

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

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff</i>)	
)	
and)	
)	
COMMUNITY CHURCHES FOR COMMUNITY)	
DEVELOPMENT, INC. and RALPH E. MOORE, JR.,)	
)	
<i>Proposed Plaintiff-Intervenors,</i>)	Civil Action No. JKB-17-99
v.)	
)	
POLICE DEPARTMENT OF BALTIMORE)	
CITY)	
)	
and)	
)	
MAYOR AND CITY COUNCIL OF BALTIMORE)	
)	
<i>Defendants.</i>)	

**MEMORANDUM OF LAW
IN SUPPORT OF PROPOSED INTERVENORS
COMMUNITY CHURCHES FOR COMMUNITY DEVELOPMENT, INC.
AND RALPH E. MOORE JR.'S
AMENDED MOTION TO INTERVENE AS PLAINTIFFS**

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Proposed Plaintiff-Intervenors Community Churches for Community Development, Inc. (“CCCD”) and Ralph E. Moore Jr. (collectively, “Proposed Plaintiff-Intervenors”), by and through their undersigned counsel, respectfully submit this Memorandum of Law in support of their Amended Motion to Intervene as of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure or, alternatively, for permissive intervention pursuant to Rule 24(b)(1).

PRELIMINARY STATEMENT

Proposed Plaintiff-Intervenors file this Amended Motion to Intervene to ensure that the right of Baltimore City residents to be free from unconstitutional policing is fully and vigorously vindicated. The need for this intervention has been precipitated by a series of actions by the United States Department of Justice (“DOJ”), the Plaintiff in this action, which suggest its unwillingness to proceed in the timely prosecution of a case filed following a year-long investigation of the unconstitutional policing practices of the Baltimore Police Department (“BPD”) and a months-long negotiation of a consent decree between the City of Baltimore and the DOJ. Both parties entered into an agreement in principle in August 2016 and have been engaged in negotiations that resulted in a proposed consent decree filed on January 12, 2017.

The investigation undertaken by the DOJ was precipitated by the killing of Freddie Gray, an African-American, unarmed 25-year-old pedestrian, who was stopped and arrested by BPD officers on April 12, 2015. Mr. Gray was handcuffed and loaded into a police van while neighborhood residents watched. When he was loaded into a police van on a street in the Sandtown-Winchester neighborhood of West Baltimore, he was very much alive. Not long later, Emergency Medical Technician (“EMT”) personnel arrived at the van in response to a call by transport officers. According to the EMT, Freddie Gray’s neck “felt like a bag of rocks.” His spinal cord had been severed and his voice box was crushed. Mr. Gray lingered in intensive care

for a week and then died on April 19, 2016. CBS Baltimore, *Prosecution Rests In Goodson Trial; Judge to Rule On Acquittal Motion*, June 5, 2016, at <http://baltimore.cbslocal.com/2016/06/15/testimony-continues-in-murder-trial-of-police-van-driver-in-freddie-gray-case/>.

Community reaction was swift. Frustrated residents of Baltimore marched and protested for weeks until six officers were arrested for Mr. Gray's death. Then-Mayor of Baltimore, Stephanie Rawlings-Blake, requested that the Department of Justice open a federal investigation into the practices of the BPD, pursuant to the DOJ's authority to investigate and prosecute "patterns and practices" of unconstitutional policing under 42 U.S.C. § 14141.

Although Freddie Gray's death became nationally recognized as one of a number of unarmed African Americans killed by police in high-profile violent encounters in 2014 and 2015, the story of unconstitutional policing in Baltimore has a long and ignoble pedigree. Indeed, a number of incidents in which BPD officers killed unarmed African Americans, including Anthony Adams in September 2012 and Tyrone West in July 2013, led then-Commissioner Anthony Batts to commission an independent investigation. That investigation concluded with a number of recommendations aimed at improving police training and practices. Ongoing issues with policing practices led then-Mayor of Baltimore to seek a federal "collaborative review" of the BPD in 2014. That review was underway when Freddie Gray was killed. Independent Review Board Members, *In-Custody Fatality Independent Review Board for the Death of Tyrone West, Findings and Recommendations*, Aug. 8, 2014, available at <http://cdn.s3-media.wbal.com/Media/2014/08/08/9a63a2ee-eb74-48cb-b793-fb50fda0b106/original.pdf>.

