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9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA
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14 **THE UNITED STATES OF AMERICA,**
 15
 Plaintiff,
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 v.
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 18 **THE STATE OF CALIFORNIA; EDMUND**
GERALD BROWN JR., Governor of
California, in his official capacity; and
 19 **XAVIER BECERRA, Attorney General of**
California, in his official capacity,
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 Defendants.
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2:18-cv-00490-JAM-KJN

**DEFENDANTS' MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 OPPOSITION TO MOTION TO
 INTERVENE BY PROPOSED
 INTERVENORS COUNTY OF ORANGE
 AND SANDRA HUTCHENS**

Date: June 5, 2018
 Time: 1:30 p.m.
 Dept: 6
 Judge: The Honorable John A. Mendez
 Trial Date: None Set
 Action Filed: March 6, 2018

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INTRODUCTION

This is an action between the State of California and the United States. It concerns three statutes that California's elected officials deemed necessary to properly allocate scarce public-safety resources, provide workplace protections, and protect its residents' rights. While the issues here are important to many individuals, organizations, and governmental entities, amici curiae briefs are the proper mechanism for those non-parties to express their viewpoints, as more than 100 amici curiae have already done. The amici curiae process allows the same opportunity for presenting diverse viewpoints to the Court as intervention, but without the unnecessary complexity that would accompany adding so many new parties to the litigation.

Orange County and its Sheriff (collectively, "Orange County"), however, seek to join this case as plaintiffs to challenge two of the three laws at issue in this case—the California Values Act, or Senate Bill (SB) 54 and Assembly Bill (AB) 103. (Mot. for Leave to Intervene, Apr. 20, 2018, ECF No. 59.) But Ninth Circuit case law bars Orange County, as a political subdivision of the State of California, from bringing a constitutional challenge against state statutes. Accordingly, it cannot satisfy the requirements for either intervention as of right or permissive intervention, and its motion should be denied on that basis alone.

The other factors courts weigh in considering intervention also counsel against Orange County's motion. In particular, Orange County shares the same ultimate objective in this case as the existing plaintiff, the federal government, which is to overturn SB 54 and AB 103. Thus, the law presumes the existing party will adequately represent those interests, especially when the party is a governmental entity that is assumed to represent its citizens' interests. Orange County cannot rebut this presumption with the required "compelling showing" that its interests will go unrepresented, because the Complaint and motion for preliminary injunction already contemplate the harms asserted by Orange County. Additionally, multiple parties will not aid in adjudication of this case on the merits because the underlying preemption issue is purely legal, and the State of California and United States will more than adequately represent the competing legal viewpoints at issue. Finally, the timing here does not weigh in favor of intervention. Orange County was aware of its alleged claims well before this lawsuit began. And this case has progressed rapidly,

1 with substantive discovery by the parties, motion practice, and many amici curiae briefs.
2 Intervention at this stage would prejudice the parties by complicating and protracting the
3 litigation, and could encourage many other non-parties to seek to intervene, adding even more
4 unnecessary complexity and delay to the proceedings. Because Orange County does not satisfy
5 the requirements for intervention, the Court should deny its motion.

6 **FACTUAL ALLEGATIONS AND BACKGROUND**

7 On March 6, 2018, the federal government sued the State of California, Governor Edmund
8 G. Brown Jr., and Attorney General Xavier Becerra, and moved to preliminarily enjoin
9 enforcement of certain sections of recently passed state laws—SB 54, AB 450, and AB 103—
10 that it alleges interfere with the execution of federal immigration law. (Compl., Apr. 20, 2018,
11 ECF No. 1; Mot. for Prelim. Inj., Apr. 20, 2018, ECF No. 2.) Defendants moved to dismiss the
12 Complaint and opposed the preliminary injunction motion on May 4, 2018. (Defs.’ Opp’n to
13 Mot. for Prelim. Injun., May 4, 2018, ECF No. 74; Mot. to Dismiss, May 4, 2018, ECF No. 77.)

