by them by filing a separate action.

III. Conclusion

For these reasons, Plaintiffs respectfully oppose Jose Perez's Second Amended Motion to Intervene as Defendant, ECF No. 84, and request that the Court deny the same and enter an order directing Jose Perez to refrain from filing further motions to intervene in the above-captioned matter.

Dated: August 19, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed and served through the ECF system upon the following parties on this 19th day of August 2025:

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I hereby certify that this document was filed through the ECF system and served upon the following individual by submission to CM/ECF and email on this 19th day of August 2025:

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