Baltimore, sometimes known as "Charm City," is a town of neighborhoods. But there are really "two Baltimores," as the Department of Justice found in its report on policing in Baltimore

last year. It is a deeply segregated town, and where you live governs the kind of policing with which you are familiar.

We seek intervention in this suit to represent Baltimoreans who live in the city, where police officers stop pedestrians without legal justification and rob them, as was alleged in a federal racketeering indictment filed last month against officers in Baltimore's elite gun unit. Justin Fenton & Kevin Rector, *Seven Baltimore Police officers indicted on federal racketeering charges*, Baltimore Sun, Mar. 1, 2017, at <http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-baltimore-police-indicted-20170301-story.html>. This intervention is sought to ensure that families suffering the humiliation and pain of having "the talk" with their sons about the danger of encounters with the police, and young people subject to excessive force by police officers, will have their rights to be free from unconstitutional policing fully vindicated. Those residents are entitled to vigorous and unequivocal representation in a process that has the potential to set a new course for policing in a town deep riven by the events of the last two years.

Without question, Baltimore is also a town confronting an ongoing struggle with violent crime. But unchecked unconstitutional policing contributes to Baltimore's public safety issues. Indeed, the chasm between the BPD and residents of the community may constitute the largest threat to public safety in the city. Any attempt to delay, dilute, or undermine the process that can breach that chasm has dire consequences for city residents. The Mayor of Baltimore, Catherine Pugh, has made clear her willingness and desire to move forward with the process of finalizing the proposed consent decree. The Commissioner of Police, Kevin Davis, has similarly expressed his wish to move forward with reform. The residents of Baltimore are anxious to play a role in the contours of this proposed consent decree.

The only party seeking delay and demonstrating reluctance to finalize this process is the United States, the putative plaintiff in this action. That DOJ, the agency empowered to vindicate the constitutional right of residents in this action, is the party working to undermine the timely and productive resolution of this matter, presents a particular kind of betrayal for Baltimore City's residents, who have relied on the promise of this negotiated consent decree to create the conditions for a fresh start in their city. Indeed, it is more than an outgrowth of the Trump Administration and the DOJ's significant shift in policing policy, but also reflects the overt hostility that the Attorney General has for consent decrees as a remedy to civil rights and constitutional violations. It is why the DOJ can no longer adequately represent the interests of Baltimore residents in this case and in this consent decree process and forms an independent, urgent justification for intervention.

This intervention is undertaken to ensure that the trust of Baltimore residents is not betrayed, and to ensure that residents are fully, fairly and vigorously represented in the resolution of this case. Accordingly, Proposed Plaintiff-Intervenors respectfully move this Court to grant intervention in this matter for the limited purpose of advocating for Court approval of the proposed consent decree and ensuring its full enforcement.

FACTUAL BACKGROUND

On April 19th 2015, Freddie Gray, a 25-year-old African-American resident of Sandtown-Winchester, died while in police custody. This tragic incident led the then-Mayor of Baltimore, Stephanie Rawlings-Blake, to ask the DOJ to conduct an exhaustive investigation of the BPD to determine whether it has been engaging in a pattern or practice of unlawful policing practices in violation of federal statutory and constitutional law. DOJ launched its investigation in May 2015.

After concluding its investigation, in August 2016, DOJ issued a report, which found that BPD engaged in a pattern or practice of conducting unconstitutional stops, searches, and arrests; using racially discriminatory policing strategies; using excessive force; retaliating against persons who criticized police officers or were involved in lawful protests. U.S. Dep't of Justice Civil Rights Division, *Investigation of the Baltimore City Police Department*, (Aug. 10, 2016), <https://www.justice.gov/opa/file/883366/download>, at 18 ("DOJ Report").

