

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 19-1739

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

STATE OF RHODE ISLAND DEPARTMENT OF CORRECTIONS; STATE OF
RHODE ISLAND,

Defendants-Appellees

JAYSON BADILLO,

Claimant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

APPELLEES' JOINT MOTION FOR SUMMARY AFFIRMANCE

Jayson Badillo has appealed the district court's denial of his motion to intervene as a party plaintiff in this case. Pursuant to Federal Rule of Appellate Procedure 27(a) and Local Rule 27.0(c), plaintiff-appellee the United States and defendants-appellees the State of Rhode Island and the Rhode Island Department of Corrections respectfully move for summary affirmance of the district court's

order denying intervention. Badillo waited 17 months after being notified of a proposed settlement agreement between the parties before moving to intervene. But that settlement agreement is now in the final stages of implementation. As the district court correctly concluded, Badillo's motion to intervene was untimely.

Local Rule 27.0(c) provides that summary disposition of an appeal may be appropriate "if it shall clearly appear that no substantial question is presented." Loc. R. 27.0(c). Badillo's untimely motion for intervention had no viable legal basis, and this appeal accordingly presents no substantial question for review. Summary disposition is therefore proper. See, e.g., *Warner v. McLaughlin*, No. 17-1791, 2017 WL 7731243, at *1 (1st Cir. Nov. 1, 2017), cert. denied, 139 S. Ct. 91 (2018).

BACKGROUND

1. In February 2014, the United States filed a lawsuit against the State of Rhode Island and the Rhode Island Department of Corrections (collectively, Rhode Island) under Section 707 of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. 2000e-6. Doc. 1.¹ The complaint alleged that the State engaged in a pattern or practice of employment discrimination by using certain examinations to hire its correctional officers that had an unlawful disparate impact

¹ Citations to "Doc. __, at __" refer to documents in the district court record, as numbered on the district court's docket sheet, and page numbers within the documents.

on African-American and Hispanic applicants, in violation of Section 703(k) of Title VII, 42 U.S.C. 2000e-2(k). Doc. 1, at 7-9. The complaint further alleged that the challenged hiring practices were not sufficiently job related for the position of correctional officer or consistent with business necessity. Doc. 1, at 7-8.

In September 2017, after extensive discovery, motions practice, and negotiations, the parties reached a settlement agreement without any finding or stipulation as to liability. See Doc. 80-1. The agreement provides for both injunctive and individual relief. It requires Rhode Island, among other things, to implement a new selection process for hiring correctional officers that complies with Title VII. Doc. 80-1, at 14-16. It also requires Rhode Island to offer two forms of individual relief to eligible African-American and Hispanic claimants who failed one or more of the challenged entry-level correctional officer exams. Doc. 80-1, at 16, 19. The first form of individual relief is monetary relief totaling \$450,000, to be distributed in amounts that take into consideration when a claimant was disqualified by the exam. Doc. 80-1, at 17, 20. The second form of individual relief is priority hiring relief for 37 claimants who successfully complete the

State's current selection procedures, as described in the agreement. Doc. 80-1, at 19-20, 31-33.²

To obtain either form of individual relief, a claimant must affirmatively accept it. To do so, a claimant must return an "Interest-in-Relief" form and then, upon receiving a final award determination, return an "Acceptance of Individual Relief Award and Release of Claims" form. Doc. 80-1, at 18, 26; Doc. 80-3, at 5-8; Doc. 80-6. By signing the latter form, the claimant agrees to release Rhode Island from all legal claims based on alleged race or national origin discrimination with respect to the appointment of correctional officers. Doc. 80-6, at 2. Absent such affirmative acceptance of relief and release of claims, the settlement does not provide any individual relief, bind any individual, or dispense with any individual's rights or claims. See Doc. 80-1, at 1, 18, 26-29.

On October 20, 2017, the district court provisionally approved the settlement agreement and scheduled a fairness hearing on the terms of the agreement for February 7, 2018. Doc. 82. In accordance with the agreement, in November 2017, potential claimants began receiving notice of the agreement, as well as information about how to object in writing and at the fairness hearing. Doc. 80-1, at 8-11; Doc.

² No more than 15 incumbent correctional officers may count toward the priority-hiring obligation, Doc. 80-81, ¶¶ 91, 101, and the parties have agreed that no more than eight incumbents will be counted as priority hires, Doc. 121-1, at 4 n.4.

