No.01-55453

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CITY OF LOS ANGELES, BOARD OF POLICE COMMISSIONERS,
LOS ANGELES POLICE DEPARTMENT,

Defendants-Appellees

MICHAEL GARCIA, ERNESTO LUEVANO, DUC PHAM, JESUS NIETO, SALVADOR SALAS, ROBERT HERNANDEZ, CARLOS GONZALEZ, DAVID ASKEW, TIMMY CAMPBELL, ALBERTO LOVATO, TONYE ALLEN, REVEREND JAMES M. LAWSON, JR., SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE OF LOS ANGELES, ACLU OF SOUTHERN CALIFORNIA, HOMEBOY INDUSTRIES, ASIAN PACIFIC AMERICAN LEGAL CENTER, RADIO SIN FRONTERAS,

Applicants in Intervention-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS APPELLEE

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Applicants in Intervention-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS APPELLEE

JURISDICTIONAL STATEMENT

The district court has jurisdiction over the underlying action pursuant to 28 U.S.C. 1331. The district court denied the Appellants' motion to intervene on February 8, 2001. The Appellants filed a timely notice of appeal on February 26,

2001. Fed. R. App. P. 4. The denial of a motion to intervene as of right is a final appealable order, *Donnelly* v. *Glickman*, 159 F.3d 405, 409 (9th Cir. 1998), and this Court therefore has jurisdiction to hear the appeal on that issue pursuant to 28 U.S.C. 1291. The denial of a motion for permissive intervention is appealable only if the district court abused its discretion in denying the motion to intervene. *Donnelly*, 159 F.3d at 411.

ISSUE PRESENTED

Whether the district court erred in denying the Appellants' motion for intervention as of right and for permissive intervention.

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

1. This case arises out of a suit filed on November 3, 2000, by the United States Department of Justice against the City of Los Angeles, California, the Los Angeles Police Department (LAPD), and the Los Angeles Board of Police Commissioners (collectively "the City" or "the City of Los Angeles"). The suit alleges that the defendants engage in a pattern or practice of depriving individuals of constitutional rights through the use of excessive force, false arrests, and improper searches and seizures (E.R. 2).[1] The suit was filed under 42 U.S.C. 14141, which makes it unlawful for "any governmental authority * * * to engage in a pattern or practice of conduct by law enforcement officers * * * that deprives

[1] References to "E.R. _" are to pages in the two-volume, consecutively-paginated Excerpts of Record, filed by the Appellants. References to "R. _" are to the district court docket number in the underlying case, No. 00-11769. References to "Br. _" are to pages in the Appellants' opening brief.

persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States," and gives the Attorney General of the United States the power to bring a civil action to "obtain appropriate equitable and declaratory relief to eliminate the pattern or practice."

The parties opted to settle the dispute through the mechanism of a consent decree, which they lodged in the district court the same day the United States filed the complaint. The stated purpose of the consent decree is to "provide for the expeditious implementation of remedial measures, to promote the use of the best available practices and procedures for police management, and to resolve the United States' claims without resort to adversarial litigation" (E.R. 11 at ¶ 6). The district court entered the decree on June 15, 2001 (R. 123).

2. The decree enjoins the LAPD and the City to adopt and implement certain management practices and procedures that will stem the pattern or practice of constitutional violations identified by the United States (E.R. 10 at ¶¶ 1-2). For instance, the decree outlines certain procedures the LAPD must follow with respect to using force (E.R. 31-35), conducting searches and making arrests (E.R. 35-37), receiving complaints (E.R. 37-39), and handling internal investigations (E.R. 39-42). The decree also instructs the City to develop both a comprehensive information-tracking system (E.R. 10-29), a method for collecting data on traffic and pedestrian stops (E.R. 49-53), and a system for responding to persons with mental illness (E.R. 61-62). The decree further directs the City to establish procedures for training officers for certain positions (E.R. 63-65), for managing

and supervising "gang units" (E.R. 54-57), and for handling confidential informants (E.R. 58-60).

