

1 Tony West
2 Assistant Attorney General
3 Dennis K. Burke
4 United States Attorney
5 Arthur R. Goldberg
6 Assistant Director, Federal Programs Branch
7 Varu Chilakamarri (NY Bar #4324299)
8 Joshua Wilkenfeld (NY Bar #4440681)
9 U.S. Department of Justice, Civil Division
10 20 Massachusetts Avenue, N.W.
11 Washington, DC 20530
12 Tel. (202) 616-8489/Fax (202) 616-8470
13 varudhini.chilakamarri@usdoj.gov
14 *Attorneys for the United States*

10 UNITED STATES DISTRICT COURT
11 DISTRICT OF ARIZONA

12 The United States of America,

13 Plaintiff,

14 v.

15 The State of Arizona; and Janice K. Brewer,
16 Governor of the State of Arizona, in her
17 Official Capacity,

18 Defendants.

No. 2:10-cv-1413-SRB

**PLAINTIFF'S RESPONSE TO
RICHARD MACK'S MOTION TO
INTERVENE**

19
20 The United States respectfully submits this memorandum in opposition to Richard
21 Mack's motion to intervene. Rather than attempting to establish the grounds for his
22 permissive or mandatory intervention under Rule 24, Mr. Mack simply opines on the
23 underlying merits of this action and the wisdom of this Court's decision to preliminarily
24 enjoin portions of S.B. 1070. Because he has wholly failed to show why he should be
25 permitted to become a party to this action, his motion is deficient on its face and must be
26 rejected.

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1 Mr. Mack fails to meet the requirements for intervention under Rule 24(a),¹ because
2 he does not have a significantly protectable interest in this matter. This requirement is
3 generally satisfied when “the interest is protectable under some law,” and “there is a
4 relationship between the legally protected interest and the claims at issue.” *Arakaki v.*
5 *Cayetano*, 324 F.3d 1078, 1084 (9th Cir.2003) (internal quotation marks omitted). The Ninth
6 Circuit has made clear that an “undifferentiated, generalized interest in the outcome of an
7 ongoing action is too porous a foundation on which to premise intervention as of right.”
8 *United States v. Alisal Water Corp.*, 370 F.3d 915, 920 (9th Cir. 2004). Mr. Mack has no
9 conceivable “protectable interest” in this matter, nor has he asserted one. In fact, Mr. Mack
10 has acknowledged that his asserted interest is shared by “all Americans.” Motion at 9.
11 Moreover, he has no right to intervene, because the interest that he is presumably seeking to
12 protect – the validation of S.B. 1070 – is already adequately represented by the Defendants.
13 *See Arakaki*, 324 F.3d at 1086 (finding that there is “an assumption of adequacy when the
14 government is acting on behalf of a constituency that it represents”).

15 In addition, Mr. Mack would not qualify for permissive intervention under Rule
16 24(b).² First, he cannot show an independent ground for jurisdiction, because there is no live
17 case or controversy between himself and the United States, which seeks no relief against Mr.
18 Mack. *See Diamond v. Charles*, 476 U.S. 54, 66 (1986); *Silver v. Babbitt*, 166 F.R.D. 418,
19 434 (D.Ariz. 1994); *Perry*, 587 F.3d at 950 & n.2. In any event, this Court should exercise
20 its discretion to deny permissive intervention here, because Mr. Mack’s interests are already
21 adequately protected, *see Medical Protective Co. v. Pang*, 2006 WL 1544192, at *5

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23 ¹ To intervene as of right, a proposed intervenor bears the burden of demonstrating
24 that: (1) his motion is timely; (2) he has a “significantly protectable” interest relating to the
25 property or transaction which is the subject of the action; (3) he is so situated that the
disposition of the action may as a practical matter impair or impede his ability to protect that
interest; and (4) his interest is inadequately represented by the parties. *United States v.*
Aerojet General Corp., 606 F.3d 1142, 1148 (9th Cir. 2010).

26 ² For permissive intervention, an intervenor must show that: (1) there are
27 independent grounds for jurisdiction; (2) the motion is timely; and (3) that his claims or
28 defenses and the main action share a common question of law or fact. *See So. Cal. Edison*
Co. v. Lynch, 307 F.3d 794, 803 (9th Cir. 2002). “Even if an applicant satisfies those
threshold requirements, the district court has discretion to deny permissive intervention.” *Id.*

1 (D.Ariz.,2006), and his intervention will only unnecessarily complicate this matter. *See*
2 *Solid Waste Agency of Northern Cook Cty. v. U.S. Army Corps of Eng'rs*, 101 F.3d 503, 508
3 (7th Cir. 1996) (“Increasing the number of parties to a suit can make the suit unwieldy.”).

4 Accordingly, the Court should deny Richard Mack’s Motion to Intervene.

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6 DATED: September 28, 2010

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8 Respectfully Submitted,

9 Tony West
10 Assistant Attorney General

11 Dennis K. Burke
12 United States Attorney

13 Arthur R. Goldberg
14 Assistant Director, Federal Programs Branch

15 /s/ Varu Chilakamarri
16 Varu Chilakamarri (NY Bar #4324299)
17 Joshua Wilkenfeld (NY Bar #4440681)
18 U.S. Department of Justice, Civil Division
19 20 Massachusetts Avenue, N.W.
20 Washington, DC 20530
21 Tel. (202) 616-8489/Fax (202) 616-8470
22 varudhini.chilakamarri@usdoj.gov
23 *Attorneys for the United States*

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2010, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the CM/ECF registrants on record in this matter.

/s/ Varu Chilakamarri
Varu Chilakamarri