80-2; Doc. 85-1, at 3-4 (describing process).

2. Jayson Badillo is a Hispanic resident of Rhode Island who alleges that he unsuccessfully sat for the examination to become a state correctional officer in 2011 and 2012. Doc. 84-1, at 1. As a potential claimant, he received notice of the settlement agreement on December 6, 2017. Doc. 84-1, at 2. On December 19, 2017, Badillo filed a written objection to the settlement agreement arguing that the amount of monetary relief provided was unreasonable. Doc. 84; see Doc. 84-2, at 1. Specifically, he argued that the monetary relief was inadequate because it did not provide unlimited funds or sufficient money to “make whole” all prospective claimants. He also argued the agreement was unfair because the parties offered no justification for the amount of monetary relief provided. Doc. 84-2, at 1, 6-12.

In their joint motion for final approval of the settlement agreement, the United States and Rhode Island responded to Badillo’s objections. Doc. 85-1, at 10-15. The parties explained that Badillo’s arguments conflated the adequacy of monetary relief when liability has been found with the adequacy of relief in a settlement with no stipulation of liability, as in this case. Doc. 85-1, at 10-11. The parties also explained that an unlimited fund was neither required by Title VII nor necessary for a settlement agreement to be fair, reasonable, and adequate. Doc. 85-1, at 11-12. Finally, the parties maintained that the settlement represented a reasonable compromise reached between two government entities after protracted

litigation and that the monetary relief component was just one of several remedies aimed at addressing Rhode Island's allegedly discriminatory practices. Doc. 85-1, at 2, 12-15. Accordingly, the parties argued that the agreement fairly balanced the interests of the parties and potential claimants with the costs, uncertainties, and delays of litigation. Doc. 85-1, at 2, 15.

3. At the first fairness hearing held in February 2018, Badillo renewed his objections. See Doc. 94, at 32-45. The magistrate judge concluded that the settlement was a reasonable compromise among government actors seeking to further the public interest, and recommended that the district court overrule all objections and approve the settlement. Doc. 88, at 2-3. Badillo objected to the magistrate judge's Report and Recommendation. Doc. 93.

On May 11, 2018, the district court issued an order finding that the settlement agreement was fair, reasonable, and adequate. Doc. 99, at 1-5. The court found Badillo's challenge to the adequacy of relief unpersuasive because his objections were based on inapposite case law concerning the reasonableness of relief provided after a finding of liability, while no such finding had been made here. Doc. 99, at 3-4. The court further distinguished the authorities Badillo relied on as involving only private parties, whereas courts afford more deference to settlement agreements reached between government entities. Doc. 99, at 3-4.

Accordingly, the court granted final approval to the terms of the settlement agreement. Doc. 99, at 5.

At no time prior to the court's final approval of the settlement agreement did Badillo move to intervene in this case. Instead, in May 2018, Badillo attempted to appeal the district court's approval of the settlement agreement. Doc. 100.

4. The United States moved to dismiss that appeal because Badillo, as a claimant-objector who had not intervened in the case, was not a party to the lawsuit and was therefore not entitled to appeal. Mot. to Dismiss, No. 18-1462 (1st Cir. July 3, 2018). This Court agreed, granted the United States' motion to dismiss, and entered judgment. 2018 WL 6079524 (1st Cir. Nov. 7, 2018) (hereinafter, Judgment). This Court explained that exceptions to the general rule barring appeals by non-parties were limited and that no such exception applied here. *Id.* at *1-2. The Court recognized that Badillo, as a non-party, was "permitted to file objections and participate in the district court process," but "he was not treated as a party and he is not bound by the [court's] approval of the settlement." *Id.* at *2. Therefore, Badillo will become bound by the settlement agreement in this case only "if he affirmatively opts in to accept the relief offered." *Ibid.* As the Court noted, "[t]he order approving the settlement here does not itself provide any individual relief or finally dispose of any right or claim Badillo might have had." *Ibid.*

In granting the United States' motion to dismiss, this Court also rejected Badillo's alternative request that he be granted leave to intervene nunc pro tunc to pursue his appeal. Judgment, 2018 WL 6079524, at *3. This Court noted that Badillo "could have filed a motion to intervene in the district court but did not," and had "failed to show why intervention should be permitted now." *Ibid.* That decision was issued more than nine months ago.

