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9 Attorneys for Sheriff Larry Dever, Cochise County Sherriff, in his official capacity

10 **IN THE UNITED STATES DISTRICT COURT**  
 11 **FOR THE DISTRICT OF ARIZONA**

12 The United States of America,  
 13  
 14 **Plaintiff,**  
 15  
 16 vs.  
 17 The State of Arizona; and Janice K.  
 18 Brewer, Governor of the State of Arizona,  
 19 in her official capacity,  
 20  
 21 **Defendants.**

No. 2:10-cv-01413-SRB

**REPLY IN SUPPORT OF COCHISE  
 COUNTY SHERIFF LARRY A.  
 DEVER’S MOTION TO INTERVENE**  
 (Assigned to the Honorable Susan R. Bolton)

22 Larry A. Dever, Cochise County Sheriff, in his official capacity (“Sheriff Dever”),  
 23 by and through counsel undersigned, hereby submits the following Reply in Support of his  
 24 Motion to Intervene in the instant action pursuant to Fed.R.Civ.P., Rule 24(b)(2)(A). This  
 25 Reply is made and based upon the Memorandum of Points and Authorities that follows, the  
 oral argument of counsel offered at any hearing on this matter, together with this Court’s  
 entire file maintained in this matter, judicial notice of which is requested pursuant to Rule  
 201 of the Federal Rules of Evidence.

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of August, 2010.

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Proposed Counsel to Defendant

**MEMORANDUM OF POINTS AND AUTHORITIES**

In its response, the United States has urged this Court to deny Sheriff Dever’s Motion to Intervene, claiming his interests are adequately protected by the existing Defendants, his participation is unnecessary, and will present a burden to this Court and existing parties. As is explained below, this objection is insufficient. Permissive intervention remains warranted in this case, even through the Sheriff’s interests may align with those of the existing defendants. This Court should exercise its discretion to allow intervention because the Sheriff has particular knowledge, experience, and perspective that will contribute to, and benefit, the Court’s understanding of the issues presented in this case. Moreover, Sheriff Dever’s intervention at this early date will not complicate the issues or delay the proceedings.

**I. INTERVENTION IS WARRANTED BECAUSE SHERIFF DEVER’S KNOWLEDGE AND CONCERN WILL GREATLY CONTRIBUTE TO THIS COURT’S UNDERSTANDING.**

The simple fact that Sheriff Dever may share a similar desire to defend the constitutionality of S.B. 1070 (the “Act”) with existing Defendants does not extinguish his

1 eligibility to intervene.<sup>1</sup> See *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329  
2 (9<sup>th</sup> Cir. 1977). Although failure to demonstrate inadequate representation may be fatal to a  
3 movant's effort to intervene as of right under Fed.R.Civ.P., Rule 24(a), it is well within the  
4 Court's discretion to grant permissive intervention under Rule 24(b), even when a proposed  
5 intervenor's ultimate goals are shared with an existing party. See *Miller v. Silbermann*, 832  
6 F.Supp. 663, 673 (S.D.N.Y. 1993). Permissive intervention is particularly appropriate when  
7 the proposed intervenor will contribute to the Court's understanding of the case due to its  
8 "knowledge and concern." *Id.* at 673-74.

10 In *Miller*, landlords commenced an action against administrative law judges,  
11 administrators, and clerical personnel of the Housing Court of the Civil Court of the City of  
12 New York City alleging that the Housing Court unconstitutionally discriminated in favor of  
13 tenants. *Id.* at 666. Several tenants and tenant representative organizations moved to  
14 intervene as of right or permissively. *Id.* at 668. The court found that the tenants were not  
15 entitled to intervene as of right because they were adequately represented by the Housing  
16 Court officials who would vigorously defend their policies and pursue the tenants' shared  
17 objectives of dismissal of the complaint or maintenance of the status quo. *Id.* at 672-73.  
18 Despite these shared objectives and presumption of adequate representation, however, the  
19 court held that permissive intervention was warranted. *Id.* at 673. It found that  
20 "considerations of fairness strongly weigh in favor of permissive intervention as the  
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25 <sup>1</sup> Sheriff Dever recognizes that adequacy of representation is a proper factor to be considered for general permissive intervention under Fed.R.Civ.P., Rule 24(b)(1) but research has not revealed any authority for its application to permissive intervention under Rule 24(b)(2) when a public officer or agency administers a statute at issue.

