

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20-30386

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CITY OF NEW ORLEANS,

Defendant-Appellee

GARY JUENGAIN,

Movant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

APPELLEE UNITED STATES' RESPONSE IN OPPOSITION TO
APPELLANT'S MOTION FOR SUMMARY REVERSAL AND CROSS-
MOTION FOR SUMMARY AFFIRMANCE

Gary Juengain, an inmate in Louisiana state prison proceeding *pro se*, has appealed the district court's denials of his motions to intervene in this case, which the United States filed in 2012 to remedy a pattern or practice of unconstitutional conduct by the New Orleans Police Department. In 2013, the district court approved a consent decree and entered final judgment in this case. On appeal, this

Court affirmed entry of the consent decree that same year. Juengain did not seek to intervene in this case before filing motions to do so in 2019 and 2020. The district court correctly denied those motions as untimely. In this Court, Juengain has filed a motion for summary reversal.

Juengain's motions to intervene were filed more than seven years after the deadline for intervention set by the district court and more than six years after the entry of judgment in this case. Because the district court correctly denied these untimely motions, the United States files this opposition to Juengain's motion for summary reversal and also respectfully moves for summary affirmance of the district court's orders denying intervention. Under the law of this Circuit, summary disposition of an appeal may be appropriate where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir.), cert. denied, 394 U.S. 1012 (1969). Juengain's untimely motions for intervention have no viable legal basis, and this appeal accordingly presents no substantial question for review. Summary disposition is therefore proper.

BACKGROUND

1. As this Court recounted in a previous appeal in this case: In May 2010, the United States Department of Justice "began an investigation of alleged

constitutional violations by the [New Orleans Police Department].” *United States v. City of New Orleans*, 731 F.3d 434, 436 (5th Cir. 2013). After that investigation, in July 2012, the United States filed this lawsuit against the City of New Orleans (City). Doc. 1.¹ In order to remedy violations of the Fourth and Fourteenth Amendments, the United States sought declaratory and injunctive relief under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141, (recodified at 34 U.S.C. 12601); the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3789d (recodified at 34 U.S.C. 10228); and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-7, and its implementing regulations, 28 C.F.R. 42.101-42.112. Doc. 1.

2. On the same day that the complaint was filed, the United States and the City jointly moved for entry of a consent decree to resolve the United States’ claims. Doc. 2. The district court ordered any interested party to file a motion to intervene by August 7, 2012, and to submit any comments on the proposed consent decree by August 24, 2012. Doc. 7. The district court held a fairness hearing on September 21, 2012. Doc. 132.

¹ Citations refer to the documents in the district court record, *United States v. City of New Orleans*, No. 2:12-cv-1924 (E.D. La.), as numbered on the docket sheet.

3. After an extensive comment process, the fairness hearing, and negotiations, the district court granted the joint motion for entry of the consent decree and entered judgment in this case on January 11, 2013. Docs. 159, 160; see also *City of New Orleans*, 731 F.3d at 436-437 (summarizing the process). No portion of the decree addresses post-conviction relief for individuals who were arrested by the NOPD.

4. This Court affirmed entry of the consent decree in an appeal that was completed in 2013. See *City of New Orleans*, 731 F.3d at 436. A court-appointed monitor continues to oversee NOPD's compliance with the decree. See Doc. 593 (June 2020 special report of monitor).

5. On November 12, 2019, more than six years after the district court's approval of the decree and entry of judgment, Gary Juengain, an inmate in Louisiana state prison, filed a Motion to Intervene. Doc. 582. In his motion, Juengain claimed that his prior court filings regarding his 2008 arrest and conviction led the United States to initiate an investigation of NOPD, that he was an innocent man lingering in prison, and that his interests had not been represented by the parties to this suit. Doc. 582, at 2-6. On November 14, 2019, the district court denied the motion as untimely, noting that the deadline for intervention had passed seven years ago. Doc. 583.