5. After Badillo's appeal was dismissed, the parties resumed implementation of the settlement agreement. The parties filed Proposed Individual Relief Awards Lists with the district court on February 1, 2019, and requested that the court schedule a Fairness Hearing on Individual Relief. Doc. 107.³ As provided by the settlement agreement, the purpose of this second fairness hearing was to determine whether these proposed awards lists should be approved or amended. Doc. 80-1, ¶ 57. The court set that fairness hearing for June 26, 2019. On April 5, 2019, the claims administrator notified all claimants who had submitted interest-in-relief forms, including Badillo, of their eligibility to receive monetary and/or priority hiring relief, and the proposed relief determinations. Doc.

³ The lists identified claimants (by Claimant ID) whom the United States determined are eligible for monetary relief (with the proposed award amounts) and those eligible to pursue priority hiring relief. Doc. 107-1; Doc. 107-2.

116, at 3; Doc. 116-1, at 2-4; Doc. 121-6, ¶ 9.⁴ In the same letter, potential claimants were informed that any objections to the proposed individual relief determinations had to be submitted by no later than May 7, 2019. Doc. 116-1, at 5-7.

On May 6, 2019, Badillo filed an objection to his individual relief determination. Doc. 116. That same day, he also filed a motion to intervene, seeking intervention as of right under Federal Rule of Civil Procedure 24(a), and, in the alternative, permissive intervention under Federal Rule of Civil Procedure 24(b), to challenge the settlement, which Badillo continued to attack as unfair and harmful to his interests. Doc. 117. The parties jointly opposed Badillo's motion. Doc. 118. In a text order issued on June 21, 2019, the district court denied Badillo's motion to intervene. The court explained that Badillo had "knowledge of a measurable risk to his rights" when he received notice of the settlement agreement on December 6, 2017, "a full seventeen months before he moved to intervene." Order, No. 1:14-cv-78 (D. R.I. June 21, 2019) (brackets omitted) (citing *R & G Mortg. Corp. v. Federal Home Loan Mortg. Corp.*, 584 F.3d 1, 7-13 (1st Cir. 2009)). The court said it would consider Badillo's arguments as

⁴ Badillo had previously submitted the court-approved Interest-in-Relief form on which he indicated his interest in receiving monetary relief, but not in priority hiring. Doc. 118, at 12 n.4.

objections at the upcoming fairness hearing. *Ibid.* At the June 26, 2019 Fairness Hearing, the court again heard and overruled Badillo's objections.

On July 24, 2019, after amendments to the awards lists not relevant here, the district court entered as final the Second Amended Proposed Monetary Awards List and Second Amended Proposed Priority Hiring Awards List. Doc. 129. During the week of August 5, 2019, all potential claimants were notified of their final award amounts and sent an Acceptance of Individual Relief & Release of Claims form, which must be returned to the Claim Administrator no later than September 3, 2019. See Doc. 80-1, at ¶¶ 68-69. Through this ongoing process, all Settlement Agreement funds should be disbursed to claimants by November 2019. Doc. 80-1, at ¶ 81.

Meanwhile, on July 19, 2019, Badillo filed a notice of appeal as to the district court's denial of his motion to intervene as of right. Doc. 125. This appeal has not stayed the disbursement process or the ongoing implementation of new, non-discriminatory testing and hiring processes for Rhode Island corrections officers.

DISCUSSION

This Court should summarily affirm the district court's denial of Badillo's untimely motion to intervene. "Whether intervention be claimed of right or as permissive * * * the application must be timely." *NAACP v. New York*, 413

U.S. 345, 365 (1973) (internal quotations & citation omitted). The determination of timeliness is “within the sound discretion of the district court,” and this Court will not “disturb the district court’s findings on this point unless an abuse of discretion has been demonstrated.” *Garrity v. Gallen*, 697 F.2d 452, 455 (1st Cir. 1983).

In this case, the district court correctly concluded that Badillo’s 17-month delay in seeking to intervene rendered his motion untimely. In addition, Badillo is wrong when he asserts that he has an unconditional right to intervene pursuant to a federal statute. Because “no substantial question is presented” that the district court abused its discretion in finding Badillo’s post-settlement motion untimely, this Court should summarily affirm the district court’s order denying intervention. See Local Rule 27.0(c).