The decree provides for the selection of an Independent Monitor, who acts as an agent of the district court in monitoring and reporting on the City's compliance with the decree (E.R. 80-89). Under the decree, the City is required to file periodic reports with the district court, the Independent Monitor, and the Department of Justice, detailing its compliance with the decree (E.R. 81). The district court will retain jurisdiction over the case for the duration of the consent decree (E.R. 82). According to the terms of the decree, it is "enforceable only by the parties," "[n]o person or entity is intended to be a third party beneficiary of the provisions of [the decree]," and "no person or entity may assert any claim or right as a beneficiary or protected class under [the decree]" (E.R. 12 at ¶ 10).

3. The Appellants comprise two groups: a group of individuals,[2] each of whom allegedly "has a recent history of illegal abuse and mistreatment at the hands of LAPD officers" (E.R. 109), and a group of organizations,[3] each of which "has members with recent histories of illegal abuse and mistreatment at the hands of

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[2] The individual appellants are Michael Garcia, Ernesto Luevano, Duc Pham, Jesus Nieto, Salvador Salas, Robert Hernandez, Carlos Gonzalez, David Askew, Timmy Campbell, Alberto Lovato, Tonye Allen, and Reverend James M. Lawson, Jr. (E.R. 111-114).

[3] The organizational appellants are the Southern Christian Leadership Conference of Los Angeles, the ACLU of Southern California, Homeboy Industries, Asian Pacific American Legal Center, and Radio Sin Fronteras (E.R. 114-115).

LAPD officers and/or has police reform as a central organizational purpose" (E.R. 109). In addition, several of the individual appellants[4] are involved in a separate lawsuit to enjoin the LAPD's alleged pattern or practice of racial profiling in vehicular stops. (R. 42, Memorandum of Points and Authorities in Support of Motion to Intervene Under Rule 24(a) and Rule 24(b)(2), at 2-3). On December 18, 2000, the Appellants filed a motion to intervene as of right and for permissive intervention, along with a complaint in intervention (E.R. 100-123). Although the complaint in intervention asserts a number of independent claims against the LAPD under, *inter alia*, 42 U.S.C. 1983 and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (E.R. 116-122), the complaint in intervention states that the Appellants "seek intervention in this lawsuit solely for the purpose of monitoring and ensuring enforcement of the consent decree as already negotiated in this lawsuit" (E.R. 109).

In their Memorandum of Points and Authorities in Support of their Motion to Intervene, the Appellants claimed that they have a right to intervene "based on their interest in ensuring that the [LAPD], and its officers, do not engage in unconstitutional racially discriminatory and abusive police practices," and averred that they sought intervention "to safeguard the public credibility of the historic consent decree negotiated in this case and to ensure that the consent decree is

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[4] These particular individual appellants are Gonzalez, Askew, Campbell, Lovato, and Allen (R. 42 at 2-3). Their separate lawsuit is styled *Gonzales, et al.* v. *City of Los Angeles, et al.*, No. 8:00-cv-507 (C.D. Cal.).

strictly enforced as negotiated" (R. 42 at 1). Although the Appellants have admitted that "[e]ach of the proposed intervenors' right to nondiscriminatory policing and interest in police reform thus can be adequately protected through the consent decree" (R. 42 at 3), they claim a right to intervene to enforce the consent decree based on their fundamental lack of "faith" in the parties to the decree. The Appellants base their mistrust of the City and LAPD on the LAPD's long-standing reluctance to implement reforms of its own practices based on the recommendations of outside commissions (R. 42 at 3, 6-10). The Appellants justify their mistrust of the Justice Department by significantly misconstruing public statements made by then-candidate George W. Bush, who is now the President of the United States.

