

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

CARLOS EDUARDO MARRÓN, et al.,

Plaintiffs,

v.

Case No.: 1:21-cv-23190-FAM

NICOLAS MADURO MOROS, et al.,

Defendants.

**ATTORNEY GENERAL'S MOTION TO INTERVENE**

Pursuant to Rules 5.1(c) and 24, Federal Rules of Civil Procedure, 28 U.S.C. §2403(b), and this Court's Order (DE 108 at 4), Ashley Moody, in her official capacity as Attorney General of the State of Florida, moves to intervene to defend the constitutionality of SB 1442.

On September 2, 2021, Plaintiffs initiated the above-styled action against Nicolas Maduro Moros, Fuerzas Armadas Revolucionarias De Colombia ("FARC"), the Cartel of the Suns, Vladimir Padrino Lopez, Maikel Jose Moreno Perez, Nestor Luis Reverol Torres, Tarek William Saab, and Tareck El Aissami seeking awards of compensatory and consequential damages as well as exemplary and punitive damages pursuant to violations of the Federal Anti-Terrorism Act, the Florida Anti-Terrorism Act, the Federal Civil RICO Act, conspiracy to violate the Federal RICO Act, defamation *per se*, conspiracy, false imprisonment, and intentional infliction of emotional distress. DE 1.

On February 13, 2023, this Court entered final judgment in favor of Plaintiffs with total compensatory damages amounting to \$153,843,976 jointly and severally against all Defendants. DE 46. On February 22, 2023, Plaintiffs filed an *ex parte* motion for writs of

execution on two properties held by shell companies of Samark Jose López Bello as an agent of the Cartel of the Suns, FARC, and Tarek El Aissami. DE 47. On June 21, 2023, Plaintiffs noticed the Court of SB 1442 taking effect on June 20, 2023. DE 83. On June 26, 2023, the Court issued an order allowing for briefing by all interested parties on the impact of SB 1442 on the issues in the present case. DE 87.

On July 11, 2023, 6301 Collins Ave 1008, LLC, and 9000 SW 63rd Court, LLC (“Potential Claimants”), filed a brief on the impact of SB 1442 and a motion to declare SB 1442 unconstitutional. DE 94. On August 8, 2023, Plaintiffs filed a response in opposition to the motion to declare SB 1442 unconstitutional. DE 101. Potential Claimants filed a reply to Plaintiffs’ response on August 22, 2023. DE 103. On September 29, 2023, the Court issued an order instructing Potential Claimants to give notice of the constitutional question to the Florida Attorney General and stating the Court’s intention to allow the Attorney General to file a response to Potential Claimants’ motion. DE 108 at 4.

Potential Claimants filed a notice of constitutional question with the Court on October 4, 2023. DE 110. Also on October 4, 2023, Potential Claimants provided notice of the constitutional question to the Florida Attorney General via email and filed a notice of compliance with the Court’s September 29, 2023, order. DE 111. The Attorney General is not a named defendant in this action but has a strong interest in defending the constitutionality of duly enacted State laws. By means of this motion, the Attorney General wishes to exercise her right, pursuant to 28 U.S.C. §2403(b) and Rules 5.1(c) and 24(a), Federal Rules of Civil Procedure, to intervene in this matter for the purpose of defending the constitutionality of the statute challenged by Potential Claimants.

## SUPPORTING MEMORANDUM

### **I. This Court must allow the Attorney General to intervene as a matter of right pursuant to Rules 24(a)(1) and 5.1(c) and 28 U.S.C. 2403(b).**

Rule 24(a)(1), Federal Rule of Civil Procedures provides that the court must permit intervention by anyone who is “given an unconditional right to intervene by a federal statute.” Fed. R. Civ. P. 24(a). The Attorney General has the right to intervene in this matter pursuant to 28 U.S.C. § 2403(b), which provides:

In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

Under this statute, the Attorney General must be permitted to intervene as a matter of right to defend the constitutionality of section 772.13 (6), Florida Statutes. Section 772.13 (6) clearly implicates “public interest” because it implicates the effective and efficient administration of Florida’s judicial system. Moreover, there is currently no agency, officer, or employee of the State defending the constitutionality of SB 1442.

The purpose of section 2403(b) is to guarantee that the State has an opportunity to be heard when the constitutionality of a State statute is at issue. That guarantee cannot be met here unless the Attorney General intervenes. Therefore, this Court must allow the Attorney General to intervene. *See Aubin v. Columbia Cas. Co.*, CV 16-290-BAJ-EWD, 2017 WL

1416814, at \*4 (M.D. La. Apr. 19, 2017) (ruling that Alabama Attorney General had an unconditional right to intervene to defend constitutionality of Alabama statute).

