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CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

BY

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11  
12 Attorneys for the United States of America

13  
 14 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

15 SUKHJINDER S. BASRA, )  
 16 )  
 17 Plaintiff, )

18 UNITED STATES OF AMERICA, )  
 19 )  
 20 Applicant for Intervention, )

21 v. )

22 MATTHEW CATE, Secretary of the )  
 23 California Department of Corrections )  
 24 and Rehabilitation, in his official )  
 25 capacity, TERRI GONZALEZ )  
 26 Warden of the California Men's )  
 27 Colony, in her official and individual )  
 capacities, the STATE of )  
 CALIFORNIA, GOVERNOR )  
 28 JERRY BROWN, in his official )

No. CV11-01676 SVW (FMOx)

**COMPLAINT IN  
 INTERVENTION  
 PURSUANT TO THE RELIGIOUS  
 LAND USE AND  
 INSTITUTIONALIZED PERSONS  
 ACT, 42 U.S.C. § 2000cc  
 (CIVIL RIGHTS)**

Judge Stephen V. Wilson

1 capacity, the CALIFORNIA )  
2 DEPARTMENT OF )  
3 CORRECTIONS AND )  
4 REHABILITATION, and the )  
5 CALIFORNIA MEN'S COLONY; )  
6 Defendants. )

7 THE UNITED STATES OF AMERICA, by its undersigned attorneys,  
8 hereby files this Complaint in Intervention and alleges upon information and  
9 belief:

10 **INTRODUCTION**

11 1. The Attorney General files this Complaint on behalf of the United  
12 States, pursuant to the provisions protecting the religious exercise of  
13 institutionalized persons of the Religious Land Use and Institutionalized Persons  
14 Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc, to enjoin the named Defendants  
15 from imposing a substantial burden on the religious exercise of Plaintiff Sukhjinder  
16 S. Basra, an inmate confined to institutions administered by Defendants.

17 2. Plaintiff Basra is a lifelong practitioner of Sikhism. A fundamental  
18 requirement of the Sikh faith is that its practitioners maintain their hair, including  
19 facial hair, unshorn. The practice of maintaining one's hair unshorn, or *Kesh*,  
20 signifies respect for the will of God, and is required for a Sikh to be considered  
21 pure. Cutting one's hair or beard is therefore a grave violation of Sikh religious  
22 beliefs. Pursuant to his sincerely held religious beliefs, Mr. Basra has always  
23 maintained his hair and beard uncut and unshaved.

24 3. CDCR policy prohibits facial hair longer than one-half inch, without  
25 providing any exception for those whose religious practices forbid cutting facial or  
26 other bodily hair.

27 4. Defendants have enforced this grooming policy against Mr. Basra,  
28 repeatedly subjecting him to progressively more severe disciplinary sanctions,

1 without any compelling government reason. By enforcing their grooming policy,  
2 Defendants compel Mr. Basra to either cut his beard and violate a central tenet of  
3 his religion or suffer increasingly severe penalties, including the deprivation of  
4 privileges and the risk of longer confinement in prison, in violation of Mr. Basra's  
5 RLUIPA rights.

6 **JURISDICTION, STANDING, AND VENUE**

7 5. This Court has jurisdiction over this action pursuant to 28 U.S.C.  
8 §§ 1331 and 1345.

9 6. The United States is authorized to initiate this action pursuant to  
10 42 U.S.C. § 2000cc-2(f).

11 7. Declaratory and injunctive relief is sought as authorized by 42 U.S.C.  
12 § 2000cc-2(f).

13 8. Venue in the United States District Court for the Central District of  
14 California is proper pursuant to 28 U.S.C. § 1391.

15 **DEFENDANTS**

16 9. Defendant the State of California ("State") operates, or contracts for  
17 the operation of, all State jails, prisons, and other correctional facilities.

18 10. Defendant Jerry Brown is the Governor of the State of California and,  
19 in this capacity, heads the executive branch of the State's government. The  
20 Governor of California, as chief of the executive branch, has the duty to ensure that  
21 the departments that compose the executive branch of the State's government  
22 protect the federal statutory rights of all of the citizens of the State, including  
23 inmates confined in State jails, prisons, and other correctional facilities.

24 11. Defendant the California Department of Corrections and  
25 Rehabilitation ("CDCR") operates all State adult prisons on behalf of the State;  
26 establishes policy to be followed by its institutions and contractors; and is  
27 responsible for the promulgation of all rules and regulations necessary and  
28 appropriate to the administration and operation of its institutions.



1  
2 **Plaintiff Basra**

3           20. Plaintiff Sukhjinder S. Basra is a person residing in or confined to an  
4 institution within the meaning of 42 U.S.C. § 2000cc.

5           21. The CDCR initially incarcerated Mr. Basra at the Pleasant Valley  
6 State Prison (“PVSP”), where he lived in a locked, two-man cell. After one year of  
7 discipline-free incarceration at PVSP, the CDCR transferred Mr. Basra to the  
8 minimum security facility within the CMC on or about February 26, 2010.  
9 Mr. Basra currently remains incarcerated at the CMC, where he lives in an  
10 unlocked, 90-person dormitory room.

11           22. Mr. Basra has practiced the Sikh faith his entire life. The most  
12 important outward symbol demonstrating one’s adherence to Sikhism is *Kesh*, the  
13 practice of allowing one’s hair, including facial hair, to grow naturally out of  
14 respect for God’s creation.

15           23. Pursuant to Mr. Basra’s faith, he believes that cutting his hair or beard  
16 would be a grievous sin. Historically, some followers of Sikhism have been  
17 willing to be punished by death rather than cut their hair or beards.

18           24. In accordance with this fundamental requirement of Sikhism,  
19 Mr. Basra maintains his hair and beard uncut and unshaved, and has done so  
20 throughout his entire life.