The district court heard oral argument on the motion to intervene on January 22, 2001 (E.R. 391-444), and denied the motion on February 8, 2001 (E.R. 446-452).[5] The district court held that there was "no basis for permitting [the Appellants] to enter the suit to contest merits issues" (E.R. 447). The district court also found that the Appellants are not entitled to intervene with respect to the remedy in this case because they "cannot show that injury will result if they do not intervene" (E.R. 448), and because they "have no inherent right to participate in the

[5] The district court considered another motion to intervene at the same hearing on January 22, 2001, and denied that motion in the same order issued on February 8, 2001. That motion was filed by a group of individual citizens who had previously filed actions against the LAPD under 42 U.S.C. 1983. The individuals who filed that motion to intervene did not appeal from the district court's denial of their motion.

enforcement of the proposed decree" (E.R. 449). On February 20, 2001, the district court formally granted the Appellants amicus curiae status and invited them to submit a memorandum to the court "addressing any issue(s) that they see fit regarding the negotiated consent decree" (R. 88, Order re: Amicus Briefing, at 2). The Appellants filed a timely notice of appeal on February 26, 2001.

SUMMARY OF ARGUMENT

The Appellants in this case are seeking to intervene for the sole purpose of enforcing the consent decree exactly as it has been negotiated by the existing parties to the lawsuit, the United States, the City of Los Angeles, the LAPD, and the Board of Police Commissioners. They have not claimed that any part of the consent decree, or any aspect of its implementation, will infringe on any legally protected rights of either the individual or organizational appellants. In order to intervene as of right in an existing lawsuit, a party must demonstrate, *inter alia*, that it has a legally protectable interest that is in danger of being injured in some tangible way if the party is not permitted to intervene to protect that interest. Because the Appellants have utterly failed to meet this burden, they are not entitled to intervene as of right.

In addition, the Appellants have failed to overcome the strong presumption that a governmental party to a lawsuit will adequately represent the interests of the public whose interests it is charged with protecting. The Appellants allege without basis that, under the leadership of President Bush, the United States will not enforce the decree it secured and negotiated. The Appellants are unable to identify

even a single action or statement on the part of either the United States or President Bush that would support their claim.

Because the Appellants are unable to demonstrate that the consent decree will harm their interests in any way, that they are entitled to participate in the implementation of the consent decree, or that their participation in this case would serve judicial economy, they are not entitled to intervention as of right or to permissive intervention.

ARGUMENT

Federal Rule of Civil Procedure 24 provides two avenues by which persons or entities may seek to intervene as parties to existing lawsuits: Rule 24(a) governs intervention as of right and Rule 24(b) governs permissive intervention. Intervention as of right is intended to protect the rights of non-parties to a lawsuit. A person who is not a party to an existing lawsuit may intervene as of right in order to protect his or her interests only if the disposition of the lawsuit will harm those interests in a tangible way. Fundamentally, intervention as of right is not concerned with ease of litigation or even with judicial economy, but rather with protecting an entity from *harm* caused by other entities' litigation. A person or entity may ask a court to address judicial economy through permissive intervention.

The Appellants are seeking to intervene in this case "for the sole purpose of monitoring and ensuring compliance with the consent decree already negotiated in the lawsuit" (Br. 9); they are not seeking to intervene in the underlying merits of this litigation. Although the lion's share of the Appellants' brief argues that they

are entitled to intervention as of right, the bulk of their reasoning focuses on the similarities of the claims of the Appellants and of the United States, and of the relief the Appellants seek and the relief the United States secured in the consent decree. Those concerns are not properly cognizable in considering intervention as of right; a person is entitled to intervention as of right *only* if they are in danger of being harmed in some tangible way absent intervention. The Appellants have utterly failed to identify any way in which the consent decree between the United States and the City of Los Angeles will impair any interests of the Appellants.

This Court reviews the denial of a motion to intervene as of right *de novo*. *Donnelly* v. *Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). This Court reviews the denial of a motion for permissive intervention for an abuse of discretion, and must dismiss the appeal if it finds no such abuse. *Id.* at 411.