6. On June 9, 2020, appellant filed a Second Motion for Intervention as of Right. Doc. 586. In this motion, Juengain again asserted his innocence, complained of his treatment by Louisiana corrections officials, and complained that he has had no in-person hearings as a result of any of his post-convictions filings in state and federal court. Doc. 586, at 2-5. The next day, the district court again denied the motion as untimely. Doc. 587. Juengain also submitted a short memorandum in support of his second motion, although it was not docketed until June 10, 2020, after the district court had already denied the second motion. Doc. 588. The district court treated this memorandum as a separate, third motion for intervention and on June 11, 2020, denied it as moot. Doc. 589. On June 17, 2020, Juengain filed a Notice of Appeal. Doc. 590.²

7. On July 9, 2020, Juengain filed in this Court a Motion for Summary Reversal of the district court's orders denying intervention. Juengain repeated his arguments that the district court should have permitted his intervention as of right

² Juengain did not timely appeal the denial of his first motion to intervene. In his Notice of Appeal, filed on June 17, 2020, Juengain stated that he had not received notice of the disposition of his first motion to intervene, but assumed, given the denial of the second motion to intervene, that it had likely also been denied. Doc. 590. Juengain states in his Motion for Summary Reversal that he did not receive notice of the district court order denying his first intervention motion until June 30, 2020. Mot. for Summ. Reversal 8. Regardless, this appeal is still properly before this Court because Juengain timely appealed the denial of his second motion for intervention. See Fed. R. App. P. 4(a)(1)(B); Doc. 590.

because his 2008 arrest purportedly sparked the United States' investigation into the NOPD, and because he is innocent and seeks a hearing on evidence that he received in 2009 to prove his innocence. Mot. for Summ. Reversal 6-14.

DISCUSSION

This Court should deny Juengain's motion for summary reversal and instead summarily affirm the district court's denials of Juengain's untimely motions 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 and citation omitted). Timeliness is thus a threshold requirement for all motions to intervene, regardless of whether the movant is seeking intervention as of right under Federal Rule of Civil Procedure 24(a), or permissive intervention under Federal Rule of Civil Procedure 24(b). *St. Bernard Parish v. Lafarge N. Am., Inc.*, 914 F.3d 969, 974-976 (5th Cir. 2019). This Court reviews the district court's timeliness findings only for an abuse of discretion. *Id.* at 973.

In this case, the district court correctly concluded that Juengain's motions, filed years after the deadline for intervention and the entry of the consent decree, were untimely. In addition, Juengain has never satisfied any of the other requirements for intervention as of right under Federal Rule of Civil Procedure 24(a)(2). Because there is no question that the district court did not abuse its

discretion in finding Juengain's motions untimely, there is "no substantial question as to the outcome" of this appeal, and therefore, the United States respectfully requests that Juengain's motion for summary reversal be denied and its motion for summary affirmance granted. *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir.), cert. denied, 394 U.S. 1012 (1969).

A. All Motions To Intervene Must Be Timely Filed

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) and (a)(2). 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).

There is no federal statute that grants Juengain an unconditional right to intervene in this action, nor has he argued that there is one. As such, the United States understands his claimed entitlement to intervention as of right to be pursuant to Federal Rule of Civil Procedure 24(a)(2), which requires that intervention be timely. Additionally, even if his motions were construed as motions for permissive intervention under Federal Rule of Civil Procedure 24(b), the district court's findings on timeliness would remain correct and dispositive. See *St. Bernard Parish*, 914 F.3d at 976.

This Court evaluates the timeliness of a motion to intervene by considering: (1) the length of time during which the would-be intervenor actually knew or reasonably should have known of its interest in the case before seeking to intervene; (2) the extent of the prejudice that the existing parties may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as it knew or reasonably should have known of its interest in the case; (3) the extent of the prejudice that the would-be intervenor may suffer if intervention is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely. *Ford v. City of Huntsville*, 242 F.3d 235, 239 (5th Cir. 2001) (citation omitted). Each of these factors makes clear that Juengain's motions to intervene were untimely and that the district court did not abuse its discretion in denying them.

B. The District Court Did Not Abuse Its Discretion In Concluding That Juengain's Motions Were Untimely

Juengain has failed to show that the first timeliness factor weighs in his favor. He provides no argument that he acted with reasonable diligence in waiting seven years after the deadline for intervention set by the district court had passed. As to the second factor, Juengain's late intervention would be prejudicial to the parties. The purpose of this litigation was to establish forward-looking requirements and procedures to ensure constitutional policing in the City, as well as to establish mechanisms to monitor the NOPD's compliance with the decree's requirements, as painstakingly negotiated by the United States and the City. No part of this litigation between the United States and the City involved post-conviction relief from criminal convictions obtained in Louisiana's courts or relief from the conditions of confinement in Louisiana's prisons. Any attempt to reopen and drastically expand the scope of the consent decree in this case would derail the framework that the parties have been operating under since 2013.