21 **CDCR’s Grooming Policy**

22           25. Defendants have promulgated a comprehensive grooming policy  
23 regulating inmates’ hair length and styles. This policy is set out in title 15, section  
24 3062 of the California Code of Regulations, entitled “Inmate Grooming  
25 Standards,” which provides that “[f]acial hair, including short beards, mustaches,  
26 and sideburns are permitted for male inmates and shall not extend more than one-  
27 half inch in length outward from the face.” Cal. Code Regs. tit. 15 § 3062(h).  
28

1           26. Pursuant to section 3062, an inmate who fails to comply with the  
2 Inmate Grooming Standards may be deemed a “program failure” and may be  
3 “subject to progressive discipline and classification committee review for  
4 appropriate housing and program placement.” Cal. Code Regs. tit. 15 § 3062(m).

5  
6           27. Section 3000 defines a “program failure” as:

7           [A]ny inmate who generates a significant disciplinary history  
8 within the last 180 days from the current date. A guilty finding  
9 for two serious Rules Violation Reports or one serious and two  
10 administrative Rules Violation Reports within that 180 day time  
11 period is reasonable evidence of a significant disciplinary  
12 history and may be considered a program failure.

13  
14           Cal. Code Regs. tit. 15 § 3000.

15           28. The Federal Bureau of Prisons does not place any limitations on  
16 inmates’ beard length throughout its facilities. *See* Program Statement 5230.05,  
17 Nov. 4, 1996 (Grooming).

18 **Defendant’s Unlawful Actions**

19           29. Defendants have unlawfully imposed, and continue to impose, a  
20 substantial burden on Plaintiff Basra’s religious exercise by disciplining him for  
21 failing to cut his beard to a length of one-half inch or less.

22           30. Defendants incarcerated Mr. Basra in a more restrictive setting at  
23 PVSP. Despite the increased restrictions, Mr. Basra maintained his unshorn beard  
24 in accordance with his Sikh faith during his incarceration at PVSP. During this  
25 time, Defendants never instructed Mr. Basra to cut his beard nor warned Mr. Basra  
26 that he was violating any law or policy by maintaining his beard at longer than  
27 one-half of an inch. Defendants never disciplined Mr. Basra for any infraction  
28 during his time at PVSP.

1           31.    When Mr. Basra first entered the CDCR through the inmate reception  
2 center, correctional officers instructed him to run his fingers through his beard.  
3 Since then, however, no CMC employee has ever searched his beard or asked  
4 Mr. Basra to search it by running his fingers through his beard in front of them.  
5 No CMC employee has ever accused Mr. Basra of hiding any contraband in his  
6 beard. No correctional officer has ever physically manipulated Mr. Basra's beard,  
7 run a metal detection wand over it, or asked Mr. Basra to part his beard or run his  
8 fingers through it in front of them, for any reason.

9           32.    During the initial portion of his confinement at the CMC, Defendants  
10 never instructed Mr. Basra to cut his beard nor warned Mr. Basra that he was  
11 violating any law or policy by maintaining his beard at longer than one-half of an  
12 inch.

13           33.    Beginning in March 2010, however, Defendants began disciplining  
14 Mr. Basra for maintaining his beard at longer than one-half inch in length. Since  
15 that time, Defendants have subjected Mr. Basra to progressively more severe  
16 disciplinary actions for failing to comply with the grooming policy, despite the fact  
17 that according to Mr. Basra's religion, doing would be a grievous sin.

18           34.    On April 3, 2010, a CMC correctional officer issued Mr. Basra an  
19 administrative Rules Violation Report ("RVR") for violating section 3062(h), the  
20 "Inmate Grooming Standards," for having a beard longer than one-half inch on  
21 March 29, 2010. At the administrative hearing on April 5, 2010, Mr. Basra pled  
22 not guilty and informed the hearing official that he is unable comply with the  
23 grooming standard because it conflicts with his religious beliefs. The hearing  
24 official found Mr. Basra guilty of the violation, assessed him 40 hours of extra  
25 duty, counseled and reprimanded him. Mr. Basra appealed the charge through all  
26 three levels of administrative review, arguing that the disciplinary action  
27 substantially burdened his religious exercise. All of his appeals were denied and,  
28

1 on July 19, 2010, the Inmate Appeals Branch informed Mr. Basra that he had  
2 exhausted his administrative remedies.

3 35. On April 30, 2010, a CMC correctional officer issued Mr. Basra a  
4 second administrative RVR for violating section 3062(h) by having a beard longer  
5 than one-half inch on April 24, 2010. At the hearing on May 3, 2010, Mr. Basra  
6 pled not guilty and informed the hearing official that cutting his beard would  
7 violate a fundamental tenet of his religion. The hearing official found Mr. Basra  
8 guilty of the charge, assessed him 10 hours of extra duty (suspended pending 30  
9 days of disciplinary free conduct), counseled and reprimanded him. Mr. Basra  
10 appealed the charge through all three levels of administrative review, arguing in  
11 part that the grooming policy as applied to him violates RLUIPA. All of his  
12 appeals were denied and, on July 19, 2010, the Inmate Appeals Branch informed  
13 Mr. Basra that he had exhausted his administrative remedies.

14 36. On June 28, 2010, a CMC correctional officer issued Mr. Basra a third  
15 RVR for violating section 3062(h) by having a beard longer than one-half inch on  
16 June 28, 2010. This time, the RVR was classified as "serious." At the hearing on  
17 July 10, 2010, Mr. Basra pled not guilty, and informed the Senior Hearing Official  
18 that his unshorn beard is a central part of his religious beliefs. The Senior Hearing  
19 Official found Mr. Basra guilty, assessed him 40 hours of extra duty, 30 days of  
20 disciplinary credit forfeiture, and 10 days confinement to quarters. The Senior  
21 Hearing Official also referred Mr. Basra to the Unit Classification Committee with  
22 a recommendation of review for program failure and temporarily modified Mr.  
23 Basra's privileges for a period of 90 days. During this 90 day period, Mr.  
24 Basra was denied family visits; limited to one-fourth of the maximum canteen  
25 draw; allowed telephone calls only on an emergency basis; denied access to the  
26 yard and other recreational activities; denied accrual of excused time off; denied  
27 special and quarterly packages; and denied special canteen purchases. Mr. Basra  
28 appealed the charge through all three levels of administrative review. More than

1 60 working days have passed since the CDCR Appeals Chief received Mr. Basra's  
2 third level appeal, and Mr. Basra has therefore exhausted his administrative  
3 remedies.

