UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS UNITED STATES OF AMERICA v. BARRETT LANCASTER BROWN	
Attorney for Intervenor: Jason Flores-Williams, Esq. 624 Galisteo #10 Santa Fe, NM 87505 Telephone: 505-467-8288 Email: JFW@JFWLAW.NET **Bar No. 132611**	▲ COURT USE ONLY▲ Case Number: **3:12-CR-317-L** **Hon. Judge Lindsay**

MOTION TO INTERVENE AND QUASH SUBPOENA

COMES NOW Sebastiaan Provost, a third party, who by and through counsel, seeks to intervene in the above-referenced matter for the limited purpose of quashing a subpoena issued to Cloudflare, Inc. by the United States Government.

One can easily envision Sam Adams and Tom Paine using the internet to disseminate truths about the British Occupation while the forces of the king tried to shut them down without providing an opportunity to redress their grievances. It is only when John Adams took up the cause of a British soldier, that the American way of access to justice was established.

LEGAL STANDARD FOR INTERVENTION

The Federal Rules of Criminal Procedure lack a counterpart to Fed.R.Civ.P. 24, which allows intervention. Nonetheless, courts have permitted intervention when the potential intervenor has a legitimate interest in the outcome and cannot protect that interest without becoming a party. See *In re Associated Press*, 162 F.3d 503, 507-08 (7th Cir.1998) (allowing intervention in a criminal prosecution). See also Fed.R.Crim.P. 57(b) ("A judge may regulate practice in any manner consistent with federal law, these rules, and the local rules of the district."). Cf. *United States v. Rollins*, No. 09-2293 (7th Cir. June 9, 2010)

(discussing opinions that allow motions for reconsideration in criminal cases, despite the absence of any provision in the Rules of Criminal Procedure.)

DISCUSSION

When the government subpoenas a corporation for information about an individual, then that individual must have the right to challenge that subpoena. Otherwise, the constitution would only exist between corporations and the government with the individual left out in the cold.[1] Courts have repeatedly asserted that when a third party's rights are threatened by the government, then they have the right to avail themselves of due process. See, e.g. *Gravel v. United States*, 408, U.S. 606, 608-609 (1972); *Warth v. Seldin*, 422 U.S. 490, 498 (1975); and for a general discussion on the right to hearing, *Matthews v. Eldridge*, 424 U.S. 319 (1976).

In its prosecution of Mr. Brown, the government has issued a broad subpoena to domain name server Cloudflare regarding the domain "echelon2.org" and the internet activities of Mr. Provost, who built newsgathering websites for Mr. Brown. To close the court door to Mr. Provost while the government invasively collects information on him is redolent of the more frightening passages in Kafka.[2]

"Someone must have slandered Josef K., for one morning, without having done anything wrong, he was arrested." Kafka, *The Trial*.

Mr. Provost has a clear interest in determining whether his information and data are given over to the U.S Government and should therefore be allowed to intervene.

[1] The government may argue that a person cedes their rights to a corporation when it contracts with them, which would eschew individual rights in a society that lives within the context of corporate transaction.
[2] Nb. Senator Ron Wyden's Letter to Attorney General Eric Holder *concerning the government's overbroad seizure of domains*. A subpoena of a domain is a seizure of proprietary information, same as limiting the movement of a person is an arrest.

LEGAL STANDARD TO QUASH SUBPOENA

Mr. Provost moves pursuant to Fed.R.Crim.P. 17(c)(2) to quash the subpoena issued by the government. Under this rule, a court may quash a subpoena if compliance would "be unreasonable or oppressive."

DISCUSSION

Mr. Provost is a young man who builds websites for newsgathering purposes. The U.S Government cannot make a sufficient showing of need to overcome the First Amendment rights that attach with regard to freedom of speech and newsgathering activity. See *Silkwood v. Kerr –Mcgee Corp*., 563 F.2d 433 (10th Cir. 1977.) In contrast to a twitter account where one is publicly broadcasting their thoughts, Mr. Provost is engaged in simply building channels for the dissemination of ideas. Cf. *People of the State of New York v. Malcolm Harris*, Docket No. 2011NY080152 (N.Y. Crim. Ct. June 30, 2012). The First Amendment rights of speech and association here are so vital that the subpoena must be quashed. There are no thought police in America.

The government is using the prosecution of Mr. Brown as a "fishing expedition" against Mr. Provost, which is ruled out by the First Amendment. *See Silkwoood*, 536 F. 2d at 438. Whether it be a blog or *The New York Times*, "[W]ithout some protection for seeking out the news, freedom of the press could be eviscerated." *Branzburg v. Hayes* 408, U.S. 665, 681 (1972). Furthermore, turning over this information could be testimonial and violate our most established Fifth Amendment privileges against self-incrimination. See *Boyd v. U.S*. 116 US 616, 68 S. Ct. 524, 29. L.ED. 746 (1886); see also *Fischer v. U.S.* 425 U.S. 391, 96 S. Ct. 1659, L. ED. 2d 39 (1976) citing *Boyd*. See also, *U.S. v. Palfrey*, 530 F. Supp. 2d 343, (DDC 2008) (defense subpoenas quashed for being a "fishing expedition.")