A. Timeliness Is A Predicate Requirement For All Motions To Intervene

Federal Rule of Civil Procedure 24(a) permits intervention as of right in two circumstances. First, under Rule 24(a)(1), a movant may intervene as of right if a federal statute gives him an unconditional right to intervene, but he must file a *timely* motion to do so. Fed. R. Civ. P. 24(a), (a)(1). In the alternative, Rule 24(a)(2) provides for intervention of right when the movant establishes: (1) the motion is *timely*, (2) the existence of a sufficient interest in the property or transaction that is the subject of the lawsuit, (3) a realistic threat that disposition of

the action will impede their ability to protect that interest, and (4) their interest is not adequately represented by existing parties. Fed. R. Civ. P. 24(a), (a)(2) (emphasis added); see, e.g., *R & G Mortg. Corp. v. Federal Home Loan Mortg. Corp.*, 584 F.3d 1, 7 (1st Cir. 2009). Finally, Rule 24(b) governs permissive intervention, and provides that “[o]n *timely* motion, the court may permit anyone to intervene who * * * has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1) (emphasis added). Rule 24(b) requires courts considering a motion for permissive intervention to “consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).⁵

Timeliness is a threshold requirement for all motions to intervene. Failure to timely file “dooms intervention.” *Public Serv. Co. of N.H. v. Patch*, 136 F.3d 197, 204 (1st Cir. 1998). “[T]imeliness is to be gauged from all the circumstances, including the stage to which the proceedings have progressed before intervention is sought.” *Candelario-Del-Moral v. UBS Fin. Serv. Inc. of P.R. (In re Efron)* 746 F.3d 30, 35 (1st Cir. 2014) (citation omitted). The more advanced the litigation, the more scrutiny the timeliness inquiry should receive. *Banco Popular de P.R. v. Greenblatt*, 964 F.2d 1227, 1231 (1st Cir. 1992); *Garrity*, 697 F.2d at 455 n.6. A

⁵ Badillo’s Notice of Appeal (Doc. 125) states that he is appealing only the denial of intervention as of right, but we will briefly address the denial of permissive intervention as well.

core purpose of the timeliness requirement is to prevent “disruptive, late-stage intervention that could have been avoided by the exercise of reasonable diligence.” *R & G Mortg. Corp.*, 584 F.3d at 9 (citing *United Nuclear Corp. v. Cannon*, 696 F.2d 141, 143 (1st Cir. 1982)); see also *Heartwood, Inc. v. United States Forest Serv.*, 316 F.3d 694, 701 (7th Cir. 2003) (stating that attempted post-settlement intervention “strongly suggests” a tactical attempt to thwart the settlement rather than to participate in the litigation (citation omitted)).

This Court evaluates the timeliness of a motion to intervene by looking to: (1) the length of time that the putative intervenor knew or reasonably should have known that his interests were at risk before he moved to intervene; (2) the prejudice to existing parties should intervention be allowed; (3) the prejudice to the putative intervenor should intervention be denied; and (4) any special circumstances weighing for or against intervention. *Banco Popular de P.R.*, 964 F.2d at 1231; *Fiandaca v. Cunningham*, 827 F.2d 825, 834 (1st Cir. 1987); accord *Candelario-Del-Moral*, 746 F.3d at 35. Each of these factors makes clear that Badillo’s motion to intervene was untimely and that the district court did not abuse its discretion in denying it.

B. Badillo's Motion To Intervene Was Not Timely Filed

1. Badillo Did Not Promptly Move To Intervene After Receiving Notice Of The Proposed Settlement In December 2017

As he concedes, Badillo was notified of the proposed settlement agreement in this case on December 6, 2017 (Doc. 117-1, at 4) and on December 19, 2017, he acted in response to that notice by filing a written objection to the settlement terms, Doc. 84. But Badillo did not move to intervene in this case at that point, or during the entirety of 2018. Instead, after the district court granted final approval of the settlement agreement in May 2018, Badillo attempted to appeal and challenge the approval. This Court rejected that attempt and dismissed Badillo's appeal for lack of jurisdiction because he was a non-party who "could have filed a motion to intervene in the district court but did not." Judgment, 2018 WL 6079524, at *3. This Court further declined Badillo's request to grant him leave to intervene nunc pro tunc in order to challenge the settlement on appeal because, having failed to file a motion to intervene below, Badillo had made no showing of "why intervention should be permitted now." *Ibid.*