4 37. On July 19, 2010, Mr. Basra submitted to Defendant Gonzalez a  
5 request that the CDCR exempt him from the grooming policy and allow him to  
6 maintain his beard untrimmed. In this exemption request, he informed the warden  
7 that maintaining unshorn facial hair is part of his religious belief and practice. In a  
8 letter dated July 28, 2010, the CDCR denied Mr. Basra's request, stating in  
9 pertinent part:

10 [Y]ou are not being discriminated against, as you allude to in your  
11 letter . . . . You are being treated the same as the other inmates at  
12 CMC . . . . You may have a beard, but you must keep it trimmed to no  
13 more than one-half inch in length. There is no provision in the CCR,  
14 Title 15 for the Warden to exempt the grooming standards.

15 38. Other than the disciplinary action that Mr. Basra has suffered as a  
16 result of his desire to practice his religion by maintaining an unshorn beard,  
17 Mr. Basra has an exemplary prison disciplinary record.

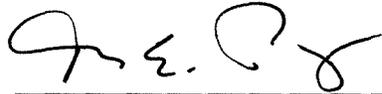
18 39. Mr. Basra's ability to maintain his privileges at the CMC and to avoid  
19 transfer to a more restrictive and/or higher security setting depends largely upon  
20 Mr. Basra's continued good behavior and lack of CDCR discipline. Each time that  
21 Mr. Basra is disciplined, he receives a number of "points." As these points accrue,  
22 they affect his classification and may cause the CDCR to transfer him to a higher  
23 level security unit.

24 **VIOLATIONS ALLEGED**

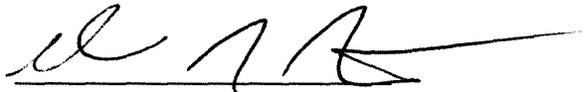
25 40. The United States incorporates by reference the allegations set forth in  
26 Paragraphs 17 through 39 as if fully set forth herein.



Respectfully submitted,



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CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

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 22 **UNITED STATES DISTRICT COURT**  
 23 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

24 SUKHJINDER S. BASRA,	)	
	)	No. 2:11-cv-01676 SVW (FMOx)
25 Plaintiff,	)	
	)	NOTICE OF UNITED STATES'
26 UNITED STATES OF AMERICA,	)	MOTION TO INTERVENE
	)	PURSUANT TO THE
27	)	
28	)	

1 Applicant for Intervention, )  
2 v. )  
3 CATE, *et al.*; )  
4 Defendants. )  
5 \_\_\_\_\_ )

RELIGIOUS LAND USE AND  
INSTITUTIONALIZED PERSONS  
ACT, 42 U.S.C. § 2000cc  
(CIVIL RIGHTS)  
  
Date: April 25, 2011  
Time: 1:30 p.m.  
Courtroom: 6  
The Honorable Stephen V. Wilson

6  
7  
8  
9 **NOTICE OF MOTION TO INTERVENE**

10  
11 To: Attorney General  
12 State of California  
13 Office of the Attorney General  
14 1300 "I" Street  
15 Sacramento, CA 95814-2919

16 YOU ARE HEREBY NOTIFIED that on April 25, 2011, at the United  
17 States District Courthouse, 312 North Spring Street, Los Angeles, CA 90012, at  
18 1:30 p.m., or as soon thereafter as the United States of America may be heard, the  
19 Government will move this Honorable Court for an Order in accordance with the  
20 attached Motion to Intervene.

21 This Motion is made following the conference of counsel pursuant to Local  
22 Rule 7-3 which took place on March 8, 2011.

23 Respectfully submitted,  
  
24  
25 s/ Thomas E. Perez  
26 THOMAS E. PEREZ  
27 Assistant Attorney General  
28 Civil Rights Division  
  
s/ Samuel R. Bagenstos

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2 **CERTIFICATE OF SERVICE**

3 I certify that the foregoing Notice of United States' Motion to Intervene was  
4 served on March 15, 2011, to the following individuals:

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6 Through the electronic filing service:

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9 Jonathan M. Gordon  
10 Leib Mitchell Lerner  
11 Alston & Bird LLP

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13 Peter J. Eliasberg  
14 ACLU Foundation of Southern California

15  
16 Daniel Mach  
17 American Civil Liberties Union,  
18 Program on Freedom of Religion and Belief

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20 Harsimram Kaur Dang  
21 The Sikh Coalition  
22 Attorneys for Plaintiff

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24 By U.S. Mail:

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Defendants

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22 **UNITED STATES DISTRICT COURT**  
 23 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

24 SUKHJINDER S. BASRA, )  
 25 )  
 26 Plaintiff, )  
 27 UNITED STATES OF AMERICA, )  
 28 )

No. 2:11-cv-01676 SVW (FMOx)

UNITED STATES' MOTION TO  
INTERVENE PURSUANT TO THE  
RELIGIOUS LAND USE AND

1	Applicant for Intervention,	)	INSTITUTIONALIZED PERSONS
		)	42 U.S.C. § 2000cc
2	v.	)	(CIVIL RIGHTS)
3	CATE, <i>et al.</i> ,	)	
4		)	Date: April 25, 2011
		)	Time: 1:30 p.m.
5	Defendants.	)	Courtroom: 6
6		)	The Judge Stephen V. Wilson

**UNITED STATES' MOTION TO INTERVENE**

The United States of America, by and through its undersigned counsel, pursuant to Rule 24, Federal Rules of Civil Procedure, moves this Honorable Court to intervene in the above styled case, to wit, *Basra v. Cate*, No. CV11-01676 SVW (FMOx) (C.D. Cal., filed Feb. 25, 2011). In support, the United States submits that:

1. Plaintiff Basra has asserted a claim under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc.
2. RLUIPA grants the United States the authority to intervene in or bring an action for injunctive or declaratory relief to enforce RLUIPA. 42 U.S.C. § 2000cc-2(f).
3. The United States moves this Court for intervention of right, pursuant to Rule 24(a)(2), and alternatively for permissive intervention, pursuant to Rule 24(b).
4. Pursuant to Local Civil Rule 7-5(b), the United States submits a Memorandum of Points and Authorities in Support of United States' Motion to Intervene.
5. The United States has attached a Complaint in Intervention, pursuant to Rule 24(c).