With the inter-connected structure of the internet, the government could use one indictment to *virally subpoena* data and information about almost anyone. As a matter of

policy, we have entered a new *Jeffersonian* age where independent citizens can utilize the internet to explore the truth about their own governments.[3] This *move toward more democracy, by and for the people,* should be protected and encouraged, not suppressed through FBI subpoena, harassment of privacy, and denial of the individual right to speak out on his own behalf.

Mr. Provost's moves this Honorable Court to allow him to intervene and quash the subpoena for oppressiveness pursuant to Fed.R.Crim.P. 17(c)(2).

Respectfully submitted,

s/Jason Flores-Williams

Jason Flores-Williams
Attorney for Mr. Provost
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[3] The Third Amendment has become a moribund footnote to our history: "No soldier shall…" But thinking in terms of this new virtual world, Homeland Security and the perpetually vague War on Terrorism, one wonders if it does not have some analogizing relevance to government occupation of domains…

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CERTIFICATE OF CONFERENCE

Lead Counsel for Defense Doug Morris has been conferenced and does not oppose this motion. Due to the nature of this intervention motion from a third-party as it relates to a subpoena in the above-referenced matter, there has been no conference with the government and the motion is assumed opposed. Certificate of Conference attached pursuant to Local Rule 5.1 of the Northern District of Texas.

Respectfully submitted,

s/Jason Flores-Williams

Jason Flores-Williams
Attorney for Mr. Provost

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CERTIFICATE OF SERVICE

I certify that on 4/2/1, I caused a copy of the foregoing pleading to be delivered via electronic filing to the Honorable Sam. A. Lindsay, United States District Judge; and Candina S. Heath, Assistant United States Attorney; and Doug Morris , Assistant Federal Public Defender; and via fax to interested party CloudFlare, Inc. Further that a Judge's Copy was mailed this day to the Honorable Sam A. Lindsay.

s/ Jason Flores-Williams

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 3:12-CR-317-L
	§	
BARRETT LANCASTER BROWN	§	

GOVERNMENT'S MOTION TO DISMISS
MOTION TO INTERVENE AND QUASH SUBPOENA

The United States, by and through the undersigned Assistant United States Attorney, respectfully files this Motion to Dismiss the Motion to Intervene and Quash Subpoena, for the following reasons:

The attorney filing the Motion, Jason Flores-Williams, is not licensed in the State of Texas or admitted to practice in the Northern District of Texas.

Mr. Flores-Williams has not complied with LCrR 57.9 and 57.10, that being, prior to filing his Motion to Intervene and Quash Subpoena, Mr. Flores-Williams (1) did not seek the permission of the presiding judge to practice in this district (LCrR 57.9(a)); (2) did not apply for admission *pro hac vice* or pay the applicable fee to the clerk (LCrR 57.9(b)); and (3) has not identified local counsel or requested an exemption from that requirement (LCrR 57.10 and 57.11).

Further, Mr. Flores-Williams did not comply in good faith with LCrR 47.1, that being, prior to filing his Motion to Intervene and Quash Subpoena, Mr. Flores-Williams

failed to conference the government, and failed to explain why it was not possible to confer with the government (LCrR 47.1(b)(3)). Pursuant to LCrR 47.1(h), a conference is required for any motion to quash.

In the event the government's Motion to Dismiss is denied, the government reserves the right to respond to the merits of the Motion to Intervene and Quash Subpoena.

Respectfully submitted,

SARAH R. SALDAÑA
UNITED STATES ATTORNEY

S/ Candina S. Heath
CANDINA S. HEATH
Assistant United States Attorney
State of Texas Bar No. 09347450
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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2013, I electronically filed the foregoing document with the clerk for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to Brown's attorney of record Doug Morris who consented in writing to accept this Notice as service of this document by electronic means. I also faxed this Motion to Jason Flores-Williams, Esq. at

S/ Candina S. Heath
CANDINA S. HEATH
Assistant United States Attorney

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ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
APR - 3 2013
CLERK, U.S. DISTRICT COURT
By _____ Deputy

UNITED STATES *Plaintiff*	§	
v.	§	Case No. 3:12-CR-317-L
BARRETT BROWN *Defendant*	§	

APPLICATION FOR ADMISSION *PRO HAC VICE*
(Complete all questions; indicate "N/A" if necessary.)