I. THE APPELLANTS ARE NOT ENTITLED TO INTERVENE AS OF RIGHT

An applicant wishing to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) must demonstrate that:

> (1) it has a "significant protectable interest" relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest.

Donnelly v. *Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). Although this Court generally interprets these requirements broadly, *ibid.*, the Appellants have failed to satisfy this standard.[6]

A. *The Appellants Have No Legally Protectable Interest Sufficient To Merit Intervention As Of Right*

1. *The Appellants Have No Right To Enforce The Consent Decree*

In order to satisfy Rule 24(a), the Appellants must demonstrate that they have a significant interest that is "protectable under some law" and that bears a relationship to the claims at issue in the lawsuit. *Forest Conservation Council* v. *United States Forest Serv.*, 66 F.3d 1489, 1494 (9th Cir. 1995). The Appellants have made it very clear that, in seeking intervention, they are not seeking *any* relief beyond that already provided in the consent decree; they wish merely to enforce the provisions of the decree exactly as negotiated by the parties (E.R. 109, Complaint in Intervention).[7] The Appellants argue that the district court erred in basing its denial of their motion on the court's conclusion that the Appellants have "no inherent right to participate in the enforcement of the proposed decree" (E.R. 448). They contend that, in reaching this conclusion, the district court failed to

[6] The United States does not dispute the district court's finding that the Appellants' motion to intervene was timely filed.

[7] The Appellants make much of the fact that the parties lodged the consent decree on the same day that the United States filed its complaint in this case. But the timing of the lodging of the consent decree is irrelevant to the Appellants' desire to intervene. Even if the Appellants had sought intervention as of right after the United States had filed its complaint but before any consent decree had been negotiated, they would still be unable to satisfy the requirements of Rule 24(a).

consider properly the requirements for intervention as of right under Rule 24. But the Appellants misconstrue the district court's holding.

Before an applicant in intervention is entitled to intervene as of right, the applicant must demonstrate that it is seeking to protect some legally cognizable right. In the course of considering whether the Appellants had demonstrated that they have a significant and legally protectable interest at stake – as is required to satisfy the first condition of Rule 24(a) – the district court considered whether the Appellants have a legally protectable right to enforce the consent decree, and found that, under the law of this Circuit, they do not. It is well settled in this Court that incidental beneficiaries to a consent decree or other type of contract do not have any legally protected right to enforce such a contract. *Klamath Water Users Protective Ass'n* v. *Patterson*, 204 F.3d 1206, 1210-1211 (9th Cir. 2000), opinion amended, 203 F.3d 1175 (9th Cir. 2000), cert. denied, 531 U.S. 821 (2000). It is equally well settled that "[p]arties that benefit from a government contract are generally assumed to be incidental beneficiaries, and may not enforce the contract absent a clear intent to the contrary." *Id.* at 1211; see also *Hook* v. *Arizona*, 972 F.2d 1012, 1015 (9th Cir. 1992) ("[O]nly the Government can seek enforcement of its consent decrees") (quoting *Dahl, Inc.* v. *Roy Cooper Co.*, 448 F.2d 17, 20 (9th Cir. 1971). There is absolutely no doubt in this case that the parties to the consent decree did not intend any person or entity to be a third party beneficiary of the decree "for purposes of any civil, criminal, or administrative action" (E.R. 12, Consent Decree). Indeed, the decree specifically states that "no person or entity

may assert any claim or right as a beneficiary or protected class" under the decree (E.R. 12). Thus, it is indisputable that the Appellants cannot claim any legally protected right to enforce this decree.

The Appellants try to turn this well-settled legal principle on its head by arguing that they must be permitted to intervene now because these very precedents will prevent them from enforcing the consent decree later. But the fact that the Appellants will not have a legally protectable right to enforce the decree later does not by itself create such a right now. Indeed, the Appellants do not have such a right now for *precisely the same reason* they will not have that right later – as incidental beneficiaries to a government consent decree, they simply do not have a right to enforce this decree.