14 Proposed Intervenors are the County of Orange, a political subdivision of the state, and
15 Sandra Hutchens, Sheriff-Coroner for the county. (Not. & Mot. by Cty. of Orange and Sandra
16 Hutchens for Leave to Intervene (“OC Mot.”), 1:18-19, 27-28, Apr. 20, 2018, ECF No. 59.)
17 Orange County filed its motion to intervene and proposed complaint on April 20, 2018, six weeks
18 after the United States filed suit. (*Id.*; Proposed Compl. in Intervention (“Proposed Compl.”),
19 Apr. 20, 2018, ECF No. 59-2.) Orange County seeks to challenge two of the three state laws at
20 issue in this case (SB 54 and AB 103) based on the Supremacy Clause and federal preemption,
21 the same theory raised by the federal government. (*Id.* at 1:12-13; *see also id.* at 2:28-3:6.) It
22 contends that the state laws impede “consultation and communication” between federal and local
23 law enforcement officials, and “interfere with contracts between federal and local entities and law
24 enforcement officials to house immigration detainees.” (OC Mot. 2:11-14.) Orange County
25 notes that it receives more than \$22 million annually through contracts with Immigration and
26 Customs Enforcement (ICE). (*Id.* at 11:20-26.) And it argues that the state laws have forced it to
27 give the Attorney General’s Office access to documents that are allegedly ICE property and were
28 to remain confidential under its contract with ICE. (*Id.* at 10:10-20.) The motion also argues that

1 the Sheriff has been exposed to criminal or civil liability based on statements the Attorney
2 General made about enforcing the state laws. (*Id.* at 10:28-11:12.) It further contends that the
3 state laws place Orange County residents at risk because the laws limit local authorities' ability to
4 cooperate with or inform federal immigration authorities about immigrants in their custody who
5 are suspected of serious crimes and subject to detention under federal law, regardless of whether
6 they have been convicted. (*Id.* at 7:16-9:1.)

7 ARGUMENT

8 I. ORANGE COUNTY IS NOT ENTITLED TO INTERVENTION AS OF RIGHT

9 Federal Rule of Civil Procedure 24(a) permits intervention as a matter of right if authorized
10 by statute or upon satisfaction of a four-part test: "(1) [t]he application for intervention must be
11 timely; (2) the applicant must have a significantly protectable interest relating to the property or
12 transaction that is the subject of the action; (3) the applicant must be so situated that the
13 disposition of the action may, as a practical matter, impair or impede the applicant's ability to
14 protect that interest; and (4) the applicant's interest must not be adequately represented by the
15 existing parties in the lawsuit." *United States v. Sprint Commc'ns, Inc.*, 855 F.3d 985, 991 (9th
16 Cir. 2017) (quoting *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001)
17 (internal citation omitted)). The applicant for intervention bears the burden of showing
18 compliance with each of the four elements. *Freedom from Religion Found., Inc. v. Geithner*, 644
19 F.3d 836, 841 (9th Cir. 2011) (citation omitted). "Failure to satisfy any one of the requirements is
20 fatal to the application, and [the court] need not reach the remaining elements if one of the
21 elements is not satisfied." *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th
22 Cir. 2009).

23 A. Orange County Does Not Have a Significant Protectable Interest Because 24 Ninth Circuit Precedent Bars it from Challenging the Constitutionality of 25 State Laws

26 Looking first to the second factor of the applicable four-part test, a proposed intervenor has
27 a "significant protectable interest" in an action "if (1) [the applicant] asserts an interest that is
28 protected under some law, and (2) there is a 'relationship' between [the applicant's] legally
protected interest and the plaintiff's claims." *Sprint Commc'ns*, 855 F.3d at 991 (quoting

1 *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998) (internal citation omitted)); *accord*
2 *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003). The interest must be “direct, non-
3 contingent, substantial and *legally protectable*.” *Dilks v. Aloha Airlines*, 642 F.2d 1155, 1157
4 (9th Cir. 1981) (per curiam) (citation omitted and emphasis added).

5 Here, Orange County does not have a significant protectable interest because a state’s
6 political subdivision lacks standing under federal law to challenge a state statute’s
7 constitutionality. *South Lake Tahoe v. Cal. Tahoe Regional Planning Agency*, 625 F.2d 231, 233-
8 34 (9th Cir. 1980). Despite some other circuit’s willingness to consider exceptions to this general
9 rule, the Ninth Circuit recognizes no exceptions. *Burbank-Glendale-Pasadena Airport Auth. v.*
10 *City of Burbank*, 136 F.3d 1360, 1363–64 (9th Cir. 1998) (citing out-of-circuit decisions that
11 permitted Supremacy Clause challenges or suggested standing in some other circumstances, but
12 noting that Ninth Circuit has not adopted them). The Ninth Circuit “has not recognized any
13 exception to the per se rule, and the broad language of *South Lake Tahoe* appears to foreclose the
14 possibility of ... doing so.” *Id.* at 1364 (citing *S. Lake Tahoe*, 625 F.2d at 233 (explaining that
15 “political subdivisions” of a state lack standing to challenge statutes of the state itself, or one of
16 its political subdivisions, on “constitutional grounds”)). In fact, the complaint in *South Lake*
17 *Tahoe* included a Supremacy Clause claim, just as Orange County’s proposed complaint does.
18 *S. Lake Tahoe*, 625 F.2d at 233.