On January 12, 2017, Plaintiff United States filed a complaint against Defendants alleging violations of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, Title VI of the 1964 Civil Rights Act, 42 U.S.C. § 2000(d) ("Title VI"), the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789(d) ("Safe Streets Act"), and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131–12134 ("Title II"). Simultaneously, Plaintiff and Defendants filed a 227-page proposed consent decree ("Proposed Consent Decree"), which details reforms to police policies and practices that are necessary to address the constitutional and statutory violations that were uncovered in the DOJ Report. Consent Decree, *United States v. Police Dep't of Baltimore*, No. Case 1:17-cv-99 (D. Md. Jan. 12, 2017), ECF No. 2-2. On January 20, 2017, Donald Trump was sworn into office, and the

DOJ filed a motion to postpone an initial court hearing on the Proposed Consent Decree in order to allow time for the new leadership at DOJ to be briefed on the case. Pls.' Mot. for Continuance of Public Fairness Hearing, *United States v. Police Dep't of Baltimore*, No. 1:17-cv-99 (D. Md. Apr. 3, 2017), ECF No. 23 ("Motion for Continuance"). That motion was denied by the Court. Order Denying Motion for Continuance of Public Fairness Hearing, *United States v. Police Dep't of Baltimore*, No. 1:17-cv-99 (D. Md. Apr. 5, 2017) ECF No. 25 ("Order Denying Motion for Continuance").

United States Attorney General Jeff Sessions was sworn into office on February 9, 2017. On several occasions leading up to and after assuming this post, the Attorney General expressed a disdain for the use of consent decrees, especially as a tool for systemic reform of law enforcement agencies. During his confirmation hearing on January 10, 2017, he commented:

I think there is concern that good police officers and good departments can be sued by the Department of Justice when you just have individuals within a department that have done wrong. . . . These lawsuits undermine the respect for police officers and create an impression that the entire department is not doing their work consistent with fidelity to law and fairness, and we need to be careful before we do that.

John Fritze, *Sessions voices concern about use of consent decrees for police*, Baltimore Sun, (Jan. 10, 2017), <http://www.baltimoresun.com/news/maryland/politics/blog/bal-jeff-sessions-voices-concern-about-use-of-consent-decrees-for-police-20170110-story.html>. And in his first speech as Attorney General on February 28, 2017, Attorney General Sessions stated:

We need, so far as we can, in my view, help police departments get better, not diminish their effectiveness. . . . And I'm afraid we've done some of that. So we're going to try to pull back on this, and I don't think it's wrong or mean or insensitive to civil rights or human rights.

Eric Lichtblau, *Sessions Indicates Justice Department Will Stop Monitoring Troubled Police*

Departments, N.Y. Times, (Feb. 28, 2017), https://www.nytimes.com/2017/02/28/us/politics/jeff-sessions-crime.html?_r=0; *see also* Jeffrey Sessions, *Forward, Consent Decrees in Institutional Reform Litigation*, Alabama Policy Institute (2008), <http://www.alabamapolicy.org/wp-content/uploads/API-Research-Consent-Decrees.pdf> (“Consent decrees . . . constitute an end run around the democratic process.”).

On March 31, 2017, Attorney General Jeff Sessions [ordered a review](#) of “all Department activities—including collaborative investigations and prosecutions, grant making, technical assistance and training, compliance reviews, existing or contemplated consent decrees, and task force participation—in order to ensure they fully and effectively promote” the new principles laid out by the Administration of President Donald Trump. Pls’ Mem. for Heads of Dep’t Components and U.S. Attorneys at 2, *United States v. Police Dep’t of Baltimore*, No. 1:17-cv-99 (D. Md. Apr. 3, 2017), ECF No. 23-1 (“Plaintiff’s Memorandum for Heads of Dep’t”). The memorandum states, in part, “[i]t is not the responsibility of the federal government to manage non-federal law enforcement agencies,” and “the misdeeds of individual bad actors should not impugn or undermine the legitimate and honorable work that law enforcement officers and agencies perform” *Id.* at 1, 2.

