

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2595
USDC No. CA H 72-1393

ALLEN LAMAR ET AL.,

UNITED STATES OF AMERICA
ET AL.,

versus

JAMES LYNAUGH ET AL.,
WHITE CLASS,
ARNOLD MUÑOZ,

Plaintiffs-Appellees,

Intervenors-Appellees,

Defendants-Appellees,

Intervenor-Appellee,

Movant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas

(August 4, 1994)

Before HIGGINBOTHAM, SMITH and STEWART, Circuit Judges.

BY THE COURT:

Arnoldo Muñoz's motion to proceed in forma pauperis (IFP) on appeal is GRANTED.

Muñoz appeals from a district court order denying his motion to intervene in Lamar v. Collins, Civil Action Number 72-H-1393. The "denial of a motion to intervene of right under Rule 24(a) is appealable." Woolen v. Surtran Taxicabs, Inc., 684 F.2d 324, 330 (5th Cir. 1982). The denial of permissive intervention is not appealable except if the district court has abused its discretion in making its determination. Id. at 331. This Court reviews de

novo motions to intervene to determine whether the motion was permissive or of right. Id. Therefore, the Court is required to review the merits of the claim in intervention in order to determine whether the order denying intervention is appealable. Id. at 330-31.

Fed. R. Civ. P. 24(a)(2) allows intervention of right based on the existence of four conditions: 1) the applicant files a timely motion to intervene; 2) "when the applicant claims an interest relating to the property or transaction which is the subject of the action"; 3) "the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest"; and 4) "the applicant's interest is [not] adequately represented by existing parties."

Muñoz is a member of the sub-class of defendant-intervenors comprised of a mixed group of Anglo-Americans, black, and Spanish-speaking inmates, who oppose the desegregation of the prison system in the class action. Muñoz argues that the prison officials are acting in violation of the conditions of the court-approved plan for integration of two-bunk cells in the prison. Muñoz argues that he has been unable to present his objections to the execution of the plan to the district court through counsel representing the sub-class of defendant-intervenors.

The district court's order denying Muñoz's motion did not address the present status of the class-action proceedings, whether Muñoz is a member of the defendant-intervenor sub-class,

and, if so, whether that sub-class presently has adequate representation or whether Muñoz's intervention would prejudice the other parties to the action. Muñoz has raised a non-frivolous issue on appeal regarding his right to intervene.

The district court's denial of the motion to intervene is VACATED and the case is REMANDED for further proceedings. See Clark v. Williams, 693 F.2d 381, 382 (5th Cir. 1982). The district court is directed to enter reasons for denying the motion to intervene and should address the concerns raised by the Court in this opinion.