

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
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AMERICAN ACADEMY OF
PEDIATRICS, ET AL

Plaintiffs

Versus

Case no. 1:25-cv-11916-WGY

ROBERT F. KENNEDY , JR , et al

Defendants

**PUTATIVE INTERVENOR'S REPLY TO PLAINTIFFS' OPPOSITION TO
HIS RULE 59(e) MOTION TO VACATE THE
JULY 31st, 2025 ORDER DENYING HIS MOTION TO INTERVENE**

Jose A. Perez , appears in propria persona and respectfully replies to the
Plaintiffs' Opposition¹ to his Rule 59(e) Motion To vacate the July 31st, 2025
Order. As grounds in support thereof he shows:

I

**THE PLAINTIFFS' ARGUMENT THAT MR. PEREZ
CAN BE SUMMARILY DEPRIVED OF HIS RIGHT
TO ACCESS THE COURT IN ORDER TO SEEK A
REDRESS OF HIS GRIEVANCES IS PATENTLY FRIVOLOUS**

¹ CM/ECF # 91

The Plaintiffs argued therein that the mere fact that the Court issued an order , sua sponte, dismissing Mr. Perez' right to access the Court as a Rule24(a)(1) Intervenor without giving him an explanation or an opportunity to be heard as required by First Circuit Court Precedents did not transgress upon Mr. Perez' Constitutional Rights. Mr. Perez objects because the Plaintiffs' argument is patently frivolous .

Rule 59(e) allows a party to direct the district court's attention to a manifest error of law or fact, thereby enabling the court to correct its own errors before appellate review². A "manifest error" is defined as "wholesale disregard, misapplication, or failure to recognize controlling precedent³.

Mr. Perez adamantly but respectfully states that he replied to the Plaintiffs' opposition⁴. The same was Postmarked August 2nd, 2025⁵.

² Pomerlau v West Springfield Public Schools , 362 F. 3d 143 FN2 (1st Cir-2004) citing FDIC v. World Univ. Inc.,978 F. 2d 10, 16 (1st Cir.1992)

³ Ibid; Accord: In Re August, 1993 Regular Grand Jury, 854 F. Supp. 1403, 1407 (S.D.Ind.1994).

⁴ CM/ECF 84

⁵ FEDEX Tracking # 883263799404

II

THE PLAINTIFFS' CLAIM THAT INTERVENOR DOES NOT HAVE A RIGHT TO AMEND HIS MOTION POST JUDGMENT IS BASELESS

Mr. Perez has a right to amend his Motion To intervene post judgment pursuant to FRCP , Rules 15(b)⁴ and 15(d) ⁵ as well as 28 USC 1653 ⁶. The Plaintiffs position to the contrary is baseless⁷.

Furthermore , In Brandon v Holt , the Supreme Court emphasized that Rule 15(b) is **“intended to promote the objective of deciding cases on their merits rather than in terms of the relative pleading skills of counsel”** . Mr. Perez respectfully submits that Rule 15(b), FRCP is essential in this case because federal courts have consistently ruled that when reviewing Pro Se complaints they must consider “all filings” before dismissing the same ⁸.

⁴ Brandon v Holt , 469 US 464 FN19 (1985) See Fed. Rule Civ. Proc. 15(b); 3 J. Moore, Federal Practice ¶ 15.13[2], p. 15-157 (2d ed. 1984) (**amendment to conform to evidence may be made at any time**); *id.*, at 15-168 (Rule 15(b) amendment allowed “so long as the opposing party has not been prejudiced in presenting his case”); 6 C. Wright & A. Miller, Federal Practice and Procedure § 1491, pp. 453, 454 (1971 ed. and Supp. 1983) (**Rule 15(b) is “intended to promote the objective of deciding cases on their merits rather than in terms of the relative pleading skills of counsel”**); *ibid.* (“[Courts should interpret [Rule 15(b)] liberally and permit an amendment whenever doing so will effectuate the underlying purpose of the rule”).. Accord: ⁴ Cruz v Coach Stores, Inc, 202 F.3d 560, 569 (2nd Cir-2000)

⁵ Scahill v District of Columbia , 909 F. 3d 1177 (DC Cir-2018) citing Mathews v. Diaz, 426 US 67, 75 (1976),

⁶ Commercial Union Insurance Co. v US , 999 F.2d 581 (DC Cir-1993) citing Newman-Green, Inc. v. Alfonzo-Larrain, 490 US 826, 830 (1989)

