

1 Brian M. Bergin, #016375  
 2 Kenneth M. Frakes, #021776  
 3 **ROSE LAW GROUP pc**  
 4 6613 N. Scottsdale Road, Suite 200  
 5 Scottsdale, Arizona 85250  
 6 Tel: (480) 240-5634  
 7 Fax: (480) 951-6993  
 8 [bbergin@roselawgroup.com](mailto:bbergin@roselawgroup.com)

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

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

9 The United States of America,  
 10  
 11 Plaintiff,  
 12 vs.  
 13 The State of Arizona; and Janice K.  
 14 Brewer, Governor of the State of Arizona,  
 15 in her official capacity,  
 16  
 17 Defendants.

No. 2:10-cv-01413-PHX-SRB

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

17 Larry A. Dever, Cochise County Sheriff, in his official capacity (“Sheriff Dever”),  
 18 by and through counsel undersigned, hereby respectfully requests that this Court enter an  
 19 order permitting him to intervene in this case. Permissive intervention is appropriate as  
 20 Sheriff Dever and his deputies must administer the legislative act that is the subject matter  
 21 of this action. This Motion is made and based upon Rule 24(b)(2)(A) of the Federal Rules  
 22 of Civil Procedure the Memorandum of Points and Authorities that follows, any oral  
 23 argument offered at any hearing conducted on this issue and this Court’s entire file  
 24 maintained on this issue, judicial notice of which is requested pursuant to Rule 201 of the  
 25

1 Federal Rules of Evidence.

2 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of July, 2010.

3 **ROSE LAW GROUP PC**

4 */s/Brian M. Bergin*

5 Brian M. Bergin

6 Kenneth M. Frakes

7 6613 N. Scottsdale Rd.; Ste 200

8 Scottsdale, Arizona 85250

9 Proposed Counsel to Defendant

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **Introduction and Background**

12 At issue in this matter is whether SB 1070, as amended by HB 2162 (the “Act”) is  
13 constitutional and should be enjoined. The United States has alleged that the Act violates  
14 the Supremacy and Commerce Clauses of the United States Constitution.

15 Sheriff Dever is the Sheriff of Cochise County, a southern Arizona border county.  
16 Sheriff Dever is the Chairman of the National Sheriff’s Association Border Issues  
17 Subcommittee, a member of the Arizona Border Sheriff’s Alliance and the Border States  
18 Sheriff’s Association. He is serving his fourth elected term as Sheriff of Cochise County  
19 and has taken a vocal leadership role in resolving border issues both locally and state-wide.

20 Cochise County’s entire southern border (nearly 84 miles) is shared with Mexico and  
21 the County has two active ports of entry in Douglas and Naco. Since 1996, when elected as  
22 Sheriff to his first term, Sheriff Dever has battled illegal immigration and related issues,  
23 including human and drug smuggling, as the County is an extremely popular smuggling  
24 corridor for travel to Tucson and Phoenix.  
25

1 It is the Sherriff's job to protect the people of Cochise County, notwithstanding  
2 whether they are legally present. No party is as familiar with (1) the problems associated  
3 with illegal immigration; (2) existing law enforcement procedures related to illegal  
4 immigration; and (3) law enforcement procedures that will be followed if the Act is  
5 implemented and enforced, as Sheriff Dever.

6 Sheriff Dever is a Defendant in a related matter (*Friendly House et al. v. Whiting et*  
7 *al.*, No. 2:2010-cv-01061) and possesses the statutory duty to enforce and administer the  
8 Act when it becomes effective. *See* A.R.S. § 11-441(A)(2). He desires to intervene in this  
9 case to advocate in favor the Act's constitutionality and value and to ensure its lawful and  
10 proper administration.  
11

12 Intervention is proper in this case because the Sheriff is uniquely qualified to  
13 represent the interests of one, who as County Sherriff, must administer and enforce the very  
14 Act that is the focus of this litigation.  
15

### 16 **Law and Argument**

#### 17 18 **I. PERMISSIVE INTERVENTION IS WARRANTED UNDER RULE** 19 **24(b)(2)(A) AS SHERIFF DEVER MUST ADMINISTER THE ACT,** 20 **WHICH IS THE SUBJECT MATTER OF PLAINTIFF'S CLAIMS.**

21 Sheriff Dever should be permitted to intervene in this case as a Defendant under  
22 Rule 24(b)(2)(A). This rule authorizes permissive intervention of a government officer or  
23 agency when a party's claim or defense is based on "a statute or executive order  
24 administered by the officer or agency." Fed. R. Civ. P. 24(b)(2)(A).  
25

1 In exercising their discretion under Rule 24, district courts should apply this rule  
2 liberally “in allowing a government agency to intervene in cases involving a statute it is  
3 required to enforce; indeed, a hospitable attitude is appropriate.” *Meyer v. MacMillan*  
4 *Publishing Co., Inc.*, 85 F.R.D. 149, 150 (S.D.N.Y. 1980) (citing *Blowers v. Lawyers Coop.*  
5 *Publishing Co.*, 527 F.2d 333, 334 (2nd Cir. 1975)).

6 Moreover, this specific subsection of Rule 24 was added in 1946 to assure  
7 government access free from overly-limited interpretations of the intervention provision.  
8 See Fed. R. Civ. P. 24 advisory committee’s notes; see also Arthur F. Greenbaum,  
9 *Government Participation in Private Litigation*, 21 Ariz. St. L. J. 853, 968-69 (1989).

