

1 Mark Kappelhoff  
2 Deputy Assistant Attorney General  
3 Judy Preston (MD Bar, no numbers assigned)  
4 Timothy D. Mygatt (DC Bar No. 1021564)  
5 Edward G. Caspar (MA Bar No. 650566)  
6 Jennifer L. Mondino (NY Bar No. 4141636)  
7 Paul Killebrew (LA Bar No. 32176)  
8 Puneet Cheema (CA Bar No. 268677)  
9 Matthew J. Donnelly (IL No. 6281308)  
10 U.S. Department of Justice, Civil Rights Division  
11 Special Litigation Section  
12 601 D St. NW, Suite 5200  
13 Washington, D.C. 20004  
14 Attorneys for the United States

11 IN THE UNITED STATES DISTRICT COURT FOR THE  
12 DISTRICT OF ARIZONA

13 Manuel de Jesus Ortega Melendres, on  
14 behalf of himself and all others similarly  
15 situated; *et al.*

15 Plaintiffs,

16 v.

17 Joseph M. Arpaio, in his individual and  
18 official capacity as Sheriff of Maricopa  
19 County, AZ; *et al.*

19 Defendants.

No. 2:07-cv-02513-GMS

**UNITED STATES' REPLY TO THE  
PARTIES' RESPONSES TO THE  
UNITED STATES' MOTION TO  
INTERVENE**

21 No party opposes the United States' intervention in this case. The County has,  
22 however, requested limitations on the United States' intervention that are unwarranted  
23 and inappropriate. These limitations should be rejected, and the United States' motion  
24 should be granted in full.

25 As the United States made clear in its Motion to Intervene, "the United States does  
26 not seek to expand the scope of this litigation. The United States does not seek to  
27 relitigate any of the merits of plaintiffs' claims, or to introduce new claims into the suit.  
28 The United States seeks only to participate in the ongoing remedial stages of this

lawsuit.” Doc. 1177, United States’ Motion to Intervene, at 2. The United States also made clear that in seeking to participate in proceedings going forward, “[t]he United States does not seek to reopen litigation concerning the scope of defendants’ unconstitutional conduct, but only to participate in proceedings concerning defendants’ compliance with the remedial orders in this case going forward.” *Id.* at 7. While the United States does not seek to inject any new claims into this case, the United States’ Motion to Intervene clearly states that the United States must participate in proceedings concerning the development of any new remedies or orders necessitated by the defendants’ lack of compliance:

The United States must participate in the determination of additional remedies to protect its interests in ensuring that the equal protection violations committed by the defendants are remedied, and that the defendants’ contempt of court in this case does not negatively impact the United States’ enforcement of civil rights laws in similar police misconduct cases throughout the country. The United States has moved to intervene expeditiously and without delay as the need for additional remedies to address the defendants’ contempt of court has become apparent.

*Id.* at 10-11.

The limitations on intervention proposed by the County are unwarranted and inappropriate. First, the County cites no applicable authority for the imposition of limitations on a party’s intervention of right under Rule 24. The County cites only Rule 21, which concerns the *misjoinder* of a party and is inapplicable here. *See* Fed. R. Civ. P. 21. Rule 21 permits a court to “add or drop a party” or to “sever any claim against a party,” *id.*, neither of which the County seeks. As to the authority of a court to order limitations on a party’s intervention of right, it is at best uncertain. *See Cotter v. Mass. Ass’n of Minority Law Enforcement Officers*, 219 F.3d 31, 36 n.2 (1st Cir. 2000) (“The traditional sense was that a court could not impose conditions on an intervention as of right. However, the 1966 Amendment to Federal Rule of Civil Procedure 24(a) may have changed this rule. District courts have frequently imposed such conditions, and courts of appeals have sometimes embraced them, but courts of appeals have commonly reserved

1 the issue, leaving the extent to which such conditions may be imposed unclear.” (internal  
2 citations omitted)); 7C Wright, Miller & Kane, *Federal Practice and Procedure* § 1922  
3 (3d ed. 2015) (noting the lack of express authority for a court to impose conditions on  
4 intervention of right, but opining that conditions are likely to be permitted “[s]o long as  
5 these conditions are reasonable and are of a housekeeping nature” and do not “make  
6 significant inroads on the standing of an intervenor of right”). A court may impose  
7 conditions in granting an application for permissive intervention under Rule 24(b), *see*  
8 *Dep’t of Fair Emp’t & Hous. v. Lucent Technologies, Inc.*, 642 F.3d 728, 741 (9th Cir.  
9 2011), but such conditions would be appropriate only if the court first denies the party’s  
10 motion for intervention of right. *See, e.g., id.* at 740-41. In any event, the limitations  
11 requested by the County here are unnecessary, unwarranted, and inappropriate.