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s/ Jonathan M. Smith  
Chief  
Special Litigation Section

s/ Timothy D. Mygatt  
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s/ Emily A. Gunston  
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**CERTIFICATE OF SERVICE**

I certify that the foregoing Motion to Intervene was served on March 15, 2011, to the following individuals:

Through the electronic filing service:

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Alston & Bird LLP

Peter J. Eliasberg  
ACLU Foundation of Southern California

Daniel Mach  
American Civil Liberties Union,  
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The Sikh Coalition  
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Defendants

FILED

2011 MAR 15 PM 2:45

CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT CALIF.  
LOS ANGELES

BY \_\_\_\_\_

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22 **UNITED STATES DISTRICT COURT**  
 23 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

24 SUKHJINDER S. BASRA, )  
 25 ) No. 2:11-cv-01676 SVW (FMOx)  
 26 Plaintiff, )  
 ) MEMORANDUM OF POINTS AND  
 27 UNITED STATES OF AMERICA, ) AUTHORITIES IN SUPPORT OF  
 28 ) UNITED STATES' MOTION TO



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## I. INTRODUCTION

The United States of America is authorized by the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc, to intervene or bring an action to enforce compliance with that statute, but seeks to intervene in the present action in the interests of judicial economy. 42 U.S.C. § 2000cc-2(f). Accordingly, the United States of America, by and through its undersigned counsel, submits this Memorandum of Points and Authorities in support of its Motion to Intervene in the matter of *Basra v. Cate, et al.*, No. 2:11-cv-01676 SVW (FMOx) (C.D. Cal., filed Feb. 25, 2011). Plaintiff Basra, a prison inmate under the control of Defendants, has asserted a claim under RLUIPA alleging that Defendants are violating his right to maintain his beard unshorn in accordance with the dictates of his Sikh faith. For the reasons that follow, the United States respectfully requests this Court to grant its Motion to Intervene, permit the United States to bring its own claim to enforce compliance with RLUIPA, and permit the United States to participate in any preliminary injunction hearing.

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## II. FACTUAL BACKGROUND AND STATEMENT OF THE CASE

Plaintiff Sukhjinder S. Basra is a lifelong practitioner of the Sikh faith. Pursuant to his sincerely held religious beliefs, Mr. Basra maintains his hair and beard uncut and unshaved. A fundamental requirement of Sikhism is that its practitioners maintain their hair, including facial hair, unshorn. In the Sikh faith, trimming one’s hair or beard is a grave violation. The practice of maintaining one’s hair unshorn, or *Kesh*, signifies respect for the will of God. Compelling a Sikh to cut his hair or trim his beard forces him to violate a central tenet of his religion. U.S. Complaint, *Basra v. Cate*, No. 2:11-cv-01676 SVW (FMOx) (C.D. Cal.) ¶¶ 22-24 (hereinafter “U.S. Compl.”). By requiring Mr. Basra to cut his beard, Defendants compel him to violate his religious beliefs in contravention of federal law.

1 Mr. Basra is currently in the custody of the California Department of  
2 Corrections and Rehabilitation (“CDCR”), which initially placed him at the  
3 Pleasant Valley State Prison (“PVSP”), where he lived in a locked, two-man cell.  
4 After one year of discipline-free incarceration at PVSP, the CDCR transferred  
5 Mr. Basra to the minimum security facility at the California Men’s Colony  
6 (“CMC”) on or about February 26, 2010. *Id.* ¶ 21. He lives there in an unlocked,  
7 90-person dormitory room. *Id.*

8 Mr. Basra suffered no disciplinary action for the entire time the CDCR  
9 incarcerated him at PVSP, despite the fact that Mr. Basra practiced his religion by  
10 maintaining an unshorn beard. *Id.* ¶ 30. Once in a lower-security setting at the  
11 CMC, however, the CDCR began disciplining Mr. Basra for maintaining his beard  
12 at longer than one-half inch in length. *Id.* ¶¶ 21, 33. Since that time, Defendants  
13 have subjected Mr. Basra to progressively more severe disciplinary actions for  
14 failing to comply with their grooming policy, in violation of Mr. Basra’s rights. *Id.*  
15 ¶ 33. Accordingly, on February 25, 2011, Mr. Basra filed this lawsuit. *See*  
16 Complaint, *Basra v. Cate*, No. 2:11-cv-01676 SVW (FMO) (C.D. Cal. Feb. 25,  
17 2011), ECF No. 1. On March 3, 2011, Mr. Basra filed a motion for a preliminary  
18 injunction. Mot. for Prelim. Inj., *Basra v. Cate*, No. 2:11-cv-01676 SVW (FMO)  
19 (C.D. Cal. Mar. 3, 2011), ECF No. 7.

20 The United States opened an investigation regarding these same allegations  
21 on August 12, 2010. Pursuant to Fed. R. Civ. P. 24, the United States now moves  
22 this Court for an order granting intervention to assert its own claim to enforce  
23 compliance with RLUIPA.<sup>1</sup> RLUIPA gives the United States jurisdiction to

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24 <sup>1</sup> Pursuant to Rule 24(c), the United States has attached its proposed Complaint in  
25 Intervention, which sets out the claim for which intervention is sought, and names  
26 the State, Governor, the CDCR, and the CMC as additional defendants. These  
27 additional defendants are the appropriate defendants to a RLUIPA claim, as  
28 RLUIPA provides that no “government” shall impose a substantial burden on an  
inmate’s religious practice. 42 U.S.C. § 2000cc-1(a). Pursuant to Rule 20(a)(2),

1 enforce that statute by instituting or intervening in an action to seek injunctive or  
2 declaratory relief. 42 U.S.C. § 2000cc-2(f). As RLUIPA charges the United States  
3 with the statute's enforcement, the United States seeks intervention to protect the  
4 public's interests in Mr. Basra's RLUIPA rights, the correct application of  
5 RLUIPA to the CDCR generally, and the uniform interpretation and application of  
6 RLUIPA nationally.