1 Tenants, in light of their knowledge and concern, will greatly contribute to this Court's  
2 understanding of this case." *Id.* at 673-74.

3 Here, although Sheriff Dever shares the existing Defendants' desire to defend the  
4 constitutionality of S.B. 1070 (the "Act"), permissive intervention is appropriate as Sheriff  
5 Dever, as Sheriff of Cochise County, unlike any existing party, can represent and contribute  
6 greatly to this Court's understanding of the day-to-day experiences of citizens of Arizona's  
7 border counties and the law enforcement personnel charged with enforcing the law in those  
8 communities.  
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10 For example, in its Order granting preliminary injunction, this Court expressed its  
11 concern that the Act's provisions requiring verification of the immigration status of  
12 arrestees may impermissibly extend the length of detention of lawfully present aliens. *See*  
13 Order dated July 28, 2010 at p. 16:1-16. Sheriff Dever specifically can shed light in that  
14 area by providing his first-hand knowledge concerning the average length of detentions for  
15 arrestees in Cochise County and the specific procedures utilized by his officers to minimize  
16 imposition. Sheriff Dever also can speak directly to his County's use of the cite-and-release  
17 procedure cited in the Court's Order and how it can be reconciled with the reasonable duty  
18 to verify immigration status under the Act.  
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21 Finally, Sheriff Dever has taken a leading role in cooperating and coordinating local  
22 enforcement with federal immigration officials during his 14 years as Cochise County  
23 Sheriff.<sup>2</sup> As such, he is uniquely qualified to speak to this Court concerning the mechanism  
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25 <sup>2</sup> Sheriff Dever formed and supervises the Cochise County Border Alliance Group ("BAG"), a multi-task agency including ICE, to prevent drug smuggling in one of the Country's most traveled and dangerous drug smuggling

1 for cooperation between local and federal officials to carry out the Act and how those efforts  
2 would minimize any impact on federal resources. For all of these reasons, Sheriff Dever's  
3 knowledge and expertise will certainly assist, rather than hinder, this Court's efforts in  
4 ruling upon the ultimate constitutionality of the Act.

5 **II. SHERIFF DEVER'S INTERVENTION WILL NOT COMPLICATE**  
6 **THE ISSUES OR DELAY THE PROCEEDINGS.**

7 Plaintiff also objects to Sheriff Dever's intervention by claiming that his participation  
8 is unnecessary, will complicate the issues and render this litigation unwieldy, thereby  
9 prejudicing existing parties.

10 Here, as explained above, Sheriff Dever's intervention will greatly add value to the  
11 proceedings. Sheriff Dever does not desire to introduce new issues to the litigation and will  
12 not delay the proceedings, which are in their infancy. Sheriff Dever is willing and prepared  
13 to answer the Complaint and can immediately participate in discovery, which has yet to  
14 commence. Sheriff Dever will be able to expand upon crucial factual issues necessary for  
15 this Court's ultimate resolution of the claims in Plaintiffs' Complaint and represent the  
16 interests acknowledged as valuable under Rule 24(b)(2)—those officials charged with  
17 carrying out the law at issue in this case. As such, Sheriff Dever's intervention is  
18 appropriate and warranted.

19 **III. CONCLUSION.**

20 Sheriff Dever respectfully renews his request that this Court grant him leave to  
21 intervene under Fed.R.Civ.P., Rule 24(b)(2)(A) as he has a statutory duty to administer and

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corridors. Through these cooperative efforts, BAG has been extremely effective in reducing the amount of narcotics  
infiltrating Arizona from Mexico.

1 enforce the Act, his participation will greatly benefit the Court and will not prejudice  
2 existing parties.

3 DATED this 23<sup>rd</sup> day of August, 2010.

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5  
6 */s/Brian M. Bergin*  
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11 Proposed Counsel to Defendant

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on August 23, 2010, I electronically transmitted the attached  
14 document to the Clerk's Office using the CM/ECF System for filing and transmittal of  
15 Notice of Electronic Filing to the CM/ECF registrants on record in this matter.

16 */s/ Jennifer Alvarez*  
17 Jennifer Alvarez