**II. This Court must allow the Attorney General to intervene as a matter of right pursuant to Rule 24(a)(2).**

Rule 24(a)(2) requires intervention on timely motion to anyone who “claims an interest relating to the property or transaction that is the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). The burden of showing adequacy of representation is “minimal” and the intervener need only show that the representation “may be inadequate.” *Stone v. First Union Corp.*, 371 F.3d 1305, 1311 (11th Cir. 2004).

In determining whether a motion to intervene is timely, courts must consider: (1) the length of time during which the proposed intervenor knew or reasonably should have known of its interest in the case before moving to intervene; (2) the extent of prejudice to the existing parties as a result of the proposed intervenor’s failure to move for intervention as soon as it knew or should have known about its interest; (3) the extent of prejudice to the proposed intervenor if the motion is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the motion to intervene was timely. *Georgia v. U.S. Army Corp. of Eng’rs*, 302 F.3d 1242, 1259 (11th Cir. 2002).

Here, the Attorney General has a direct, substantial, and legally protectable interest in the enforceability of Florida’s laws and the intervention factors support her request to intervene as a matter of right. First, the Attorney General is the “chief state legal officer.” Fla. Const. Art. IV, §4(b). She has the authority to intervene in cases “in which the state may be a party,

or in anywise interested.” §16.01(4)-(5), Fla. Stat. (2022). Potential Claimants challenge the constitutionality of section 772.13 (6), which was duly enacted into law by the Florida Legislature, and the State “clearly has a legitimate interest in the continued enforceability of its own statutes.” *Maine v. Taylor*, 477 U.S. 131, 137 (1986). As such, its “opportunity to defend its laws in federal court should not be lightly cut off.” *Cameron v. EMW Women’s Surgical Ctr.*, P.S.C., 142 S. Ct. 1002, 1011 (2022).

Second, intervention is necessary to protect the State’s interests. The State is currently unrepresented on this vital issue of the constitutionality of its duly enacted statute.

Third, the Attorney General is seeking to intervene in a timely manner. The Notice of Constitutional Question was filed on October 4, 2023. The Attorney General has moved to intervene within the 60 days provided for intervention under Rule 5.1(c) and thus within Potential Claimants’ reasonable expectation for possible intervention. Finally, the Attorney General has attached her proposed response in opposition to the Motion to Declare SB 1442 Unconstitutional. Therefore, the Attorney General’s intervention will not delay these proceedings.

### **III. Alternatively, this Court should allow the Attorney General to intervene by permission pursuant to Rule 24(b)(1).**

Rule 24(b)(1) permits intervention on timely motion by anyone 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.” Fed. R. Civ. P. 24(b)(1). “In exercising its discretion,” a court “must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). The requirement of having a common question of law or fact is “construed liberally.” *In re Estelle*, 516 F.2d 480, 485 (5th

Cir. 1975). The intervener does not need to have a “direct or pecuniary interest in the subject of the litigation.” *Id.* (citing *SEC v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 459 (1940)).

The Attorney General’s defense of section 772.13 (6) involves a common question of law or fact. Potential Claimants Motion and the Attorney General’s defense center on whether section 772.13 (6) is constitutional. The State has a compelling interest in the outcome of this action, i.e., the enforceability of a duly enacted State statute. And, as discussed above, the Attorney General sought to intervene in a timely manner; allowing intervention would not unduly delay or prejudice the adjudication of these proceedings; and the Attorney General would suffer prejudice if not permitted to intervene to provide a robust defense to the constitutionality of SB 1442.

### **Request for Relief**

WHEREFORE, Attorney General Ashley Moody requests this Court to enter an order allowing her to intervene and deeming the attached response in opposition to Potential Claimants’ Motion to Declare SB 1442 Unconstitutional properly filed.

**CERTIFICATE OF ATTORNEY CONFERENCE**

I certify that I have conferred with counsel for the Parties and that they do not oppose the relief sought in this motion.

Respectfully submitted,

ASHLEY MOODY  
ATTORNEY GENERAL

/s/ Noah T. Sjostrom

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4th day of December, 2023 a copy of this document was filed electronically through the CM/ECF system and furnished by email to all counsel of record.

/s/ Noah T. Sjostrom

Noah T. Sjostrom