### 7 8 **III. APPLICABLE LEGAL STANDARDS**

#### 9 **A. RLUIPA**

10 RLUIPA provides that no state or locally-owned institution, including  
11 correctional facilities, "shall impose a substantial burden on the religious exercise  
12 of a [resident]." 42 U.S.C. § 2000cc-1(a). This prohibition includes a substantial  
13 burden on religious exercise resulting from a rule of general applicability. *Id.*  
14 "Religious exercise" is defined to include "any exercise of religion, whether or not  
15 compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-  
16 5(7)(A).

17 To overcome this prohibition on religious burdens, a government must  
18 demonstrate that the burden is: (1) "in furtherance of a compelling governmental  
19 interest;" and (2) "the least restrictive means of furthering that compelling  
20 governmental interest." 42 U.S.C. § 2000cc-1(a).

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24 joinder of these defendants is proper because the right to relief asserted against  
25 them arises out of the same transaction or occurrence, or series of transactions of  
26 occurrences, namely their imposition of a substantial burden on Mr. Basra by  
27 compelling him to cut his beard in violation of his religious beliefs and practices,  
28 and the RLUIPA claim presents a question of law or fact common to all  
defendants.

1 RLUIPA gives the United States jurisdiction to enforce § 2000cc-1 by  
2 instituting or intervening in an action for injunctive or declaratory relief. 42 U.S.C.  
3 § 2000cc-2(f).

4  
5 **B. Intervention Pursuant to Rule 24**

6 Rule 24 of the Federal Rules of Civil Procedure controls intervention,  
7 providing for “Intervention of Right” and “Permissive Intervention”:

8 **(a) Intervention of Right.** On timely motion, the court must permit  
9 anyone to intervene who: . . .

10 (2) claims an interest relating to the property or transaction that  
11 is the subject of the action, and is so situated that disposing of  
12 the action may as a practical matter impair or impede the  
13 movant’s ability to protect its interest, unless existing parties  
14 adequately represent that interest.

15 **(b) Permissive Intervention.** . . .

16 (2) **By a Government Officer or Agency.** On timely motion,  
17 the court may permit a federal . . . governmental officer or  
18 agency to intervene if a party’s claim or defense is based on:

19 (A) a statute or executive order administered by the  
20 officer or agency . . .

21 (3) **Delay or Prejudice.** In exercising its discretion, the court must  
22 consider whether the intervention will unduly delay or prejudice the  
23 adjudication of the original parties’ rights.  
24

25 Fed. R. Civ. P. 24.  
26  
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1 **IV. ARGUMENT**

2 This Court should grant the United States' Motion to Intervene because the  
3 United States satisfies both the requirements to intervene as of right and for  
4 permissive intervention. First, this Court should permit the United States to  
5 intervene as of right because (1) the United States has timely filed its Motion to  
6 Intervene; (2) it has a significant, legally protectable interest in the proceedings; (3)  
7 that interest may be impaired by the disposition of the case; and (4) the existing  
8 parties will not adequately protect its interest in the proper and uniform  
9 enforcement of RLUIPA. In the alternative, this Court should grant the United  
10 States' Motion to Intervene under Federal Rule of Civil Procedure 24(b) because  
11 its motion is timely, it is a governmental agency charged with enforcing the statute  
12 on which Plaintiff's claim is based, and it will not unduly delay or prejudice the  
13 adjudication of the case.

14 **A. The United States Is Entitled to Intervention of Right**

15 When analyzing a motion to intervene as of right under Federal Rule of Civil  
16 Procedure 24(a)(2), the Ninth Circuit applies a four-part test:

17 (1) the motion must be timely; (2) the applicant must claim a  
18 "significantly protectable" interest relating to the property or  
19 transaction which is the subject of the action; (3) the applicant  
20 must be so situated that the disposition of the action may as a  
21 practical matter impair or impede its ability to protect that  
22 interest; and (4) the applicant's interest must be inadequately  
23 represented by the parties to the action.

24 *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011);  
25 *United States v. Aerojet Gen. Corp.*, 606 F.3d 1142, 1147 (9th Cir. 2010). Courts  
26 construe Rule 24(a) "liberally in favor of potential intervenors." *Sw. Ctr. for*  
27 *Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001); *see also Scotts*  
28 *Valley Band of Pomo Indians of Sugar Bowl Rancheria v. United States*, 921 F.2d

1 924, 926 (9th Cir. 1990). The United States' application for intervention as of  
2 right satisfies all four requirements.

### 3 **1. The United States' Motion for Intervention Is Timely**

4 To determine whether a motion for intervention is timely, the Ninth Circuit  
5 considers three factors: "(1) the stage of the proceeding at which the applicant  
6 seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and  
7 length of the delay." *Smith v. Marsh*, 194 F.3d 1045, 1050 (9th Cir. 1999).

8 Whether an application is timely is left to the Court's discretion. *Dilks v. Aloha*  
9 *Airlines*, 642 F.2d 1155, 1156 (9th Cir. 1981). For intervention of right, "the  
10 timeliness requirement for intervention . . . should be treated more leniently than  
11 for permissive intervention because of the likelihood of more serious harm."  
12 *United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984).

13 Here, the United States' application is timely. The litigation is in the earliest  
14 stages: Plaintiffs filed their complaint just over two weeks ago, and a preliminary  
15 injunction motion just over one week ago. Defendants have yet to file a responsive  
16 pleading or motion, and discovery has not begun. *See Arakaki v. Cavetano*, 324  
17 F.3d 1078, 1084 (9th Cir. 2003) (motion to intervene timely when filed three  
18 weeks after plaintiffs' complaint); *Nw. Forest Res. Council v. Glickman*, 82 F.3d  
19 825, 837 (9th Cir. 1996) (motion to intervene timely when filed less than one week  
20 after plaintiff filed its claim, before defendant filed an answer, and before any  
21 proceedings had taken place); *cf. Smith*, 194 F.3d at 1050-51 (motion to intervene  
22 untimely when filed 15 months after complaint, and court had ruled on summary  
23 judgment motion, and set discovery deadlines and trial date); *League of United*  
24 *Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1303 (9th Cir. 1997) (motion to  
25 intervene untimely when filed 27 months after complaint, court had issued  
26 preliminary injunction, four other parties had successfully intervened, defendant  
27 had filed answer, and court issued order on motion for summary judgment).