I. Applicant is an attorney and a member of the law firm of (or practices under the name of)

JASON FLORES-WILLIAMS, with offices at

624 GALISTEO #10
(Street Address)

SANTA FE (City) NM (State) 87505 (Zip Code)

505-467-8288.
(Telephone No.)

II. Applicant will sign all filings with the name JASON FLORES-WILLIAMS.

OPTIONAL: Applicant wants this form to serve as applicant's registration for electronic case filing and consents under FED.R.CIV.P. 5(b) to accept service electronically at the following e-mail address:

JFW@JFWLAW.NET.
(E-mail Address)

III. Applicant has been retained personally or as a member of the above-named firm by:
(List All Parties Represented)

SEBASTIAAN PROVOST

to provide legal representation in connection with the above-styled matter now pending before the United States District Court for the Northern District of Texas.

IV. Applicant is a member in good standing of the bar of the highest court of the state of NEW MEXICO, where Applicant regularly practices law.

For Court Use Only.
Bar Status Verified:

Bar license number: 132611 Admission date: 04/2009

Attach to this application an original certificate of good standing issued within the past 90 days from the attorney licensing authority in a state in which you are admitted to practice (e.g., the State Bar of Texas).

V. Applicant has also been admitted to practice before the following courts:

Court:	Admission Date:	Active or Inactive:
US DIST CT. NM	07/2010	ACTIVE
DC	04/2010	ACTIVE

VI. Applicant has never involuntarily lost, temporarily or permanently, the right to practice before any court or tribunal, or resigned in lieu of discipline, except as provided below:

NEVER

VII. Applicant has never been subject to grievance proceedings or involuntary removal proceedings—regardless of outcome—while a member of the bar of any state or federal court or tribunal that requires admission to practice, except as provided below:

NEVER

VIII. Applicant has not been charged, arrested, or convicted of a criminal offense or offenses, except as provided below (omit minor traffic offenses):

DUI IN ORANGE COUNTY, CALIFORNIA WHILE ON VACATION IN SEPTEMBER 2004

IX. Applicant has filed for *pro hac vice* admission in the United States District Court for the Northern District of Texas during the past three (3) years in the following matters:

Date of Application: Case No. And Style:

NEVER

(If necessary, attach statement of additional applications.)

X. Local counsel of record associated with Applicant in this matter is

LAW OFFICES OF ANDREW GARCIA, P.C. who has offices at

1112 N/ ZANG BLVD., STE. 106
(Street Address)

DALLAS (City) TX (State) 75203 (Zip Code)

214-942-4200 .
(Telephone No.)

XI. Check the appropriate box below.

For Application in a **Civil Case**

☐ Applicant has read *Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n*, 121 F.R.D.284 (N.D. Tex. 1988) (en banc), and the local civil rules of this court and will comply with the standards of practice adopted in *Dondi* and with the local civil rules.

For Application in a **Criminal Case**

☒ Applicant has read and will comply with the local criminal rules of this court.

XII. Applicant respectfully requests to be admitted to practice in the United States District Court for the Northern District of Texas for this cause only. Applicant certifies that a true and correct copy of this document has been served upon each attorney of record and the original upon the clerk of court, accompanied by a $25.00 filing fee, on this the 2 day of APRIL , .

JASON FLORES-WILLIAMS
Printed Name of Applicant

Signature

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Certificate

STATE OF NEW MEXICO }
} *ss.*
SUPREME COURT }

I, JOEY D. MOYA, Chief Clerk of the Supreme Court of the State of New Mexico, hereby certify that ***JASON FLORES WILLIAMS*** *was admitted to practice law in the Supreme Court and other courts of the State of New Mexico on* April 20, 2009, *and has at all times since been and is now a member of the Bar of said Supreme Court in good standing.*

"Good standing" means that the attorney is current on payment of State Bar dues; has complied with Minimum Continuing Legal Education requirements; and is not presently under either administrative or disciplinary suspension. No disciplinary action involving professional misconduct has been taken against the attorney's law license. This certification expires 30 days from this date, unless sooner revoked or rendered invalid by operation of rule or law.

WITNESS, My official signature and the seal of said Court this 2nd *day of* April, 2013

Joey D. Moya
Chief Clerk of the Supreme Court of the State of New Mexico

By Madelini Garcia
Chief Deputy Clerk

LAW OFFICE OF JASON FLORES-WILLIAMS, ESQ.
624 Galisteo #10
SF/NM 87505
505/469-5050

"That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment."
Justice Oliver Wendell Holmes, *dissenting.*

4/2/13

Dear Clerk:

Thank you for your work.

Enclosed is my application for pro hac vice and $25 application fee. If you have any questions do not hesitate to contact me.

Best,

Jason Flores-Williams, Esq.

Jason