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

16 United States of America,

17 Plaintiff,

18 vs.

19 Maricopa County, Arizona; Maricopa
 20 County sheriff’s Office; and Joseph M.
 21 Arpaio, in his official capacity as Sheriff
 22 of Maricopa County, Arizona,

23 Defendants.

No. 2:10-cv-01878-GMS

**DEFENDANTS JOSEPH ARPAIO &
 MARICOPA COUNTY SHERIFF’S
 OFFICE’S REPLY IN SUPPORT OF
 MOTION FOR CONTINUANCE**

(Expedited Consideration Requested)

24 Defendants Joseph M. Arpaio and the Maricopa County Sheriff’s Office (together,
 25 “the MCSO Defendants”), through their undersigned counsel, submit this Reply in
 26 Support of their Motion for Continuance, and in support thereof state as follows:

27 1. On September 27, 2010 the MCSO Defendants moved for a short
 28 continuance on the ground that the Maricopa County Board of Supervisors had voted to
 terminate Ogletree, Deakins, Nash, Smoak & Stewart’s (“Ogletree”) Legal Services
 Contract with Maricopa County.

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1 2. On September 28, 2010, Plaintiff, the Department of Justice (“DOJ”), filed
2 an Opposition to the Motion. DOJ’s arguments rest on faulty assumptions and ignore the
3 rapid developments in this matter.

4 3. The MCSO Defendants have moved quickly to inform this Court of the
5 issues surrounding its outside counsel. On September 17, 2010, Ogletree received a letter
6 from Maricopa County Manager David Smith that purported to declare “null and void”
7 Ogletree’s representation of the MCSO Defendants in this matter. On September 20,
8 2010, Ogletree received a letter from the Director of the Maricopa County Office of
9 Special Litigation Services, Richard Stewart, which re-appointed Ogletree to represent
10 the MCSO Defendants in this matter. Two days later, on September 22, 2010, without
11 the consultation or approval of Mr. Stewart, Ogletree received a second letter from
12 Maricopa County Manager David Smith informing Ogletree that Maricopa County had
13 terminated Ogletree’s Legal Services Contract. This letter also stated that Ogletree’s
14 representation of the Sheriff and MCSO would cease on all matters, including this case,
15 on Monday September 27, 2010.

16 4. In light of these fast-moving events, neither Ogletree nor the MCSO
17 Defendants have had any certainty about who is representing, or has authority to
18 represent, the MCSO Defendants. Both Ogletree and the MCSO Defendants made every
19 effort to clarify this issue prior to September 27, the deadline for filing an Answer to the
20 Amended Complaint. As soon as it became apparent that no clarification would occur
21 before the filing deadline, the MCSO Defendants filed the pending motion.

22 5. Moreover, in the context of Maricopa County’s termination of Ogletree’s
23 Legal Services Contract, Maricopa County made serious allegations that make it virtually
24 impossible for Ogletree to continue as counsel of record. Ogletree attorneys will move to
25 withdraw their appearances as soon as Maricopa County appoints competent substitute
26 counsel for the MCSO Defendants and the MCSO Defendants agree to that appointment.

27 6. A short continuance would not unreasonably delay DOJ’s suit. DOJ
28 notified the MCSO Defendants of its investigation on March 10, 2009. However, taking

1 virtually no action for well over a year, DOJ did not initiate this lawsuit until September
2 2, 2010. The MCSO Defendants' Response to DOJ's Motion for Summary Judgment is
3 currently due on October 13; a three week continuance would merely push back that date
4 until November 3.

5 7. Furthermore, contrary to DOJ's suggestions, the MCSO Defendants should
6 bear no blame for this short delay. Maricopa County, not the MCSO Defendants, created
7 this uncertainty by terminating Ogletree's contract. Indeed, the MCSO Defendants filed
8 their Answer on September 28, 2010, while its Motion for Continuance was pending, and
9 on the same date that DOJ complained about the filing deadline. In contrast, the other
10 named defendant, Maricopa County, has not filed an answer or otherwise responded to
11 the Amended Complaint.

12 7. On the other hand, without a continuance, the MCSO Defendants would
13 suffer serious prejudice. DOJ's lawsuit raises complex constitutional, statutory, and
14 factual issues. DOJ has already moved for summary judgment. Given the lawsuit's
15 complexity and procedural posture, the MCSO Defendants deserve to have competent
16 counsel represent them throughout this litigation. A short delay would simply ensure that
17 substitute counsel has adequate time to learn the issues and present a competent defense
18 for the MCSO Defendants.

19 RESPECTFULLY SUBMITTED this 5th day of October, 2010.

20 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October 2010, I electronically transmitted the attached document to the Clerk’s Office using the ECF Systems for filing and transmittal of a Notice of Electronic Filing to the following ECF registrant:

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s/Glenda Ready