1 Granting the instant motion at this early stage will not cause any significant  
2 delay in the proceedings nor require this Court to revisit any settled issues. It will  
3 thus not cause any prejudice to the parties. *Nw. Forest Res. Council*, 82 F.3d at  
4 837 (no prejudice when motion to intervene filed before district court had made  
5 any substantive rulings). Finally, the length of and reason for any delay supports  
6 the United States' intervention, as the United States has moved expeditiously to  
7 intervene within just over a week following Plaintiff's filing of the complaint. *See*  
8 *Arakaki*, 324 F.3d at 1084; *Utica Mut. Ins. Co. v. Hamilton Supply Co.*, No. C 06-  
9 07846 SI, 2007 WL 3256485, at \*3 (N.D. Cal. Nov. 5, 2007) (motion to intervene  
10 timely when filed two months after receiving actual notice of lawsuit).

## 11 **2. The United States Has a Protectable Interest**

12 The United States has a significantly protectable interest under Rule 24  
13 because it has a right to bring a claim to protect Mr. Basra's religious exercise  
14 pursuant to RLUIPA, and because it has an interest in the uniform application of  
15 RLUIPA nationally. After timeliness, intervention of right requires that the United  
16 States have a significantly protectable interest. "An applicant for intervention has  
17 a significantly protectable interest if the interest is protected by law and there is a  
18 relationship between the legally protected interest and the plaintiff's claims."  
19 *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004). The  
20 United States satisfies this requirement because: (1) it has an interest in its own  
21 enforcement of Mr. Basra's RLUIPA rights, as well as the correct application of  
22 RLUIPA to the CDCR generally, and the uniform application of RLUIPA  
23 nationally; (2) these interests are protected by RLUIPA, the same statutory basis  
24 for the claim asserted by Mr. Basra; and (3) these interests relate to the same  
25 factual circumstances as Mr. Basra's RLUIPA claim.

26 Regarding an interest protected by law, RLUIPA grants the United States  
27 the authority to bring suit to enforce compliance with that statute. 42 U.S.C.  
28

1 2000cc-2(f). Accordingly, the United States has an enforcement interest in any  
2 violation of Mr. Basra's RLUIPA rights. Indeed, the United States has an open  
3 investigation into these same allegations. Additionally, this enforcement authority  
4 gives the United States an overarching interest in the correct application of  
5 RLUIPA to the CDCR generally, and in the uniform application of RLUIPA  
6 nationally.

7 The United States therefore has a significantly protectable interest in  
8 Mr. Basra's RLUIPA lawsuit because its interest is "protected by the statute under  
9 which the litigation is brought." *Arakaki*, 324 F.3d at 1085 (citing *Sierra Club v.*  
10 *E.P.A.*, 995 F.2d 1478, 1484 (9th Cir. 1993) ("We ordinarily do not require that a  
11 prospective intervenor show that the interest he asserts is one that is protected by  
12 the statute under which the litigation is brought. It is generally enough that the  
13 interest is protectable under some law, and that there is a relationship between the  
14 legally protected interest and the claims at issue.")). Even without this "interest  
15 protected by the statute under which the litigation is brought," the United States  
16 has a protectable interest in the terms and scope of any injunctive relief granted by  
17 this Court because of its enforcement authority under RLUIPA. *See United States*  
18 *v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (finding party had  
19 protectable interest in the parameters of an injunctive remedy).

20 Regarding the relationship between the United States' interest and  
21 Mr. Basra's claim, our interest obviously "relate[s] to the underlying subject matter  
22 of the litigation," *Alisal Water Corp.*, 370 F.3d at 920, because the United States  
23 bases its RLUIPA claim both on the facts asserted by Mr. Basra and its own  
24 investigation of those same factual circumstances.

25 As the United States' claim proceeds under the same statute and involves the  
26 same facts as Mr. Basra's RLUIPA claim, this Court should find that the United  
27 States satisfies the "protectable interest" requirement.

1           **3. This Case Will Impair the United States' Ability To Protect Its**  
2           **Interest**

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4           The next intervention of right requirement asks whether Mr. Basra's lawsuit  
5 may, as a practical matter, impair or impede the United States' ability to protect its  
6 interest. While the United States has an interest in Mr. Basra's particular RLUIPA  
7 claim, it has additional interests in the correct application of RLUIPA to the CDCR  
8 generally, and in the uniform application of RLUIPA nationally. An unfavorable  
9 ruling could preclude factual and legal arguments in any future RLUIPA cases  
10 against Defendants. Ninth Circuit law holds that the practical preclusive effect of a  
11 proceeding on future litigation satisfies the requirement that the lawsuit impair the  
12 ability of a prospective intervenor to protect its interest. *See United States v.*  
13 *Oregon*, 839 F.2d 635, 638 (9th Cir. 1988) (finding state mental health facility  
14 residents had right to intervene in United States' action challenging facility  
15 conditions, because factual and legal determinations regarding facility conditions  
16 would have persuasive stare decisis effect in subsequent litigation by residents);  
17 *Smith v. Pangilinan*, 651 F.2d 1320, 1324-25 (9th Cir. 1981) (finding Attorney  
18 General, charged with administering immigration, had protected interest in  
19 construction and application of immigration law, and that Attorney General had  
20 right to intervene because of a possible stare decisis impairment); *AB v. Rhinebeck*  
21 *Central School Dist.*, 224 F.R.D. 144, 157 (S.D.N.Y. 2004) (granting intervention  
22 of right to United States to protect its interest in preventing adverse judgment that  
23 could interfere with United States' ability to enforce Title IX). Thus, the United  
24 States satisfies the impairment of ability to protect its interest requirement.

