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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 United States of America,

17 Plaintiff-Intervenor,

18 v.

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

22 Defendants.

No. 2:07-cv-02513-GMS

**UNITED STATES' OPPOSITION
TO COUNTY'S MOTION FOR
RECOGNITION OF ITS RIGHTS
AS A PARTY LITIGANT**

23 Maricopa County's ("County") Motion for Recognition of Its Rights as a Party
24 Litigant does not identify any harm to its interests, and it therefore raises no issues on
25 which this Court could grant relief. Instead, the Motion is an effort to re-litigate an issue
26 that the Ninth Circuit and this District Court have already decided numerous times: the
27 legal relationship between the County and the Sheriff.¹ Moreover, the County is already

28 ¹ See *United States v. Maricopa County, Arizona*, No. CV-12-00981-PHX-ROS
("Maricopa"):

1 a party to this litigation and is participating to the extent it wishes to do so, and the Court
2 has not imposed any limits on it. The County's request to be declared a "full-fledged
3 party" is therefore unnecessary and counterproductive, and the Court should deny it.

4 In its motion, the County asks that the Court enter an order stating that "Defendant
5 Maricopa County is a full-fledged party to this proceeding, and has all the rights of other
6 parties hereto." Proposed Order on County's Motion for Recognition at 5 (Aug. 28,
7 2015) (Doc. 1272-3). But the County acknowledges that neither this Court nor the Ninth
8 Circuit has imposed any express or implied limitations on the County's participation as a
9 party litigant in this matter. Defendant Maricopa County, Arizona's Motion for
10 Recognition of its Rights as a Party Litigant at 4-5 (Aug. 28, 2015) ("County's Motion")
11 (Doc. 1272). Nor does the County identify anything it might wish to do as a "full-fledged
12 party" different from what it can do in its current status as a party. The requested relief is
13 confusing and unnecessary, and it should be denied on that basis.

14 While styled as a motion to be given rights as a party litigant, at its core the
15 County's motion attempts to establish the opposite: that it is an inappropriate party to
16 this lawsuit. The substance of this argument has already been considered and rejected by
17 this District Court in *Maricopa* and by the Ninth Circuit in *Melendres v. Arpiao*, 784 F.3d
18 1254 (9th Cir. 2015) ("*Melendres II*"). In *Maricopa*, Judge Silver denied the County's
19 motion to dismiss, holding that "Under Arizona law, the Sheriff has final policymaking
20 authority with respect to County law enforcement and jails, and *the County can be held*
21 *responsible for constitutional violations resulting from these policies.*" See Order,
22 *Maricopa* at 13 (Dec. 12, 2012) (emphasis added) (Doc. 56). Judge Silver then affirmed
23 her decision by denying the County's motion for reconsideration. See Order, *Maricopa*
24 (Jan. 18, 2013) (Doc. 73). Judge Silver reached the same conclusion on the County's
25 motion for summary judgment. See Order, *Maricopa* at 15 (June 15, 2015) (Doc. 379).
26 The County also raised these same arguments in its Petition for Panel Rehearing and
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1 Petition for En Banc Consideration,² which the Ninth Circuit denied. *See* Ex. 4 to
2 County's Motion (Doc. 1272-2). Nevertheless, the County devotes almost half of its
3 motion to reviving the arguments the Ninth Circuit properly rejected and openly
4 criticizing the Ninth Circuit. *See* County's Motion at 6-15 ("the Court of Appeals got it
5 wrong").

6 This Court should not entertain procedural maneuvers that amount to a challenge
7 to the previous decisions of Judge Silver and the Ninth Circuit, let alone create a new
8 type of party designation to do it. The Federal Rules of Appellate Procedure authorized a
9 substitution of the County into this case as a party, and that is what the Ninth Circuit did.
10 *See* Fed. R. App. P. 43 ("If a party needs to be substituted for any reason other than
11 death, the procedure prescribed in Rule 43(a) applies."). The decisions of Judge Silver
12 and the Ninth Circuit have put to rest the idea that the County is not a proper party to this
13 litigation, and this Court should not revisit the matter in response to the County's Motion.

27 ² *See* Defendant Maricopa County's Notice of Filing Petition for Panel Rehearing and En
28 Banc Determination Recently Filed in U.S. Court of Appeals for the Ninth Circuit (May
21, 2015) (Doc. 1116).

1 For the foregoing reasons, the County's Motion for Recognition of Its Rights as a
2 Party Litigant should be denied.

3 Respectfully submitted,

4 Mark Kappelhoff
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6 Civil Rights Division

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8 Special Litigation Section

9 Timothy D. Mygatt, Special Counsel

10 /s/ Cynthia Coe

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CERTIFICATE OF SERVICE

I certify that on September 14, 2015, I used the Court's CM/ECF system to serve a true and correct copy of the foregoing filing on counsel of record.

/s/ Cynthia Coe

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