Badillo did not move to intervene in the district court until May 2019, *17 months* after being notified of the proposed settlement agreement, a full year after the district court approved the settlement agreement, and six months after this Court dismissed his first appeal. Potential intervenors are required to "move to protect [their] interest no later than when [they] gain[] some actual knowledge that

a measurable risk” to their rights exists. *Banco Popular de P.R.*, 964 F.2d at 1231. As this Court already has recognized, Badillo had ample notice of the United States’ lawsuit and the terms of a potential settlement and yet filed no motion to intervene. This Court’s dismissal of his prior appeal was not an invitation to file an untimely motion to intervene. Indeed, in a prior case this Court reasoned that “a delay of two and one-half months after [the movant] knew of the incipient problem * * * was inexcusable * * * [and] amply supported the district court’s ruling that its motion to intervene was unreasonably late.” *R & G Mortg. Corp.*, 584 F.3d at 8-9.

This 17-month delay, from the time that Badillo was notified of the proposed settlement until he moved to intervene, is not excusable. See *Banco Popular de P.R.*, 964 F.2d at 1231 (“courts have historically viewed post-judgment intervention with a jaundiced eye in situations where the applicant had a reasonable basis for knowing, before final judgment, that its interest was at risk”). During the year-and-a-half that Badillo was on notice, the district court not only approved the settlement agreement, but the parties, under the oversight of the district court, have taken many steps to carry out its financial disbursement and hiring terms. This first factor plainly weighs against a finding of timeliness as Badillo did not act at all “reasonably promptly” in moving to intervene. *Banco Popular de P. R.*, 964 F.2d at 1231.

2. *Intervention At This Late Stage Would Prejudice The Parties And Claimants By Potentially Upending The Settlement Agreement*

Both the parties and claimants under the settlement would be severely prejudiced if Badillo's intervention were allowed at this late stage. Badillo is not seeking to intervene to preserve his right to appeal the precise calculation of his monetary award under the settlement but instead to contest the sufficiency of monetary and priority hiring relief awarded under the settlement. See Doc. 117-1, at 3-5, 7-10; Doc. 119, at 3-4. These terms are essential provisions of the settlement agreement that the district court determined more than a year ago are fair, reasonable, and adequate. Doc. 99. The individual relief the United States secured in this settlement affords relief to hundreds of African-American and Hispanic applicants, including Badillo. Intervention now would wreak havoc on the settlement implementation process, which is close to completion. Individual monetary relief amounts and eligibility for priority hiring have been finally determined and approved by the district court (Doc. 129), and claimants have begun accepting relief under the settlement agreement and releasing their claims.

A post-settlement intervention would also be costly and waste the resources of both parties. The United States retained a claims administrator and has already expended considerable resources, both in time and money, to execute the terms of the Agreement, including its most recent August 2019 mailing of all eligibility determination notices. The United States would incur significant additional

administrative expenses if notices needed to be resent and monetary and priority hiring relief recalculated. See *EEOC v. United Air Lines, Inc.*, No. 73 C 972, 1995 WL 103658, at *3 (N.D. Ill. Mar. 3, 1995) (“It is well-settled that it is prejudicial to allow intervention in a case after the original parties have invested time and effort into settling a case.”).

In addition, as the parties explained below, Rhode Island is in dire need of new hires for the entry-level correctional officer position, since their last class was hired nearly two years ago, and the State’s test development process is currently well underway. Doc. 118, at 10. New, Title VII-compliant selection processes were administered on August 21 and will be again on September 6, and Rhode Island believes that any delay in implementing the new selection devices could compromise institutional safety and security. Doc. 118, at 14. The substantial prejudice to the parties weighs strongly in favor of swiftly affirming the district court’s denial of Badillo’s tardy motion to intervene. See *Banco Popular de P.R.*, 964 F.2d at 1232 (“Once settlement efforts are completed and embodied in a final judgment, the parties expect to be able to tailor their future actions and decisions in reliance on that judgment. It follows inexorably that modifying a settlement term can knock the props out from under justifiable reliance of this sort.”).