⁷ CM/ECF #91 page 2

⁸ Brown v Whole Foods Market Group, Inc , 789 F. 3d 146 , 152 (DC Cir-2015) (district court must consider all allegations — including those in Brown’s opposition to Whole Foods’s motion to dismiss) citing Richardson v. United States, 193 F. 3d 545, 548 ,

III

**THE PLAINTIFFS' POSITION
THAT MR. PEREZ DOES NOT HAVE AN ABSOLUTE
RIGHT TO INTERVENE PURSUANT TO RULE 24(a)(1)
WITHIN THE MEANING OF 5 USC 701, ET SEQ IS MERITLESS**

The Administrative Procedures Act – 5 USC 701-706 – provides Mr. Perez an absolute right of intervention within the meaning of Rule 24(a)(1), FRCP: The Administrative Procedures Act provides, in unqualified terms, that any individual suffering legal wrong because of agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof⁹. It is not necessary that the statute specifically state that Litigants have the “absolute right to intervene “¹⁰.

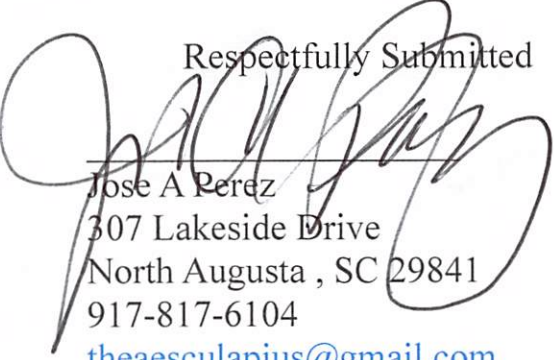
(D.C.Cir.1999). Accord : Pearson v. Gatto, 933 F.2d 521, 527 (7th Cir. 1991) (the District Court should have construed a pro se plaintiff's letter to judge to be an amended complaint); Cooper v. Sheriff, Lubbock County, Texas, 929 F.2d 1078, 1081 (5th Cir. 1991) (finding, in an appeal of a Fed. R. Civ. P. 12(b) (6) dismissal, that the magistrate judge should have considered a pro se litigant's reply to the defendant's answer as a motion to amend the complaint).

⁹ Instituto de Educacion Universal Corp v U.S. Department of Education, 209 F. 3d 18 (1st Cir-2000) citing 5 USC 702 ; Cf: In the Matter of Marin Motor Oil , Inc , 689 F. 2d 445 (3rd Cir-1984) (11 U.S.C. § 1109(b). provides an absolute right of intervention to a creditors' committee in a Chapter 11 "case."

¹⁰ Assured Guaranty Corp v Financial Oversight & Management Board , 872 F.2d 57(1st Cir-2017) The plaintiffs' argument against intervention is largely predicated on their contention that § 1109(b) does not provide an unconditional right to participate in an adversary proceeding. The plaintiffs do, however, also point out that the statute “says nothing about intervention at all.”we view the rights described in § 1109(b) to be entirely consistent with intervention rights generally. Accordingly, § 1109(b) provides the UCC with an “unconditional right to intervene” in the adversary proceeding. Fed. R. Civ. P. 24(a)(1). Accord : *Official Unsecured Creditors' Committee v. Michaels (In re Marin Motor Oil, Inc.)*, 689 F.2d 445 , 451-53 (3d Cir.1982),

Wherefore Mr. Perez respectfully requests that the referenced ruling be vacated and that he be given an opportunity to address any deficits .

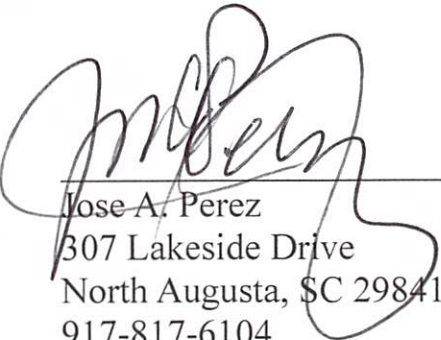
Respectfully Submitted



Jose A Perez
307 Lakeside Drive
North Augusta , SC 29841
917-817-6104
theaesculapius@gmail.com

CERTIFICATE OF SERVICE

It is hereby certified that on this 19th day of August 2025 a true and correct copy of the foregoing document was served upon all counsel identified in the docket sheet via email.



Jose A. Perez
307 Lakeside Drive
North Augusta, SC 29841
917-817-6104