Following the release of this memorandum, the DOJ submitted a motion [on](#) April 3, 2017, requesting that the public hearing on the Proposed Consent Decree, scheduled for April 6, 2017, be continued for 90 days in order to give the DOJ time to “review and assess the proposed Consent Decree” Motion for Continuance at 5. The motion articulates the federal government’s new law enforcement priorities and their impact on the consent decree entered in this case. The motion states that “the federal government has announced several new initiatives and policies that prioritize combatting and preventing violent crime . . . ,” and that, pursuant to

the President's executive orders, the federal government must “prioritize crime reduction.” *Id.* at 2. According to the motion, the President has determined that a “focus on law and order and the safety and security of the American people requires a commitment to enforcing the law and developing policies that comprehensively address illegal immigration, drug trafficking, and violent crime.” *Id.* at 3.

On April 5, 2017, this Court denied DOJ’s request for continuance, stating that:

The primary purpose of this hearing is to hear from *the public*; it would be especially inappropriate to grant this late request for a delay when it would be *the public* who were most adversely affected by a postponement. . . . To postpone the public hearing at the eleventh hour would be to unduly burden and inconvenience the Court, the other parties, and, most importantly, the public.

Order Denying Motion for Continuance at 2.

Proposed Plaintiff-Intervenor CCCD is a Maryland non-stock, non-profit corporation that is a collaborative of six local pastors who lead religious congregations in Baltimore City.¹ All six churches, except Ark Church, are located in West Baltimore in predominately African-American neighborhoods. And members of all six churches, who are predominately African-American—as well as the members of the communities where the churches are located—have experienced unconstitutional policing in Baltimore City.

CCCD’s objective is to enhance the quality of life for Baltimore City residents in keeping with the principles of the beloved community espoused by Dr. Martin Luther King, Jr. The six principals achieve their objective through public policy advocacy, civic engagement, and strategic partnerships with other community stakeholders. Part of this work includes

¹ They are Bishop James L. Carter of Ark Church; Rev. Dr. Alvin C. Hathaway, Sr., of Union Baptist Church; Rev. Dr. Arnold W. Howard of Enon Baptist Church; Rev. Dr. Lester A. McCorn of Pennsylvania Avenue AME Zion Church; Rev. Dr. Darron D. McKinney, Sr., of Macedonia Baptist Church; and Rev. Dr. Sheridan Todd Yeary of Douglas Memorial Community Church.

strengthening community-police relations, attending strategic insight meetings with BPD, and consulting with community stakeholders impacted by unconstitutional policing. In addition to its police-related work, CCCD has also contributed to the development of an Economic Inclusion Plan as part of the development agreement for the State Center Project, focusing on creating job opportunities for disaffected persons, and developed a certificate in Community Building Strategies in partnership with the College of Public Affairs at the University of Baltimore.

Proposed Plaintiff-Intervenor Ralph E. Moore is a 64-year-old, lifelong resident of Baltimore City, who has worked in social services all of his adult life. For eight years, he served as a housing counselor on the staff of St. Ambrose Housing Aid Center, and was assigned to work in Johnston Square near the former Maryland State Penitentiary. Mr. Moore was also the founding director of the St. Frances Academy Community Center, where he directed programs for youth and adults, including after school and summer camp programs for children and GED, voter registration, and job readiness and placement programs for adults. In addition, Mr. Moore has run a mentoring program for adult males returning home from prison and an apartment building and resource center for formerly homeless youth in Park Heights. He currently teaches pre-GED courses for Baltimore City Community College at a Healthy Start Center in East Baltimore.