Furthermore, even if the Appellants were permitted to intervene, thereby becoming parties to the lawsuit, they still would not have a right to become parties to the consent decree itself. The Supreme Court has unambiguously found that a subset of parties to a multi-party lawsuit may settle their differences through the mechanism of a consent decree without the approval of the other parties to the lawsuit, as long as the settling parties do not dispose of any rights of the non-consenting parties. *Local 93, Int'l Ass'n of Firefighters* v. *City of Cleveland*, 478 U.S. 501, 528-529 (1986) ("It has never been supposed that one party – whether an original party, a party that was joined later, or an intervenor – could preclude other parties from settling their own disputes and thereby withdrawing from litigation."); see also *Waller* v. *Financial Corp.*, 828 F.2d 579, 582-583 (9th Cir. 1987) (holding

that "a non-settling [party] lacks standing to object to a partial settlement" unless the party "can demonstrate that it will sustain some formal legal prejudice as a result of the settlement"). Thus, even if the Appellants were permitted to intervene, and therefore to become parties to the lawsuit, they still would neither be parties to the consent decree nor have a right to enforce the terms of the consent decree. In seeking the right to become a party to the consent decree, the Appellants are essentially asking this Court to force the City to enter into a consent decree – a decree that is identical to the decree between the City and the United States – with the Appellants. Rule 24 is a tool for protecting non-parties whose interests are at stake in a lawsuit; it may not be used as a tool for compelling parties to include additional entities in their negotiated settlement where those entities' interests are not threatened by the settlement.

2. *The Appellants Cannot Manufacture A Legally Protectable Right By Conditioning Settlement Of Separate Lawsuits On Enforcement Of This Decree*

The Appellants also claim that they have an "interest in ensuring enforcement of the consent decree as negotiated" (Br. 10), and are therefore entitled to intervene as of right, because five of the individual appellants have filed independent civil rights actions to enjoin the LAPD from engaging in racial profiling, and have conditioned their agreement to settle those cases on "inclusion within the consent decree of specific provisions proscribing racial profiling and mandating data collection to help monitor its incidence" (Br. 11). Certainly, an applicant in intervention cannot create a legally protectable right by voluntarily

linking the relinquishment of some other right on the enforcement of the consent decree. If the Appellants opt to hinge the resolution of their separate claims on the implementation of the settlement agreement between the United States and the LAPD and City of Los Angeles, they are free to do so. But the fact that the Appellants have made such a choice does not give them the right to ask a federal court to force the signatories to the consent decree to make the Appellants parties to the decree as well. If the Appellants ultimately are unsatisfied with the manner in which the United States and the City of Los Angeles are implementing and enforcing the decree, they may at that point resume their separate lawsuits. Alternatively, if the Appellants are as certain as they claim that the consent decree will not be vigorously enforced, they may simply proceed with their lawsuits, which are already underway.

The Appellants speculate that, although they are able to pursue independent legal claims against the City and the LAPD, "once the comprehensive consent decree between the DOJ and the City is approved here, it strains credulity to imagine that any judge in a subsequent case would enter and then enforce a similar (perhaps functionally indistinguishable) and competing injunction against the City" (Br. 28-29). In addition to being wholly unsupported, this claim is pure conjecture, and is therefore insufficient to warrant intervention as of right. "When an applicant's purported interest is so tenuous, intervention is inappropriate." *Donnelly*, 159 F.3d at 411; see also *Washington Elec. Coop., Inc.* v. *Massachusetts Mun. Wholesale Elec. Co.*, 922 F.2d 92, 97 (2d Cir. 1990) (holding that an "interest

that is * * * contingent upon the occurrence of a sequence of events before it becomes colorable, will not satisfy" Rule 24). If the Appellants are ultimately unsatisfied with the United States' enforcement of the decree, the Appellants will remain free to present any claims they may have against the LAPD to a federal judge, at which point they will be entitled to any injunctive relief the judge deems warranted by the proof presented in that case.

