

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**LAS AMERICAS IMMIGRANT ADVOCACY  
CENTER; AMERICAN GATEWAYS; AND  
THE COUNTY OF EL PASO, TEXAS,**

***Plaintiffs,***

**v.**

**STEVEN C. McCRAW, IN HIS OFFICIAL  
CAPACITY AS DIRECTOR OF THE STATE OF  
TEXAS DEPARTMENT OF PUBLIC SAFETY,  
AND BILL D. HICKS, IN HIS OFFICIAL  
CAPACITY AS DISTRICT ATTORNEY FOR  
THE 34TH DISTRICT,**

***Defendants.***

**CIVIL ACTION NO. 1:23-CV-1537-DII**

**DEFENDANTS' OPPOSITION TO STARR'S MOTION FOR LEAVE TO FILE ENCLOSED  
INTERVENTION AND COMPLAINT**

Defendants Steven C. McCraw, in his official capacity as Director of the Texas Department of Public Safety, and Bill D. Hicks, in his official capacity as District Attorney for the 34th Judicial District of Texas, file this Opposition to Carl Starr's ("Starr") Motion for Leave to File Enclosed Intervention and Complaint (ECF No. 28).

**I. Starr cannot intervene in this action pursuant to Federal Rule of Civil Procedure 24(b)(2).**

Starr seeks to intervene in this action permissively under Federal Rule of Civil Procedure 24(b)(2). Rule 24(b) provides:

- (1) **In General.** On timely motion, the court may permit anyone to intervene who:
- (A) is given a conditional right to intervene by a federal statute; or
  - (B) has a claim or defense that shares with the main action a common question of law or fact.

(2) **By a Government Officer or Agency.** On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

- (A) a statute or executive order administered by the officer or agency; or
- (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) **Delay or Prejudice.** In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Thus, Rule 24(b)(2) specifically is limited to intervention by a “a federal or state governmental officer or agency.” Starr does not allege himself to be either of these. Starr does not allege he is representing the interest of any government entity, nor has he shown any authority to do so. *See generally* ECF No. 28. Accordingly, since Starr is not a governmental officer or agency, Starr's request for intervention under 24(b)(2) must be denied.

Moreover, Starr does not claim to intervene in this action based on any “statute or executive order administered by the officer or agency,” as required by Fed. R. Civ. P. 24(b)(2)(A), or based on “any regulation, order, requirement, or agreement issued or made under the statute or executive order,” as required by Fed. R. Civ. P. 24(b)(2)(B). Intervention should be denied for this additional reason.

## **II. Starr's permissive intervention would be futile.**

Even if Starr had filed a motion for permissive intervention under Rule 24(b)(1) of the Federal Rules of Civil Procedure, denial would be required. Such permissive intervention is “wholly discretionary with the district court ... even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied.” *Kneeland v. NCAA*, 806 F.2d 1285, 1289 (5th Cir. 1987).

While Rule 24(b)(1) provides, that a party may be allowed to permissively intervene when

“an applicant’s claim or defense and the main action have a question of law or fact in common,” the Fifth Circuit Court of Appeals has clarified that “[i]ntervention is not generally appropriate where the applicant can protect its interests and/or recover on its claim through some other means.” *In Deus v. Allstate Ins. Co.*, 15 F.3d 506, 526 (5th Cir. 1994). Moreover, any such intervention would be futile because Starr lacks standing to sue Defendants.

If Starr is concerned about a future, hypothetical, broken settlement agreement, he can protect those interests through a separate lawsuit against Plaintiff County of El Paso should the County ever break the settlement agreement. Thus, Starr can protect his interests through some other means, making permissive intervention in this suit improper. *See In Deus v. Allstate Ins. Co.*, 15 F.3d 506, 526 (5th Cir. 1994).

Further, Starr’s interest in this action is based entirely on speculation and conjecture. He does not even allege he will be subject to any possible liability under S. B. 4. In fact, his only his only alleged injury is based on a potential settlement breach as outlined below.

In *National Press Photographers Ass’n v. McCraw*, a pre-enforcement facial challenge like this one, the Court noted that for individuals like Starr to have standing to sue, they “must (1) have suffered an injury in fact, (2) that is fairly traceable to the challenged actions of the defendant, and (3) that likely will be redressed by a favorable decision.” No. 22-50337, 2024 WL 105019, at \*4 (5th Cir. Jan. 10, 2024); *see also Lujan v. Def’s of Wildlife*, 504 U.S. 555, 560–61 (1992).

An injury sufficient to satisfy Article III must be concrete and particularized and actual or imminent, not conjectural or hypothetical. An allegation of future injury may suffice if the threatened injury is certainly impending or there is a substantial risk that harm will occur. *Id.*

Starr plainly alleges no actual or threatened injury Defendant have inflicted on him. At no

point in his pleadings does Starr allege any action conceivably ripe for adjudication. Starr plainly lacks standing to sue Defendants. If he were allowed to intervene, this Court would have no subject matter jurisdiction as to any claims asserted by Starr.

While Starr may disagree with the wisdom of S.B. 4, his disagreement does not create standing to sue in federal court to invalidate a statute. In essence, Starr claims only that S. B. 4, which is not yet even in effect, might someday lead one of the Plaintiffs, the County of El Paso, to breach an alleged settlement agreement Starr says he made with the County in 2006. Starr also suggests that someday, somehow, he might be unconstitutionally stopped and searched by someone under authority of S. B. 4. These are classic examples of conjectural or hypothetical claims of possible future injury, which are insufficient to create Article III standing.

Any possible intervention by Starr would be futile, as he lacks standing and has alternate avenues to protect his interests. Therefore, Starr's motion for leave to file a motion to intervene in this case should be denied.

Date: January 19, 2024

Respectfully submitted.

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**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on January 19, 2024 and that all counsel of record were served by CM/ECF.

/s/Ryan D. Walters  
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