1                   **4. The Existing Parties Will Provide Inadequate Representation**  
2                   **of the United States' Interest**

3                   The existing parties to this lawsuit do not represent the United States'  
4 interests adequately, satisfying the final requirement for intervention as of right.  
5 The burden of establishing inadequacy of representation is "minimal." *Trbovich v.*  
6 *United Mine Workers*, 404 U.S. 528, 538 n.10, 92 S. Ct. 630, 30 L. Ed. 2d 686  
7 (1972); *see also Arakaki*, 324 F.3d at 1086 (quoting *Trbovich*, 404 U.S. at 538  
8 n.10). Moreover, an applicant need not demonstrate with certainty that the  
9 existing parties will inadequately represent its interests, only that such  
10 representation "may be" inadequate. *Arakaki*, 324 F.3d at 1086 (quoting *Trbovich*,  
11 404 U.S. at 538 n.10) (internal quotation marks omitted); *City of Los Angeles*, 288  
12 F.3d at 398. To determine whether the existing parties may provide inadequate  
13 representation, this Court should consider whether: (1) "the interests of a present  
14 party to the suit are such that it will undoubtedly make all of the intervenor's  
15 arguments;" (2) "the present party is capable of and willing to make such  
16 arguments;" and (3) "the intervenor would offer any necessary elements to the  
17 proceedings that other parties would neglect." *Nw. Forest Res. Council*, 82 F.3d at  
18 838 (citations omitted). Given the United States' additional interests in the  
19 application of RLUIPA, the United States satisfies the inadequate representation  
20 element.

21                   As stated above, the United States' interests go beyond Mr. Basra's  
22 individual interest in his religious exercise, to the correct application of RLUIPA to  
23 the CDCR generally and the uniform application of RLUIPA nationally. Thus, Mr.  
24 Basra may not make all of the United States' arguments for the application of  
25 RLUIPA because our interests are "not identical." *C.S. ex rel. Struble v.*  
26 *California Dep't of Educ.*, No. 08cv226, 2008 WL 962159, at \*\*4-5 (S.D. Cal.  
27 Apr. 8, 2008) (finding that party would not "undoubtedly make all of" intervenor's  
28 arguments, because their interests were "not identical"). Nor does the United

1 States have the “same ultimate objective,” because the United States is not merely  
2 interested in protecting Mr. Basra’s rights, but is also interested in ensuring that the  
3 correct standard is applied generally. *Wilson*, 131 F.3d at 1305 (finding  
4 presumption of adequate representation exists if the parties have the “same  
5 ultimate objective”).

6 The case law concerning private parties attempting to intervene in  
7 government lawsuits provides an additional basis for determining that Mr. Basra  
8 will not adequately represent the United States’ interests. There is a presumption  
9 that a government entity will adequately represent an intervenor when the  
10 government is acting pursuant to its lawful authority to represent the interests of a  
11 prospective intervenor. *City of Los Angeles*, 288 F.3d at 401-02. Nevertheless,  
12 Courts have found that intervention applicants that have “more narrow, parochial  
13 interests” than the government, and thus have interests unprotected by the  
14 government. *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489,  
15 1499 (9th Cir. 1995). In the instant case, the reverse is true. Mr. Basra’s “narrow,  
16 parochial” interest in his religious exercise will not adequately represent the United  
17 States’ more expansive interests in a potentially broader interpretation of RLUIPA  
18 and in more comprehensive injunctive relief against Defendants. Arguments for an  
19 expansive construction of a statute are not mere “differences in litigation strategy”  
20 but constitute a “point of view to the litigation not presented by either the  
21 plaintiff[] or the defendants.” *California ex rel. Lockyer v. United States*, 450 F.3d  
22 436, 444-45 (9th Cir. 2006) (finding that intervenors’ broad interpretation of  
23 statute was not protected by more limited interpretation asserted by government-  
24 party). Accordingly, Mr. Basra cannot and should not be expected to represent the  
25 public interest on behalf of the United States. Given the United States’ divergent  
26 interest in a uniform and possibly more expansive application and interpretation of  
27 RLUIPA, the United States satisfies the inadequate representation element.

1 \* \* \*

2 In sum, this Court should grant the United States' application for  
3 intervention of right because: (1) the application is timely and will not cause the  
4 parties undue prejudice; (2) the United States has a significantly protectable  
5 interest in its own RLUIPA claim, which directly relates to Mr. Basra's RLUIPA  
6 claim, as well as in the uniform application and interpretation of the RLUIPA  
7 statute; (3) this lawsuit threatens to impair these protectable interests; and (4) the  
8 present parties may not adequately represent the United States' interests because  
9 the interests of the United States are broader than those of Plaintiff.

10 **B. This Court Should Grant Permissive Intervention**

11 In the alternative, the Court should grant the United States permissive  
12 intervention under Rule 24(b). Rule 24(b) specifically addresses permissive  
13 intervention by the United States, stating that, upon a timely motion, a court may  
14 permit a United States agency to intervene if a party's claim or defense is based on  
15 a statute administered by the United States' agency. Fed. R. Civ. P. 24 (b)(2)(A).<sup>2</sup>  
16 If this condition is met, the question of whether a party will be allowed to intervene  
17 is within the sound discretion of the trial court. *See Donnelly v. Glickman*, 159  
18 F.3d 405, 409 (9th Cir. 1998). "In exercising its discretion the court must consider  
19 whether the intervention will unduly delay or prejudice the adjudication of the  
20 original parties' rights." Fed. R. Civ. P. 24(b)(3). Because RLUIPA charges the  
21 United States with its enforcement, and Mr. Basra asserts a claim under RLUIPA,  
22

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23 <sup>2</sup> Courts have required that non-government intervenors seeking permissive  
24 intervention establish an independent ground for jurisdiction. *See Nw. Forest Res.*  
25 *Council*, 82 F.3d at 839. To the extent this requirement applies to a government  
26 charged with administering a statute at issue in the litigation, RLUIPA's grant of  
27 authority to the United States to enforce the statute supplies the necessary  
28 independent jurisdiction.