3. *Badillo Has Not Been Prejudiced By The Denial Of His Motion To Intervene*

When considering prejudice to the movant, this Court analyzes the likelihood of success on the merits should intervention be permitted. *Banco Popular de P.R.*, 964 F.2d at 1232. Before moving to intervene, Badillo had submitted multiple briefs in the district court on all of the same issues he re-raised in his motion to intervene. See Doc. 118, at 3, 11 (summarizing filings). He also filed an objection to the proposed individual relief. Doc. 116. The district court has already considered Badillo's arguments, approved the Settlement Agreement over his objections, and rejected his recent round of objections. Doc. 99; see also Minute Entry, 1:14-cv-78 (D. R.I. June 26, 2019) (stating that district court rejected Badillo's objections at the second fairness hearing after hearing arguments from his counsel). There is no plausible reason to believe that re-raising these same arguments again, but as a party, would lead to a different outcome, either before the district court or on appeal, particularly given that implementation of the Settlement Agreement is nearing completion.

Moreover, as discussed below, this Court has already recognized that Badillo is not similarly situated to an unnamed member of a class action and that the district court's approval of the settlement more than a year ago did not prejudice him. Judgment, 2018 WL 6079524, at *2. Badillo is bound by the agreement only if he affirmatively opts in and accepts the relief it offers. *Ibid.*

Accordingly, Badillo has made no showing of prejudice.

4. *Delays In Hiring And Distribution Of Relief Are Special Circumstances That Weigh Against Intervention*

Not only are there no unusual circumstances that would justify Badillo's intervention at this late date, but special circumstances militate significantly against it. As mentioned above, the State has not hired a new class of correctional officers since 2017. The Rhode Island Department of Corrections needs to seat a training academy class as soon as practicable. It is the State's position that any further delay could compromise the safety and security of the Department and continue to drain the resources necessary to staff it. Maintaining appropriate staffing levels in a correctional institution is in the public interest. It is also in the public interest to ensure that there is no disruption or delay in the disbursement of monetary relief to hundreds of eligible African-American and Hispanic claimants. That process is well underway, with claimants already returning forms accepting relief under the settlement agreement, and should not be threatened with disruption.

In sum, there is no substantial question that the district court abused its discretion in finding Badillo's motion untimely.

C. The District Court Did Not Abuse Its Discretion In Denying Badillo Both Intervention As Of Right And Permissive Intervention

The untimeliness of Badillo’s motion to intervene is fatal, and nothing more is needed for this Court to affirm the district court’s denial of it. Nonetheless, we note that Badillo’s motion failed to meet the other requirements for intervention as of right under Rule 24(a)(1) or Rule 24(a)(2), as well as for permissive intervention under Rule 24(b).

1. Badillo Had No Unconditional Right To Intervene By Statute

Rule 24(a)(1) permits timely intervention when the movant has “an unconditional right to intervene by a federal statute.” Fed. R. Civ. P. 24(a)(1). Badillo argued below that he has a statutory right to intervene in this case as a “person aggrieved” by defendants’ actions, as defined under Section 706 of the Title VII. See 42 U.S.C. 2000e-5(f)(1).⁶ Doc. 117-1 at 5-6. Cases brought under Section 706 originate with a charge of discrimination filed with the EEOC. 42 U.S.C. 2000e-5(b), (e), and (f). But this is not a Section 706 case. Instead, the United States brought this lawsuit pursuant to Section 707(a) of Title VII, 42 U.S.C. 2000e-6(a), which confers independent statutory authority on the Attorney

⁶ The term “person aggrieved” in Section 706 refers to individuals who have filed a charge with the Equal Employment Opportunity Commission (EEOC), and can include similarly-situated individuals who share the same claims as those advanced in a filed EEOC charge. See *Spirit v. Teachers Ins. & Annuity Ass’n*, 93 F.R.D. 627, 642 (S.D.N.Y.), *aff’d in part, rev’d in part on other grounds*, 691 F.2d 1054 (2d Cir. 1982).

General to initiate a pattern-or-practice case against state or local governments without the filing of a charge with the EEOC. See Doc. 1. There is no provision in Section 707 for intervention as of right for aggrieved persons as there is in Section 706. Because Badillo does not have an unconditional statutory right to intervene in this case, the district court did not abuse its discretion in denying Badillo's motion to intervene as of right under Rule 24(a)(1). See *United States v. Allegheny-Ludlum Indus. Inc.*, 517 F.2d 826, 843 (5th Cir. 1975) ("Nothing in [Section] 707 * * * conferred an unconditional right of intervention upon any private individual or association thereof.").