19 The Sheriff cannot circumvent this rule by requesting to intervene personally. To the
20 degree that the Sheriff seeks to represent the County’s interests, her “claims would be barred”
21 along with the County’s. *S. Lake Tahoe*, 625 F.2d at 237. As to any independent claims brought
22 by the Sheriff, she lacks standing for her effectively “abstract constitutional grievances.” *Id.*
23 at 238. Without an adequate showing that she “has sustained or is immediately in danger of
24 sustaining some direct injury as the result of the challenged statute or official conduct,” she
25 cannot demonstrate standing. *Id.* (quoting *O’Shea v. Littleton*, 414 U.S. 488, 494 (1974)) (internal
26 quotation marks omitted). “To confer standing on public officials because they wish not to
27 enforce a statute due to private constitutional predilections, or because their decision not to
28 enforce the statute may result in criminal liability, would convert all officials charged with

1 executing statutes into potential litigants, or attorneys general, as to laws within their charge.” *Id.*
2 Supreme Court precedent precludes this. *Schlesinger v. Reservists Comm. to Stop the War*, 418
3 U.S. 208 (1974); *United States v. Richardson*, 418 U.S. 166 (1974)).

4 Even if Orange County could assert a significant protectable interest, the interest it asserts
5 is not threatened by the laws at issue here. Orange County alleges that it is prohibited from
6 providing release dates to federal immigration officials, but state law actually allows the
7 provision of release dates if “that information is available to the public.” Cal. Gov’t Code
8 § 7284.6(a)(1)(c). Indeed, the Attorney General’s bulletin for SB 54 accepts the practice of
9 posting release dates. (Decl. R. Peterson Supp. OC Mot., Ex. 7 (Information Bulletin No. DLE-
10 2018-01, dated Mar. 28, 2018), Apr. 20, 2018, ECF No. 59-10 at 6 (disclosure of a person’s
11 release date is permitted if “[t]he information is available to the public”).)

12 Because providing release dates is not prohibited by the challenged laws, the notion that the
13 Sheriff or County could be subject to civil or criminal liability for failing to comply with state law
14 is “entirely speculative” because they have an “available course of action which subjects them to
15 no concrete adverse consequences”—that is, complying with the state law. *S. Lake Tahoe*, 625
16 F.2d at 237; *Drake v. Obama*, 664 F.3d 774, 780 (9th Cir. 2011) (holding that the plaintiff failed
17 to assert a concrete injury because he could avoid military discipline by obeying the orders of the
18 Commander in Chief). Thus, there is no showing of actual or imminent danger here sufficient to
19 show a protectable interest justifying intervention.

20 The lack of a significant protectable interest is fatal to Orange County’s application, and the
21 Court therefore should deny it for this reason alone. Nevertheless, and as explained further
22 below, Orange County also has failed to show that any of the remaining factors weigh in its favor,
23 much less all of them.

24 **B. Orange County Cannot Rebut the Presumption of Adequate**
25 **Representation by the Federal Government**

26 “The most important factor in determining the adequacy of representation is how the
27 interest compares with the interests of existing parties.” *Arakaki*, 324 F.3d at 1086 (citation
28 omitted). The three factors for evaluating adequacy are: “(1) whether the interest of a present

1 party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether
2 the present party is capable and willing to make such arguments; and (3) whether a proposed
3 intervenor would offer any necessary elements to the proceeding that other parties would
4 neglect." *Id.* (citing *California v. Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir.
5 1986)). "Where the party and the proposed intervenor share the same 'ultimate objective,' a
6 presumption of adequacy of representation applies, and the intervenor can rebut that presumption
7 only with a 'compelling showing' to the contrary." *Perry*, 587 F.3d at 951; accord *Freedom*
8 *from Religion Found.*, 644 F.3d at 841 (quoting same). "[M]ere differences in litigation strategy
9 are not enough to justify intervention as a matter of right." *Id.* at 954 (internal brackets and
10 quotation marks omitted) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 402-03
11 (9th Cir. 2002); *Arakaki*, 324 F.3d at 1087; *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825,
12 838 (9th Cir. 1996) (explaining that "minor differences in opinion" between parties and proposed
13 intervenor fail to demonstrate inadequacy of representation).