1 this Court should consider whether the United States’ intervention is timely, and  
2 whether intervention will cause undue delay or prejudice the parties’ rights.

3       Regarding the timeliness requirement for permissive intervention, this Court  
4 should analyze “precisely the same three factors” as for intervention of right.  
5 *Wilson*, 131 F.3d at 1308 (adding that the analysis for permissive timeliness is  
6 more strict). Thus, as outlined in the intervention of right analysis above, the  
7 United States’ application is timely. *See* Part IV.A.1, *supra*.

8       Nor will the United States’ intervention “unduly delay or prejudice the  
9 adjudication of the original parties’ rights.” Fed. R. Civ. P. 24 (b)(3). As detailed  
10 above, the United States’ RLUIPA claim will not cause the parties to relitigate  
11 previously decided issues and will not cause any significant delay in the  
12 proceedings. *See* Part IV.A.1, *supra*. The United States’ RLUIPA claim is not “in  
13 direct opposition” to Mr. Basra; indeed, the claims share a “common factual  
14 proof.” *Donnelly*, 159 F.3d at 412 (upholding denial of intervention based on lack  
15 of common factual proof). Thus, intervention would not prejudice the parties by  
16 creating a “whole new lawsuit.” *See id.*

17       Finally, given that RLUIPA authorizes the United States to file its own  
18 separate action to enforce Mr. Basra’s RLUIPA rights, permitting intervention will  
19 promote judicial economy. *Venegas v. Skaggs*, 867 F.2d 527, 531 (9th Cir. 1989)  
20 (finding “judicial economy is a relevant consideration in deciding a motion for  
21 permissive intervention”).

22       In sum, this Court should grant the United States permissive intervention  
23 because: (1) Mr. Basra’s RLUIPA claim involves a statute that charges the United  
24 States with its enforcement; (2) the United States’ intervention is timely; and (3)  
25 intervention will not cause undue delay or prejudice, but rather promote judicial  
26 economy.

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## V. CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court grant its Motion to Intervene, permit the United States to bring its own claim to enforce compliance with RLUIPA, and permit the United States to participate in any preliminary injunction hearing.

Respectfully submitted,

s/ Thomas E. Perez

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**CERTIFICATE OF SERVICE**

1 I certify that the foregoing Memorandum of Points and Authorities in  
2 Support of United States' Motion to Intervene was served on March 15, 2011, to  
3 the following individuals:

4  
5 Through the electronic filing service:

6 Cassandra E. Hooks  
7 Jonathan M. Gordon  
8 Leib Mitchell Lerner  
9 Alston & Bird LLP

10 Peter J. Eliasberg  
11 ACLU Foundation of Southern California

12 Daniel Mach  
13 American Civil Liberties Union,  
14 Program on Freedom of Religion and Belief

15 Harsimram Kaur Dang  
16 The Sikh Coalition

17 Attorneys for Plaintiff

18 By U.S. Mail:

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24 Warden Terri Gonzalez  
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26 Litigation Coordinator  
27 Men's Colony  
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2011 MAR 15 PM 3:46  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION  
CENTRAL DIST. OF CALIF  
LOS ANGELES

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3 SUKHJINDER S. BASRA, )  
4 BY \_\_\_\_\_ )

5 Plaintiff, )

6 UNITED STATES OF AMERICA, )

No. 2:11-cv-01676 SVW (FMOx)

7 Plaintiff-Intervenor, )  
8 )

ORDER

9 v. )

Doc No. \_\_\_\_\_

10 CATE, et al.; )  
11 )

12 Defendants. )  
13 )

14 **ORDER**

15  
16 Currently pending before the Court is the Motion to Intervene of Proposed  
17 Intervenor the United States of America, pursuant to Rule 24 of the Federal Rules  
18 of Civil Procedure. Dkt. \_\_\_\_\_. This Court finds that the requirements of Rule 24  
19 have been met. Specifically, under Rule 24(a), the Court finds that: (a) the United  
20 States' Motion to Intervene is timely and that granting the Motion will not result in  
21 undue delay or prejudice to the adjudication of the original parties' rights; (b) the  
22 United States has a significantly protectable interest relating to the transaction that  
23 is the subject of this action; (c) the United States' interests will be impaired and  
24 impeded by the disposition of this action; and (d) the United States' interest is not  
25 adequately represented by the existing parties to the lawsuit. Under Rule 24(b), the  
26 Court finds that: (a) one of the claims of the original Plaintiff involves a statute  
27 that charges the United States with its enforcement; (b) the United States' Motion  
28 to Intervene is timely; and (c) granting the Motion will not result in undue delay or  
prejudice to the adjudication of the original parties' rights. Having found that the

1 requirements of Rule 24 have been met, the Court will grant the Motion to  
2 Intervene.

3 Accordingly, on this \_\_\_ day of \_\_\_\_\_, 2011, in the United States  
4 District Court for the Central District of California, it is ORDERED:

5 1. That the United States' Motion to Intervene BE, and hereby IS,  
6 GRANTED;

7 2. That the United States shall be added as Plaintiff-Intervenor to the suit  
8 *Basra v. Cate*, No. 2:11-cv-01676 SVW (FMOx)

9 3. That the Clerk of this Court enter the United States' Complaint in  
10 Intervention in these proceedings;

11 4. That the United States may participate in the preliminary injunction  
12 hearing; and

13 5. That the Clerk of this Court transmit a copy of this Order to all parties  
14 and counsel of record.

15 \_\_\_\_\_  
16 Stephen V. Wilson  
17 United States District Judge  
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3 **CERTIFICATE OF SERVICE**

4 I certify that the foregoing Proposed Order was served on March 15, 2011,  
5 to the following individuals:

6 Through the electronic filing service:

7 Cassandra E. Hooks  
8 Jonathan M. Gordon  
9 Leib Mitchell Lerner  
10 Alston & Bird LLP

11 Peter J. Eliasberg  
12 ACLU Foundation of Southern California

13 Daniel Mach  
14 American Civil Liberties Union,  
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16 Harsimram Kaur Dang  
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18 Attorneys for Plaintiff

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