2. *Badillo Was Not Entitled To Intervene As Of Right Under Rule 24(a)(2)*

Badillo also failed to establish the other requirements, in addition to timeliness, that govern intervention as of right under Rule 24(a)(2). Again, Badillo was required to demonstrate: a sufficient interest in the property or transaction that is the subject of the lawsuit; a realistic threat that disposition of the action would impede his ability to protect that interest; and that this interest is not adequately represented by the existing parties. Fed. R. Civ. P. 24(a)(2); *R & G Mortg. Corp.*, 584 F.3d at 7.

Badillo established none of these factors. The United States brought this pattern-or-practice case against Rhode Island under its authority to enforce Title VII's antidiscrimination mandates against state and local governments. Badillo is

simply a member of a group of potential beneficiaries of that agreement. Contrary to his assertions, Badillo's interests are not impaired by this settlement. As this Court has already recognized, the agreement between the United States and Rhode Island does not automatically bind Badillo. Judgment, 2018 WL 6079524, at *2. Badillo must affirmatively opt in to participate in the agreement's remedial scheme. If he declines to do so, the settlement will not limit any individual rights or claims he may have. Thus, the settlement does not amount to a final decision on any individual claim Badillo may have, or finally dispose of any rights he may enjoy. *Ibid.*

Nor is it the case that Badillo's interests have not been adequately represented. Where "a governmental body is entrusted with the legal responsibility to represent the interests of its citizens, such as in this section 707 action, the governmental body is presumed to provide adequate representation." *EEOC v. United Air Lines, Inc.*, No. 73-cv-972, 1995 WL 103658, at *5 (N.D. Ill. Mar. 3, 1995); see also *United States v. City of Chicago*, 908 F.2d 197, 199 n.2 (7th Cir. 1990) (reasoning that petitioners' displeasure with the back pay secured by the consent decree does not show that their interests were not adequately represented by the Government), cert. denied, 498 U.S. 1067 (1991). In sum, the district court did not abuse its discretion in denying intervention as of right under Rule 24(a)(2).

3. *Badillo's Request For Permissive Intervention Was Also Unavailing*

Badillo's decision to wait a full 17 months after receiving notice of the settlement agreement in this case also doomed his motion for permissive intervention. *R & G Mortg. Corp.*, 584 F.3d at 11 (“[W]hen a putative intervenor seeks both intervention as of right and permissive intervention, a finding of untimeliness with respect to the former normally applies to the latter (and, therefore, dooms the movant’s quest for permissive intervention).”). Even if the analysis did not end with timeliness, as it plainly should, conferring party status on Badillo at this extraordinarily late date, when hundreds of claimants are poised to receive relief, would work serious and irreversible prejudice. See Fed. R. Civ. P. 24(b)(3) (requiring consideration of whether intervention would “unduly delay or prejudice the adjudication of the original parties’ rights”). The district court did not abuse its discretion in also denying permissive intervention.

CONCLUSION

For the foregoing reasons, this Court should summarily affirm the district court’s denial of Badillo’s motion to intervene.

Respectfully submitted,

ERIC S. DREIBAND
Assistant Attorney General

PETER F. NERONHA
Attorney General

s/ Anna M. Baldwin
BONNIE I. ROBIN-VERGEER
ANNA M. BALDWIN
Attorneys
U.S. Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 305-4278

s/ Neil F.X. Kelly
NEIL F.X. KELLY
Assistant Attorney General
150 South Main Street
Providence, RI 02903
(410) 274-4400, Ext.
2284

Attorneys for Defendants State
of Rhode Island, Rhode Island
Department of Corrections

Attorneys for Plaintiff
United States of America

CERTIFICATE OF COMPLIANCE

I certify that this motion:

(1) complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2)(a) because it contains 5,177 words; and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Word 2016, in 14-point Times New Roman font.

s/ Anna M. Baldwin
ANNA M. BALDWIN
Attorney

Date: August 26, 2019

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2019, I electronically filed the APPELLEES' JOINT MOTION FOR SUMMARY AFFIRMANCE with the United States Court of Appeals for the First Circuit by using the CM/ECF system.

I certify that all participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Anna M. Baldwin
ANNA M. BALDWIN
Attorney