14 The federal government will presumably provide adequate representation of Orange
15 County's interests because they share the same ultimate objective—to overturn SB 54 and
16 AB 103. This presumption is especially strong in situations such as here, where the federal
17 government purports to advance a congressional directive. See *Freedom from Religion Found.*,
18 644 F.3d at 841 ("This presumption of adequacy is 'nowhere more applicable than in a case
19 where the Department of Justice deploys its formidable resources to defend the constitutionality
20 of a congressional enactment.'") (quoting *California ex rel. Lockyer v. United States*, 450 F.3d
21 436, 444 (9th Cir. 2006)). Here, the federal government has more than sufficient means and
22 motivation to challenge the California statutes, and the presumption of adequacy applies. And
23 "when one of the parties is an arm or agency of the government, and the case concerns a matter of
24 'sovereign interest,' the bar [of adequate representation] is raised, because in such cases the
25 government is 'presumed to represent the interests of all its citizens.'" *Mausolf v. Babbitt*, 85
26 F.3d 1295, 1303 (8th Cir. 1996) (quoting *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989
27 F.2d 994, 1000 (8th Cir. 1993)); *Freedom from Religion Found.*, 644 F.3d at 841-43 (determining
28 that the putative intervenor failed to provide "a compelling showing" that either the federal

1 government or the California government would not adequately defend the federal and state laws
2 at issue in the case); *United States v. Hooker Chems. & Plastics Corp.*, 749 F.2d 968, 987 (2nd
3 Cir. 1984) (“[I]t is proper to require a strong showing of inadequate representation before
4 permitting intervenors to disrupt the government’s exclusive control over the court of its
5 litigation.”). The existing parties in this litigation are government entities representing their
6 “sovereign interests.” There is nothing that Orange County can do to enhance this litigation or
7 help resolve the action on the merits.

8 Orange County argues that its interests differ materially from the federal government,
9 which is focused on preemption and national immigration laws. (OC Mot. 12:22-24, 14:15-16,
10 25-28.) Orange County seeks to intervene to address the rights of its citizens and is concerned
11 with the application of state laws on the local level. (*Id.* at 12:14-28.) Orange County specifies
12 the “nexus of protecting the rights of their local citizens and dealing with their obligations in
13 relation to the conflicting state and federal laws.” (*Id.* at 12:16-18.) It also asserts that its
14 interests are separate from those of the federal government because the Attorney General has
15 made demands on Orange County regarding its jail facilities and records, and allegedly threatened
16 Orange County for complying with federal law. (*Id.* at 12:18-23.)

17 But the federal government has already advanced the issues that Orange County raises.
18 (*See, e.g.*, Compl. ¶¶ 30 (noting that Department of Homeland Security enters into contracts for
19 detention with local governments) and 50-59 (noting restrictions that state laws impose on state
20 and local law enforcement’s cooperation with federal officials); Mot. for Prelim Inj. 25:11-26:15
21 (advocating for consultation between federal and state officials in immigration enforcement and
22 arguing that SB 54 “deliberately seeks to undermine” that cooperation), 32:19-33:7 (arguing that
23 state laws impair the federal government’s “ability to locate, detain, prosecute, and remove aliens
24 who pose risks to the safety and security of our Nation’s citizens”), 36:24-26 (“California
25 effectively requires its subdivisions to release dangerous criminal aliens to the public rather than
26 transfer them back to DHS custody upon release”).) Most importantly, if the federal government
27 succeeds on the preemption issue, it will resolve all of Orange County’s claims.