12       The County’s requested limitations are unnecessary here because the United  
13 States’ proffered Complaint in Intervention carefully tracks the issues already determined  
14 by the Court in this case and does not raise any others. *See* Complaint in Intervention,  
15 Doc. 1177-4, Exhibit 4 to the United States’ Motion to Intervene. The County is simply  
16 mistaken in asserting that the United States’ Complaint in Intervention “*does* introduce  
17 claims that have never before been asserted in this litigation, but were asserted, litigated,  
18 and in important respects settled in *US v. Maricopa County*.” Doc. 1218, County’s  
19 Response to the United States’ Motion to Intervene, at 5. For that mistaken assertion, the  
20 County cites the United States’ Complaint in *United States v. Maricopa County, et al.*,  
21 not the United States’ proffered Complaint in Intervention in this case. *See id.* at 5-6.  
22 Because the proffered Complaint in Intervention tracks the issues already determined in  
23 this case, the United States would need to seek further leave of the Court to raise any  
24 other claims, and the Court certainly could consider the representations made in the  
25 United States’ Motion to Intervene in deciding any such motion. The limitations  
26 proposed by the County on the scope of the United States’ intervention are therefore  
27 unnecessary.

1           Additionally, the requested limitations are unwarranted and inappropriate. The  
2 County has requested, for example, that the United States be ordered at the outset to have  
3 “[n]o right to seek, or participate in, any relitigation of the merits of any of the Plaintiffs’  
4 claims herein . . . .” Doc. 1218, County’s Response to the United States’ Motion to  
5 Intervene, at 6. Although the United States will not seek such relitigation, the defendants  
6 may seek such relitigation themselves through an appeal. In the extremely unlikely and  
7 unnecessary event that a relitigation of any of the merits of the Plaintiffs’ claims is  
8 required, the reasons necessitating the United States’ intervention now would still apply:  
9 the need to protect the United States’ interests in ensuring that the violations committed  
10 by the defendants are remedied. *See* Doc. 1177, United States’ Motion to Intervene, at  
11 10-11. A limitation at the outset barring the United States from participating in such  
12 relitigation would therefore be inappropriate.

13           The County’s requested limitations that the United States have “[n]o right to  
14 litigate any claims that were litigated, or could have been litigated, in *US v. Maricopa*  
15 *County*,” and “[n]o right to seek any remedies that were sought, or could have been  
16 sought, in *US v. Maricopa County*,” Doc. 1218, at 6, also would be inappropriate. The  
17 claims decided in this case overlap with the discriminatory policing claims at issue in the  
18 United States’ case, as noted in the United States’ Motion to Intervene. *See* Doc. 1177,  
19 United States’ Motion to Intervene, at 3, 5. Because of the overlap among the  
20 discriminatory policing claims in the two cases, and because all of the remedies  
21 potentially available in this case therefore “could have been sought” in the United States’  
22 case, the County’s requested limitations would bar altogether the United States’  
23 participation in this case.

24           Moreover, the overlap in potentially available remedies is one of the  
25 circumstances that make the United States’ intervention in this case appropriate: it will  
26 allow the United States to obtain a remedy for the discriminatory policing claims on  
27 which the United States already has won summary judgment and thereby obviate the  
28 need for further remedial proceedings in the United States’ case, as explained in the

1 United States' Motion to Intervene. *See* Doc. 1177, United States' Motion to Intervene,  
 2 at 12-13. In this way, the United States' intervention would further the interests of  
 3 judicial economy. To foreclose at the outset the United States' opportunity to "seek any  
 4 remedies that . . . could have been sought" in the United States' case would defeat the  
 5 purpose of allowing the United States to intervene.

6 None of the County's requested limitations on the United States' intervention in  
 7 this case are warranted or appropriate, and they should be rejected.

### 8 CONCLUSION

9 No party to this case opposes the United States' intervention. The United States  
 10 has carefully tailored its Complaint in Intervention to the issues already decided in this  
 11 case. For the reasons stated above, the County's requested limitations on the United  
 12 States' participation in proceedings going forward are unjustified, unnecessary, and  
 13 inappropriate. The United States seeks intervention to participate in proceedings  
 14 concerning the defendants' compliance with the remedial orders, including the  
 15 determination of any additional remedies necessitated by the defendants' failures to  
 16 comply. Accordingly, the United States respectfully requests that the Court grant the  
 17 United States' Motion to Intervene.

18 Respectfully submitted,

19 Mark Kappelhoff  
 20 Deputy Assistant Attorney General  
 21 Civil Rights Division

22 Judy Preston  
 23 Acting Chief, Special Litigation Section

24 Timothy D. Mygatt  
 25 Special Counsel

26 /s/ Edward G. Caspar  
 27 Edward G. Caspar (MA Bar No. 650566)  
 28 Special Counsel  
 Jennifer L. Mondino (NY Bar No. 4141636)  
 Paul Killebrew (LA Bar No. 32176)

1 Puneet Cheema (CA Bar No. 268677)  
2 Matthew J. Donnelly (IL No. 6281308)  
3 Trial Attorneys  
4 U.S. Department of Justice  
5 Civil Rights Division- PHB  
6 950 Pennsylvania Avenue, NW  
7 Washington, D.C. 20530  
8 Tel. (202) 514-2000/Fax (202) 514-6273  
9 edward.g.caspar@usdoj.gov  
10 ATTORNEYS FOR THE UNITED STATES

11 CERTIFICATE OF SERVICE

12 I certify that on or about August 10, 2015, I used the Court's CM/ECF system to  
13 serve a true and correct copy of the foregoing filing on counsel of record.

14 /s/ Edward G. Caspar  
15 EDWARD G. CASPAR  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28