3. *The Appellants' Remaining Asserted Interests Do Not Satisfy Rule 24(a)*

The Appellants' remaining asserted interests are also insufficient to warrant intervention under Rule 24(a). The individual appellants claim that, by virtue of the fact that they have been subjected to unconstitutional conduct by LAPD officers, they have a sufficient protectable interest in this lawsuit. They are not seeking to modify the existing consent decree in any way; rather, they are seeking intervention to enforce the decree exactly as written. It is well settled in this Court, however, that a putative intervenor's "mere desire to obtain similar relief [as the plaintiffs] is insufficient, by itself, to necessitate intervention." *Donnelly*, 159 F.3d at 411; *id.* at 409 (finding that the fact that both the plaintiffs and the putative intervenors "assert[ed] discrimination claims against the same defendants" was "not enough" to warrant intervention as of right). In the instant case, the individual appellants are seeking not just similar relief but *precisely the same relief* that the United States has already secured through the consent decree.

In addition, the organizational appellants claim that their interest in police reform, and specifically in community-based police reform, is sufficient to warrant intervention as of right. Again, they have not expressed any displeasure with the relief negotiated through the consent decree or demonstrated how implementation of the decree will cause them harm; they simply wish to impose themselves into the agreement between the United States and the City. In order to satisfy Rule 24(a), an applicant in intervention's purported interest must be related to the claims at issue in the lawsuit. "An applicant generally satisfies the 'relationship' requirement only if the resolution of the plaintiff's claims actually will affect the applicant." *Donnelly*, 159 F.3d at 410. Allowing the parties to the consent decree to implement the decree without the involvement of the organizational appellants will have no effect on the ability of those appellants either to seek police reform or to promote community involvement in that reform. Indeed, even absent intervention, the organizational appellants will remain free to provide any information they collect through their community contacts to the district court and to the Independent Monitor, or to bring their own separate action. The fact that the district court granted amicus curiae status to the Appellants even enhances their ability to pursue their interests in this case. Because none of the Appellants' interests will actually be affected by enforcement of the consent decree by the parties alone, the Appellants are not entitled to intervention as of right under Rule 24(a).

B. *Any Interest the Appellants May Have Will Not Be Impaired Absent Intervention*

Even if this Court finds that the Appellants' interests in being free from unconstitutional police conduct or in participating in police reform are sufficient to satisfy the first requirement of Rule 24(a), the Appellants are nevertheless not entitled to intervene because neither of those interests will be impaired by this litigation. Nothing in the consent decree disposes of any rights of any of the Appellants. The individual appellants remain free to pursue any and all legal claims that they may have against the City or the LAPD. Where a purported intervenor remains free to pursue all of the independent claims he or she may have, that person fails to satisfy the requirements of Rule 24(a). See *Shea* v. *Angulo*, 19 F.3d 343, 347 (7th Cir. 1994) (holding that where applicant in intervention remained free to protect his rights by initiating his own suit, "there is no potential impairment" of those rights); accord *McClune* v. *Shamah*, 593 F.2d 482, 486 (3d Cir. 1979); *SEC* v. *Everest Mgmt.*, 475 F.2d 1236, 1239 (2d Cir. 1972).

Moreover, the institutional appellants remain free to pursue their asserted interests in gathering information from community sources to ensure that the parties who are enforcing the decree are aware of the concerns of citizens of Los Angeles. The fact that the institutional appellants are not themselves parties to the consent decree falls far short of creating a legally sufficient impairment to their interests under Rule 24(a). Indeed, their status as non-parties creates no practical impairment at all to their ability to provide information to the court and to the

Independent Monitor. The district court has granted all of the Appellants amicus curiae status, thereby facilitating their ability to pursue their community-involvement goals.

