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

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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

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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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