10 Although public officials or agencies “may not intrude in a purely private  
11 controversy, permissive intervention is available when sought because an aspect of the  
12 public interest with which he is officially concerned is involved in the litigation.” *In re First*  
13 *Databank Antitrust Litigation*, 205 F.R.D. 408, 414 (D.D.C. 2002) (citing *Nuesse v. Camp*,  
14 385 F.2d 694, 706 (D.C. Cir. 1967)). One advantage of government intervention is  
15 heightened protection of the public interest in litigation. See *New Orleans Pub. Serv., Inc. v.*  
16 *United Gas Pipeline Co.*, 690 F.2d 1203, 1210 (5th Cir. 1982).

17 Here, Sheriff Dever possesses a statutory duty to enforce all laws of the State of  
18 Arizona. See A.R.S. § 11-441(A)(2) (the county sheriff shall “arrest and take before the  
19 nearest magistrate for examination all persons who attempt to commit or have committed a  
20 public offense”). Accordingly, Sheriff Dever is charged with the crucial and considerable  
21 duty of enforcing the Act and ensuring that it is applied justly and within constitutional  
22 directives. The enforcement and administration of the Act is not purely a ‘private  
23  
24  
25

1 controversy' but one with which Sheriff Dever is 'officially concerned.' *In re First*  
2 *Databank*, 205 F.R.D. at 414.

3 Furthermore, Sheriff Dever has a unique and specific perspective to present to this  
4 Court as a border sheriff, with nearly 84 miles of shared border and two active ports of  
5 entry. During his 14-year tenure as Sheriff, Sheriff Dever has had significant experience in  
6 border control and has been called upon to testify before Congress regarding the specific  
7 issues his county faces in the battle against illegal immigration. Sheriff Dever can provide  
8 knowledge and information to this Court that would otherwise be unavailable to it to  
9 demonstrate the necessity of the Act as critical tool for securing the border and the health,  
10 safety, and welfare of all persons present in his county and our State.

## 11 **II. SHERIFF DEVER'S MOTION IS TIMELY.**

12 Sheriff Dever's Motion is timely. When considering the timeliness of a motion to  
13 intervene, courts consider the following three factors: (1) the stage of the proceeding at  
14 which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason  
15 for and the length of the delay. *U.S. ex rel. McGough v. Covington Technologies Co.*, 967  
16 F.2d 1391, 1394 (9th Cir. 1992) (citing *U.S. v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984)).

### 17 A. Sheriff Dever is seeking permission to intervene at a very early stage 18 in the proceedings.

19 The first factor weighs heavily in favor of this Court authorizing Sheriff Dever's  
20 intervention as he is intervening at a very early stage of this matter. The United States'  
21 Complaint was filed only three weeks ago, on July 6, 2010 and Defendants have not  
22 answered. This Court has not yet made any substantive rulings in this matter, including a  
23  
24  
25

1 decision on Plaintiff's motion for a preliminary injunction. *See Northwest Forest Res.*  
2 *Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996). Sheriff Dever's intervention at this  
3 time will also permit him to file a timely answer.

4 B. No party will be prejudiced by Sheriff Dever's intervention.

5 Sheriff Dever's intervention will not prejudice any of the existing parties. No  
6 prejudice results from intervention when the Court has neither made any substantive rulings  
7 nor will need to re-open or re-litigate any of the issues. *Id.*; *see also CEP Emery Tech*  
8 *Investors, LLC v. JPMorgan Chase Bank, N.A.*, No. 09-04409-SBA, slip op. at 3 (N.D. Cal.  
9 Apr. 12, 2010) (attached). Sheriff's Dever's intervention will not prejudice any of the  
10 parties as this Court will not need to re-open or re-litigate any of the issues as he is seeking  
11 to participate in the underlying substantive merits.  
12

13 C. The instant motion is not delayed.

14 Finally, the third factor also justifies Sheriff Dever's intervention as he has not  
15 unnecessarily delayed in filing his request to intervene. Sheriff Dever will defend against  
16 the DOJ's claims and file a timely answer.  
17

18 **III. CONCLUSION.**

19 Consequently Sheriff Dever respectfully requests that this Court grant him leave to  
20 intervene under Rule 24(b)(2)(A). His motion is timely and his intervention will not  
21 prejudice any parties herein.  
22

23 ///

24 ///

25 ///

DATED this 28<sup>th</sup> day of July, 2010.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**ROSE LAW GROUP PC**

*/s/Brian M. Bergin* \_\_\_\_\_  
Brian M. Bergin  
Kenneth M. Frakes  
6613 N. Scottsdale Rd.; Ste 200  
Scottsdale, Arizona 85250  
Proposed Counsel to Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on July 28, 2010, I electronically transmitted the foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the following CM/ECF registrants:

Tony West  
Dennis K. Burke  
Arthur R. Goldberg  
Varu Chilakamarri  
Edwin Smiley Kneedler  
Joshua Wilkenfeld  
U.S. Department of Justice, Civil Division  
20 Massachusetts Ave, N.W.  
Washington, D.C. 20530

John J. Bouma  
Robert A. Henry  
Joseph G. Adams  
SNELL & WILMER L.L.P.  
One Arizona Center  
400 E. Van Buren  
Phoenix, AZ 85004-2202

Joseph A. Kanefield  
Office of Governor Janice K. Brewer  
1700 W. Washington, 9th Floor  
Phoenix, AZ 85007

By: /s/ Brian M. Bergin