Virtually all of the cases the Appellants rely upon establish that they are *not* entitled to intervention as of right. In *Forest Conservation Council* v. *United States Forest Service*, for instance, the applicants in intervention were permitted to intervene precisely because the court found that the injunctive relief the plaintiffs sought "pose[d] a 'tangible threat' to their legally cognizable interests." 66 F.3d 1489, 1496 (9th Cir. 1995). The Appellants in the instant case have utterly failed to demonstrate that the consent decree as written poses any sort of tangible threat to their interests. In addition, the Appellants erroneously rely on *Feigin* v. *Securities America, Inc.*, 992 P.2d 675 (Colo. App. 1999), rev'd on other grounds, 19 P.3d 23 (Colo. 2001). Contrary to the Appellants' assertion that the Colorado appellate court "confronted the question presented here" (Br. 18), the court was not considering a case in which applicants in intervention sought intervention for the sole purpose of enforcing a government consent decree or settlement. Rather, the putative intervenors in that case were seeking to object to the proposed settlement because, as the court found, "the implementation of [the settlement] would most certainly impair the ability of any investor not participating in [the] claim procedure to protect his or her interest." 992 P.2d at 681. In that case, as in every other case cited by the Appellants in which intervention as of right has been permitted, the court found that the putative intervenors had a right to intervene in

the case not because the applicants in intervention sought exactly the same relief as the plaintiffs, but because, absent intervention, the applicants' legally protectable interests would be impaired. Thus, those cases have no application to the instant case.

C. *The Appellants' Interests Are Adequately Represented By The United States*

Finally, the Appellants speculate that the United States will not adequately represent their interest in enforcing the consent decree. Their attempts to substantiate these allegations succeed only in misconstruing certain statements made by then-candidate George W. Bush.[8] In determining adequacy of representation, this Court considers "whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments; whether the present party is capable and willing to make such arguments; and whether the intervenor would offer any necessary elements to the proceedings that other parties would neglect." *Forest Conservation Council*, 66 F.3d at 1499 (internal citations omitted). The Appellants bear the burden of demonstrating that existing parties will not adequately represent their interests. *Northwest Forest Resource Council* v. *Glickman*, 82 F.3d 825, 838 (9th Cir. 1996).

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[8] The Appellants also argue that the parties' representation in this case is inadequate because the Appellants have "an independent interest in participating in reform of their police department, which neither the City nor the federal government can adequately represent" (Br. 30). This erroneous claim is addressed at pp. 15-17, *supra*.

At the outset, it is important to note as a general matter that "a presumption of adequate representation generally arises when the representative is a governmental body or officer charged by law with representing the interests of the absentee." *Forest Conservation Council*, 66 F.3d at 1498. The instant case is such a case, and the United States is therefore entitled to this presumption of adequate representation.[9] Moreover, "[u]nder well-settled precedent in this circuit, [w]here an applicant for intervention and an existing party have the same *ultimate objective*, a presumption of adequacy of representation arises." *League of United Latin Am. Citizens* v. *Wilson*, 131 F.3d 1297, 1305 (9th Cir. 1997) (emphasis in original) (internal quotation marks omitted). In the instant case, the Appellants have precisely the same objectives as the United States, and therefore cannot meet their burden of demonstrating inadequate representation.

Nor do the Appellants' misinterpretations of then-candidate Bush's campaign statements satisfy their burden of establishing that the United States will not adequately represent the Appellants' interest in enforcement of the consent decree. This Administration is committed to enforcing the consent decree. The Appellants have cited no evidence that even remotely suggests anything to the

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[9] The Supreme Court's holding in *Trbovich* v. *United Mine Workers of America*, 404 U.S. 528 (1972), is not to the contrary. The Court allowed a Union member to intervene in that action brought by the Secretary of Labor because in that case, the statute under which the Secretary brought suit "plainly impose[d] on the Secretary the duty to serve two distinct interests," one of which was not necessarily aligned with the interests of the intervenor. 404 U.S. 528 at 538. No such conflict exists with regard to the Justice Department's duty under 42 U.S.C. 14141.