1 Orange County has not and cannot show that the originator of this action and the
2 “preeminent authority” on immigration matters (Compl. ¶ 2; Proposed Compl. ¶ 1) would
3 abandon potentially meritorious arguments or otherwise veer from its ultimate goal of overturning
4 the state laws at issue here. *See, e.g., Lockyer*, 450 F.3d at 444 (“In order to make a ‘very
5 compelling showing’ of the government’s inadequacy, the proposed intervenor must demonstrate
6 a likelihood that the government will abandon or concede a potentially meritorious reading of the
7 statute.”). At best, Orange County offers a modified litigation strategy in this case. But different
8 strategies are not enough to rebut the presumption of adequacy. *Perry*, 587 F.3d at 954; *Arakaki*,
9 324 F.3d at 1087. Even assuming Orange County brings a unique perspective to this litigation,
10 the issues in this case are purely legal, and permitting intervention will not aid in adjudication of
11 this case. *See Astiana v. Hain Celestial Group, Inc.*, 783 F.3d 753, 757 (9th Cir. 2015); *Sales*
12 *Hydro Assocs. v. Maughn*, 985 F.2d 451, 454 (9th Cir. 1993) (whether federal statute preempts
13 state law is “purely legal”); *Hotel Emps. & Rest. Emps. Int’l Union v. Nevada Gaming Comm’n*,
14 984 F.2d 1507, 1513 (9th Cir. 1993) (citing *Pac. Gas & Elec. Co. v. State Energy Res. Conserv.*
15 *& Dev. Comm’n*, 461 U.S. 190, 201 (1983) for proposition that resolution of preemption issue
16 need not await development of record). Because Orange County cannot show that its interest will
17 not be adequately represented by the federal government, it cannot be granted leave to intervene
18 under Federal Rule of Civil Procedure 24(a).

19 **C. Intervention as a Matter of Right Is Not Warranted Because Orange**
20 **County Has Other Means to Protect Its Interests**

21 If a proposed intervenor “would be substantially affected in a practical sense by the
22 determination made in an action, he should, as a general rule, be entitled to intervene.” Fed. R.
23 Civ. P. 24 advisory committee’s note to 1966 amendment; *Sw. Ctr. For Biological Diversity*, 268
24 F.3d at 822 (quoting same). Orange County’s interests will not be practically impaired where
25 they have “other means” for protecting their interests. *Lockyer*, 450 F.3d at 442 (citing *United*
26 *States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004)). Here, Orange County argues
27 that disposition of this case without their participation may impair or impede their ability to
28 protect Orange County residents or subject the Sheriff to prosecution by the Attorney General.

1 (OC Mot. 11:20-24.) They also note that monetary interests in their contract with ICE are worth
2 several million dollars. (*Id.* at 11:24-27.)

3 But Orange County has not identified anything that it would bring to the defense of its
4 interests that the existing federal plaintiff will not employ. The federal government's complaint
5 and motion for preliminary injunction show that it is able and willing to address preemption
6 arguments and the restrictions that the state laws impose on its dealings with local governments.
7 Therefore, Orange County's interests will not be significantly impaired if intervention is denied in
8 this case.

9 Even if this Court were to accept Orange County's interests as significant and legally
10 protectable or were to agree that the federal government will not provide adequate representation,
11 "other means" are available to protect Orange County's interests. This Court may grant Orange
12 County leave to file an amicus brief to address the issues and highlight the alleged impact of the
13 state laws on local governments.¹ See *McHenry v. C.I.R.*, 677 F.3d 214, 227 (4th Cir. 2012)
14 (denying intervention and noting that any views of IRS's interpretation of the tax code could be
15 expressed in an amicus brief); *Elec. Data Sys. Fed. Corp. v. Gen. Servs. Admin.*, 629 F. Supp.
16 350, 353 (D.D.C. 1986) (shortfalls in presentation of proposed intervenor's interests can be
17 "cured" by permitting an amicus brief); *cf. Ctr. for Biological Diversity v. Brennan*, 571 F. Supp.
18 2d 1105, 1129 (N.D. Cal. 2007) (noting that Congressional leaders who are intervenor-applicants
19 may draw and release "political arrows" at any time to protect their interests). There are also
20 legislative options available to Orange County, such as the initiative process. Because Orange
21 County has other means to protect its interests, intervention as of right should be denied.

22 **D. Orange County Does Not Show that Timing Weighs in Its Favor**

23 Timeliness "is determined by the totality of the circumstances facing would-be intervenors,
24 with a focus on three primary factors: '(1) the stage of the proceeding at which an applicant seeks
25 to intervene; (2) the prejudice to the other parties; and (3) the reason for and length of the delay.'" *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (quoting *Alisal Water Corp.*,

27 _____
28 ¹ Participation through the amicus process makes sense as twenty-five local governments
have already asserted their interests in this case through amicus briefs.

1 370 F.3d at 921). The crucial date in assessing timeliness is “when the proposed intervenors
2 should have been aware that their interests would not be adequately protected by the existing
3 parties.” *Id.* (quoting *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999)).