As a social worker, Mr. Moore has spent decades serving youth and adults in East Baltimore who have experiences with unconstitutional policing and whose communities are directly affected by the policing practice in Baltimore City. Furthermore, Mr. Moore has had personal experiences with police abuse in Baltimore City. On two separate occasions, BPD officers drew their weapons on him without justification after he contacted the police to report a crime.

ARGUMENT

I. Proposed Plaintiff-Intervenors Should be Permitted to Intervene as of Right Pursuant to Federal Rule of Civil Procedure 24(a).

Federal Rule of Civil Procedure 24(a), concerning intervention as a matter of right, states:

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a). Federal courts, including those in the Fourth Circuit, have emphasized that Rule 24's intervention requirements should be liberally construed in favor of intervention. *See, e.g., Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) (recognizing need for liberal application of the rules permitting intervention as of right); *State of Md. v. Rolan*, 124 F. Supp. 86, 87 (D. Md. 1954) (noting the propriety of liberally construing permissive intervention under Rule 24(b)); *Metro. Prop. & Cas. Ins. Co. v. McKaughan*, CIV.A. No. WMN-10-690, 2011 WL 977870, at *2 (D. Md. Mar. 17, 2011), *aff'd sub nom. Metro. Prop. & Cas. Ins. Co. v. Holland*, 463 F. App'x 188 (4th Cir. 2012) (recognizing Fourth Circuit's liberal approach to intervention).

Under Rule 24(a)(2), intervention as of right depends on four factors: (1) the timeliness of the motion; (2) whether the applicant "claims an interest relating to the property or transaction that is the subject of the action;" (3) whether the applicant "is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest;" and (4) whether "existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). *See In re Sierra Club*, 945 F.2d 776, 779-81 (4th Cir. 1991) (granting intervention where these factors have been satisfied); *accord Houston Gen. Ins. Co. v. Moore*, 193 F.3d 838, 839 (4th Cir. 1999);

Newport News Shipbuilding & Drydock Co. v. Peninsula Shipbuilders' Ass'n, 646 F.2d 117, 120 (4th Cir. 1981). Proposed Plaintiff-Intervenors satisfy each of these requirements.

A. Proposed Plaintiff-Intervenors' Amended Motion is Timely.

The Fourth Circuit considers three factors in determining whether a motion to intervene is timely: (1) how far the suit has progressed; (2) the prejudice the delay might cause other parties; and (3) the reason for the tardiness in moving to intervene. *See Alt v. Envtl. Prot. Agency*, 758 F.3d 588, 591 (4th Cir. 2014). The purpose of the timeliness requirement “is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal.” *Scardelletti v. Debarr*, 265 F.3d 195, 202 (4th Cir. 2001), *rev'd on other grounds*, *Devlin v. Scardelletti*, 536 U.S. 1, 14 (2002). To that end, the most important inquiry is whether the delay might cause prejudice to the other parties. *See Spring Constr. Co. v. Harris*, 614 F.2d 374, 377 (4th Cir. 1980).

All of these factors counsel in favor of permitting intervention in the instant matter. This case has been pending only since January 12, 2017, and it was not until a shift in DOJ's position was noted by its motion for continuance on April 3, 2017, that Proposed Plaintiff-Intervenors became aware that their interests would not adequately be represented by DOJ. Moreover, intervention at this stage will not cause any prejudice because Plaintiff-Intervenors do not seek a continuance or any other delay of the proceedings as a consequence of their proposed intervention; nor do they seek relief different than what is enumerated in the Proposed Consent Decree. This Amended Motion is therefore timely, and granting it pursuant to Rule 24(a)(2) would not unduly prejudice the existing parties.