contrary. The statements cited by the Appellants simply express the President's concerns regarding the proper role of federal oversight of local law enforcement, and are in no way contrary to this Administration's strong commitment to aggressively enforcing the civil rights laws of this country and protecting the constitutional rights of all Americans. The Appellants have failed to identify any statement made by then-candidate Bush either about this case in particular or indeed about any consent decree that resembles the decree in this case that would suggest an unwillingness to enforce consent decrees designed to protect individuals against unconstitutional police misconduct.

The Appellants' reliance on *Sagebrush Rebellion, Inc.* v. *Watt*, 713 F.2d 525 (9th Cir. 1983), is misplaced. In that case, the Court found that the applicants in intervention had overcome the presumption of adequate representation by a governmental entity because the government official who became the nominal defendant after a change in Administration had previously worked for the very law firm that was representing the plaintiffs. Acknowledging that "the mere change from one presidential administration to another, a recurrent event in our system of government, should not give rise to intervention as of right in ongoing lawsuits," the Court in that case found special circumstances warranting intervention because of the actual conflict of interest created by the representational history of the named defendant. *Id.* at 528-529. Because no such conflict has even been suggested in this case, the Appellants have failed to demonstrate that the United States will not adequately represent their interests, as is required for intervention as of right.

II. THE APPELLANTS ARE NOT ENTITLED TO PERMISSIVE INTERVENTION

The Appellants also briefly contend that the district court erred in denying their motion for permissive intervention (Br. 35-36). As this Court has held, "Rule 24(b) necessarily vests discretion in the district court to determine the fairest and most efficient method of handling a case." *Venegas* v. *Skaggs*, 867 F.2d 527, 530 (9th Cir. 1989), aff'd, 495 U.S. 82 (1990) (internal quotation marks omitted). In making that determination, a district court must consider both whether the intervention will unduly delay the litigation and whether permitting intervention will serve judicial economy, and this Court may not disturb the district court's determination absent an abuse of discretion. *Id.* at 529-531. Thus, even if the Appellants' claims satisfy the requirements of permissive intervention under Rule 24(b), they are not automatically entitled to intervene. *Id.* at 530; see also *Donnelly*, 159 F.3d at 412 ("Even if an applicant satisfies those threshold requirements, the district court has discretion to deny permissive intervention."). The parties to this lawsuit have agreed to settle their dispute through implementation of a comprehensive consent decree. Allowing the Appellants to insert their individual claims into this case will unduly complicate and delay the implementation of the important reforms embodied in the decree. The district court in this case did not abuse its discretion in denying the Appellants' motion for permissive intervention, and the Appellants' appeal from that ruling should therefore be dismissed.

CONCLUSION

This Court should affirm the district court's denial of the Appellants' motion to intervene as of right and dismiss the Appellants' appeal from the district court's denial of permissive intervention.

Respectfully submitted,

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STATEMENT OF RELATED CASES

The United States is aware of two related cases pending before this Court. Both cases either arise out of or are related to *United States* v. *City of Los Angeles, et al.*, No. 00-11769, the suit underlying this appeal. The two related cases are:

- *Los Angeles Police Protective League* v. *United States, et al.*, No. 01-55084, an appeal from a separate complaint filed by the Los Angeles Police Protective League seeking, inter alia, to enjoin the entry of the consent decree, and
- *United States* v. *Los Angeles Police Protective League*, No. 01-55182, an appeal from the denial of a motion to intervene by the Los Angeles Police Protective League.

CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached answering brief is proportionately spaced, has a typeface of 14 points and contains 5,915 words.

July 27, 2001

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CERTIFICATE OF SERVICE

I certify that the foregoing Brief for the United States as Appellee was sent by federal express to the following counsel of record on this 27th day of July, 2001:

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