On the third factor, Juengain cannot show that any protectable interest he possesses has been prejudiced by the denial of intervention. The federal statutes and regulations at issue in this case (the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141 (recodified at 34 U.S.C. 12601); the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3789d (recodified

at 34 U.S.C. 10228); and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-7, and its implementing regulations, 28 C.F.R. 42.101-42.112), would not have authorized the district court to adjudicate Mr. Juengain's claims of innocence. Nor does the consent decree in this case address or in any way limit any other avenues under state or federal law that Juengain may have to address the validity of his conviction, his claims of innocence, or his complaints about mistreatment in prison. In short, this case is not the correct vehicle to resolve individualized disputes about prior convictions or conditions in state prisons.

Finally, as to the fourth factor, there are no special factors that favor a finding of timeliness. The parties and the court-ordered monitor continue to work toward NOPD's compliance with all of the long-mandated terms of the decree. Again, this case is simply not a proper forum for addressing Juengain's unrelated complaints, irrespective of their legitimacy or lack thereof.

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

Juengain also has failed to establish the other requirements, in addition to timeliness, that govern intervention as of right under Rule 24(a)(2). That rule requires that Juengain demonstrate: a sufficient interest in the property or transaction that is the subject of the lawsuit; that he is so situated that the disposition of the action may, as a practical matter, impair 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); *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir.), cert. denied, 469 U.S. 1019 (1984).

Juengain has established none of these factors. The fact that Juengain complains of NOPD conduct in his 2008 arrest does not give him a “direct, substantial, legally protectable” interest in the resolution of the United States’ statutory pattern-or-practice federal civil rights claims asserted against the City. See *New Orleans Pub. Serv., Inc.*, 732 F.2d at 463. The interests that Juengain does have—interests in challenging the legitimacy of his conviction and his conditions of confinement—are not impaired or even touched by the consent decree in this case. The decree has absolutely no effect on any existing channel that Juengain has under state or federal law to address his claims of innocence and his complaints about his treatment in prison. See *United States v. City of New Orleans*, 540 F. App’x 380, 381 (5th Cir. 2013) (affirming the denial of city police union’s timely motion to intervene in this same case where the union had no “legally protectable interest in the subject matter of [this] litigation because the consent decree does not modify the civil service system for NOPD officers”); see also *Mothersill D.I.S.C. Corp. v. Petroleos Mexicanos, S.A.*, 831 F.2d 59, 63 (5th Cir. 1987) (holding that allegations of “practical harm [are] irrelevant” in the absence of a legally protectable interest in the action).

Nor can Juengain show that any interest he has in ensuring constitutional policing by the NOPD has not been adequately represented by the parties in this case—the United States remains committed to ensuring constitutional policing in the City for all persons. This case is simply not a proper vehicle for adjudicating individual complaints about prior state law convictions and current conditions of confinement in Louisiana state prisons.

CONCLUSION

For the foregoing reasons, this Court should deny Juengain's motion for summary reversal and instead summarily affirm the district court's denials Juengain's motions to intervene.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached APPELLEE UNITED STATES' RESPONSE IN OPPOSITION TO APPELLANT'S MOTION FOR SUMMARY REVERSAL AND CROSS-MOTION FOR SUMMARY AFFIRMANCE:

(1) complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2)(a) because it contains 2614 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 2019, in 14-point Times New Roman font.

(3) The United States is unable to timely contact appellant to ascertain his position on this motion, see 5th Cir. R. 27.4, given his current incarceration and *pro se* status.

s/ Anna M. Baldwin
ANNA M. BALDWIN
Attorney

Date: August 13, 2020

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2020, I electronically filed the foregoing APPELLEE UNITED STATES' RESPONSE IN OPPOSITION TO APPELLANT'S MOTION FOR SUMMARY REVERSAL AND CROSS-MOTION FOR SUMMARY AFFIRMANCE with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. This motion will be served by Federal Express standard overnight service to appellant:

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