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

United States of America,

Plaintiff,

CASE NO: CV 10-1413-PHX-SRB

v.

State of Arizona; and Janice K. Brewer,  
Governor of the State of Arizona, in her  
Official Capacity,

Defendants

**RICHARD MACK'S REPLY IN SUPPORT OF HIS MOTION TO  
INTERVENE**

Pursuant to federal rules of civil procedure and this Court's local rules,  
Richard Mack respectfully submits this reply in support of his motion to intervene.

## **I. Mack's Interests are Significant and Protectable**

The United States' opposition memo to Richard Mack's motion to intervene asserts that Mack "does not have a significantly protectable interest in this matter." R.125 at 2. This is simply wrong. Mack has a significantly protectable interest because the US is abusing authority delegated to it by Mack; because the US has violated existing Federal law resulting in direct harm to Mack; and because the US's failure to enforce existing immigration law while simultaneously prohibiting Arizona from enforcing existing immigration law has violated Mack's Constitutional rights to property.

### **A. Standard**

The requirement of a significant protectable interest is satisfied when the interest is protectable under some law and there is a relationship between the legally protected interest and the claims at issue. *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9<sup>th</sup> Cir. 2003).

### **B. Mack's Property Interest**

In its order granting the United States' motion for preliminary injunction this Court described the current situation in Arizona as follows: "Against a backdrop of rampant illegal immigration, escalating drug and human trafficking crimes, and

serious public safety concerns...” R. 78 at 1. Mack’s motion began with the statement that Richard Mack is a citizen of Arizona. R. 122 at 1.

Sheriff Mack lives and owns property in a state that this Court has concluded suffers from rampant illegal immigration, kidnapping for illegal slavery has become common, and drug wars are raging. Because of the problems in Arizona as accurately described by this Court, the standard of living, real property values, economy, and citizen population of Arizona have been plummeting over the past several years. It cannot be reasonably asserted that Mack does not have an interest in his plunging real property values caused by the crimes previously acknowledged by this Court.

### **C. Mack’s Interest in Misuse of His Authority**

All authority held by the Federal government is derived from individual citizens who delegate a portion of their authority to the government. “The powers not *delegated* to the United States by the Constitution, nor prohibited by it to the States, are *reserved* to the States respectively, or to the people.” U.S. Constitution, Amend. X (emphasis added). It is clear from the 10<sup>th</sup> Amendment that individual citizens own all authority, delegate some of that authority to government, and *reserve* the rest to themselves.

It is undeniable that under contract law an individual who delegates authority to another has a protectable legal interest should the other party abuse the

delegated authority. The United States' opposition to Mack's motion essentially argues that the same should not be true where the authority is delegated via the U.S. Constitution. So, according to the United States, private contracts create interests that are superior to interests created by the U.S. Constitution. This is not logically supportable.

Clearly Mack has a legally protectable interest in preventing the executive branch from acting outside of the authority delegated to it by Mack under the U.S. Constitution, as amended by the 10<sup>th</sup> Amendment. This is true because the authority being abused belongs to Mack.

#### **D. Mack's Interest is Not Undifferentiated or Generalized**

This Court's conclusions regarding the current criminal environment in Arizona leads to the undeniable conclusion that every Arizona citizen is being directly harmed by the actions (and failures to act) of the United States. The fact that these harms are wide-spread does not make them undifferentiated. The harms are specific: lower property values and higher personal security costs are just two specific examples of harms experienced by Mack that are likely experienced by most Arizona citizens. The fact that large numbers of people are harmed does not automatically lead to the conclusion that the harm is undifferentiated. The injuries to Arizona citizen's legal interests are specific, AND widespread.

The fact that Mack's protectable interests are interests that are held by most, if not all, Arizona citizens is not a sufficient excuse to refuse Mack access to this Court. Mack's interests are not simply "taxpayer" interests because they are not founded upon an argument that the government is misusing taxpayer funds. Mack's interests arise from violations of the most fundamental rights protected under the constitution: denial of property rights, decreased liberty, denial of the right to self-defense, abuse of authority delegated by Mack. If this Court determines that these interests are too generalized to be protected by our country's legal system, then the judicial branch has abdicated its role as a check on the other branches of government, and the Constitution's protection of these fundamental rights has lost all meaning.

#### **E. Interests Protectable Under Law**

The interests asserted by Mack are protected by the U.S. Constitution, which is the "supreme law of the land." Art. VI.

The interests asserted by Mack are also protected by existing Federal law. As discussed in Mack's motion to intervene, the Department of Homeland Security has actively violated 8 U.S.C. §1373(c): "Regardless of Congress' motives in passing 8 U.S.C. §1373(c), neither DHS nor ICE nor any other administrative agency of the federal government, nor the President himself, has the authority to determine that 'other responsibilities' have higher priority." R. 122 at 6-7.

## II. Mack's Interests are Not Adequately Represented

The United States' opposition memo states that "there is an assumption of adequacy when the government is acting on behalf of a constituency that it represents." R. 125 at 2, quoting *Arakaki*, 324 F.3d 1078, 1086. However, any assumption is overcome where it is negated by undisputed facts. In the instant case this Court accepted an argument from the United States that the executive branch has authority to violate existing immigration law in favor of the executive branches' own priorities.<sup>1</sup> The parties currently represented in the instant action apparently failed to effectively point out to this Court that the executive branch cannot ignore mandates of the legislative branch, no matter how much the executive branch may disagree with the priorities established by Congress. The executive branch has no authority to "establish its own priorities" where those priorities violate Federal law.

This unbelievable outcome conclusively establishes that the parties currently represented in the instant case have not adequately represented Sheriff Mack's interests. This conclusion, based upon undisputed facts, negates any presumptions regarding adequacy of representation.

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<sup>1</sup> "Regardless of Congress' motives in passing 8 U.S.C. §1373(c), neither DHS nor ICE nor any other administrative agency of the federal government, nor the President himself, has the authority to determine that 'other responsibilities' have higher priority." R. 122 at 6-7.

Finally, the United States opposition memo asserts that parties should not be allowed to intervene where their addition will *unnecessarily* complicate the matter at issue. R. 125 at 3, citing *Solid Waste Agency of Northern Cook Cty. V. U.S. Army Corps of Eng'rs.*, 101 F.3d 503, 508 (7<sup>th</sup> Cir. 1996). While this is a correct statement of law, the emphasis in this statement must be placed upon the word “unnecessarily.” Complex matters by themselves are not beyond this Court’s consideration. The question is whether or not the additional complication added by an intervening party is *necessary* to adequately protect his interests. As has been shown in this reply, Sheriff Mack’s interests are not being adequately represented by the parties currently involved in this litigation. Therefore, his intervention is NECESSARY.

### **III. RELIEF SOUGHT**

For the reasons discussed above, the Applicant requests an order allowing Applicant to intervene in the above-named matter and allowing Applicant to file the attached proposed Third-Party Complaint.

Respectfully submitted,

Dated: 10/6/10

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CERTIFICATE OF SERVICE

It is hereby certified that on October 6, 2010, a copy of “Richard Mack’s Reply in Support of His Motion to Intervene” was filed electronically. Notice of this filing will be sent by operation of the Court’s electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court’s electronic filing system.

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