4 Although Orange County contends that it filed “very early on in the litigation” (OC
5 Mot. 4:22-28), this high-profile case has progressed rapidly since its inception. This is no
6 ordinary civil action, and while Orange County waited for six weeks to file its motion, the parties
7 conducted substantive discovery related to the federal government’s motion for preliminary
8 injunction, and litigated discovery issues before Magistrate Judge Newman. The docket also
9 amassed nearly sixty entries, including joint briefs by nearly forty amici curiae at the time of the
10 motion to intervene (Amici Briefs, filed between Mar. 30, 2018 and Apr. 6 & 12, 2018, ECF
11 Nos. 43, 44, 48, 55-57), with many more being filed since (Amici Briefs, May 21, 2018, ECF
12 Nos. 126-140). Moreover, the parties are now deep into briefing on both a motion to dismiss and
13 a preliminary-injunction motion, with hearings on those matters scheduled soon.

14 Permitting intervention at this stage would unnecessarily complicate and protract this
15 litigation. Indeed, allowing Orange County to intervene would encourage other interested non-
16 parties to seek intervention as well, adding a level of complexity to the proceedings that would be
17 unnecessary to properly resolve the issues in the case. Orange County fails to explain why it
18 waited for six weeks, despite full knowledge of the facts and questions of law relevant to its
19 asserted claims. For each of these reasons, Orange County fails to show that the timing weighs in
20 its favor.

21 **II. PERMISSIVE INTERVENTION SHOULD BE DENIED.**

22 Courts have discretion to deny permissive intervention for reasons similar to intervention as
23 of right. *Donnelly*, 159 F.3d at 412. Permissive intervention may be granted where an applicant
24 shows “(1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant’s
25 claim or defense, and the main action, have a question of law or a question of fact in common.”
26 *Perry*, 587 F.3d at 955 (quoting *Nw. Forest Res. Council*, 82 F.3d at 839). If these requirements
27 are met, the court may also use its discretion to consider other factors, “including ‘the nature and
28 extent of the intervenors’ interest’ and ‘whether the intervenors’ interests are adequately

1 represented by other parties.” *Id.* (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d
2 1326, 1329 (9th Cir. 1977)). Rule 24(b)(3) also requires that the court “consider whether the
3 intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed.
4 R. Civ. P. 24(b)(3); *Perry*, 587 F.3d at 955.

5 Here, as explained above, Orange County cannot demonstrate “independent grounds for
6 jurisdiction,” given the bar against local governments’ challenges to state statutes under
7 established case law, and the Sheriff’s additional failure to assert a concrete injury. Moreover,
8 Orange County cannot show that its motion is timely, given the rapidly progressing litigation in
9 this case.

10 In addition, permitting intervention would also expand the scope of the litigation by
11 allowing Orange County to pursue contingent and speculative arguments. The allegations
12 relating to the Attorney General’s statements about enforcing state laws, contracts with ICE, and
13 threats to public safety fall within this category. These arguments are separate from the
14 preemption issue and cannot be the subject of a separate action against the state. Nor would
15 factual development of the local issues aid in resolution of the preemption issue. Each of these
16 factors weigh against permissive intervention.

17 Rule 24(b)(3) also requires that this Court consider “whether the intervention will unduly
18 delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3);
19 *Perry*, 587 F.3d at 955. The factors that support the prejudice argument equally apply to this
20 point. Permitting intervention could open the door for the fifty-seven other counties in California
21 and many more cities to join this action and add their various local interests to the case.

22 Intervention could also lead to duplicative discovery because Orange County shares
23 substantially similar interests with the federal government. Given the similarity of interests, the
24 federal government can develop a factual record encompassing the County’s interests. *Perry*, 587
25 F.3d at 955 (finding intervention unnecessary as “each group would need to conduct discovery on
26 substantially similar issues.”). Accordingly, to avoid delay and prejudice to the parties, the Court
27 should deny permissive intervention.

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CONCLUSION

Based on the foregoing reasons, Orange County has not shown that it is entitled to intervention as a matter of right or permissively. Accordingly, the Court should deny the motion.

Dated: May 22, 2018

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Case Name: United States v. California, et al No. 2:18-cv-00490-JAM-KJN

I hereby certify that on May 22, 2018, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO INTERVENE BY PROPOSED INTERVENORS COUNTY OF ORANGE AND SANDRA HUTCHENS

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 22, 2018, at Sacramento, California.

Tracie L. Campbell

Declarant

/s/ Tracie Campbell

Signature

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