B. Proposed Plaintiff-Intervenors Have Direct, Substantial, and Legally Protectable Interests.

A movant seeking to intervene as a matter of right must demonstrate that it has a “significantly protectable interest” in the subject matter of the action. *Donaldson v. United States*, 400 U.S. 517, 531 (1971), *superseded by statutes on other grounds*, *Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310 (1985). In the Fourth Circuit, an applicant has a protectable interest in an action if it “stand[s] to gain or lose by the direct legal operation” of a judgment in that action. *Teague v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1994). Moreover, other courts have held that “[t]he interest requirement may be judged by a more lenient standard if the case involves a public interest question or is brought by a public interest group. The zone of interests protected by a constitutional provision or statute of general application is arguably broader than are the protectable interests recognized in other contexts.” *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014) (citing 6 James W. Moore, et al., *Moore’s Federal Practice*, § 24.03[2][c], at 24–34 (3d ed. 2008) (citing *New Orleans Pub. Serv. Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 464-65 (5th Cir. 1984))).

It is unquestionable that Proposed Plaintiff-Intervenors have “significantly protectable interest” in this action. Both Proposed Plaintiff-Intervenors seek intervention with a “public interest” purpose of ensuring that the communities where they live and work receive the constitutional policing that they deserve. The individuals served by CCCD’s member churches and Mr. Moore have for far too long been harmed by a police department that has failed to abide by its constitutional obligations, resulting in unwarranted stops and arrests, excessive force, and/or disparate treatment by virtue of their race as African Americans. By intervening in this action, in the face of the United States’ alarmingly recalcitrant behavior, Proposed Plaintiff-

Intervenors endeavor to reform BPD so that may live in a safe and secure community without fear of police abuse.

C. Proposed Plaintiff-Intervenors' Interests Will Be Affected by the Disposition of the Litigation.

Proposed Plaintiff-Intervenor CCCD, as an organization, has long advocated for better police-community relationships and has worked directly with BPD towards that goal. The successful negotiation, anticipated approval of the Proposed Consent Decree, and resulting police reforms, therefore, would not only directly benefit CCCD's member churches and their individual church members by ensuring constitutional encounters with police, but it would also allow CCCD to direct its scarce resources into other organizational priorities, such as developing job opportunities and addressing other socioeconomic needs of the individuals served by the member churches.

Proposed Plaintiff-Intervenor Ralph E. Moore, Jr., as an African-American Baltimore resident who has personally experienced police abuse, would likewise directly benefit from the successful implementation of the Proposed Consent Decree by no longer living in fear of possible harm from encounters with BPD officers and also by alleviating the collateral consequences experienced by the communities with whom he works as a longtime social worker.

At stake in the outcome of the consent decree process is the possibility of having a police department that no longer engages in unconstitutional conduct that predominately harms the communities of color served by CCCD's member churches and African-American men like Mr. Moore. What both Proposed Plaintiff-Intervenors stand to lose should the Proposed Consent Decree fall through is immeasurable.

D. Proposed Plaintiff-Intervenors' Interests May Not Be Adequately Represented by the Present Parties.

Proposed Plaintiff-Intervenors have the right to intervene in this litigation because its interests may not be “adequately represented by the existing parties.” Fed. R. Civ. P. 24(a)(2). *See also* 7C Charles Alan Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1909 (3d ed. 1998) (an applicant ordinarily should be permitted to intervene as of right “unless it is *clear* that the party will provide adequate representation for the absentee” (emphasis added)). Courts “will find that representation is adequate ‘if no collusion is shown between the representative and an opposing party, if the representative does not have or represent an interest adverse to the proposed intervenor, and if the representative does not fail in fulfillment of his duty.’” *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 215 (11th Cir. 1993) (quoting *United States v. U.S. Steel Corp.*, 548 F.2d 1232, 1236 (5th Cir. 1977)).

Here, the United States cannot fully represent the interests of Proposed Plaintiff-Intervenors because the newly articulated institutional priorities and constraints that have emerged in the wake of a change in federal government administration—and after the filing of the instant consent decree—demonstrate that the United States’ litigation strategy and/or litigation position will advance an interest that is significantly different from, and adverse to, that of the Proposed Plaintiff-Intervenors. Given Defendants’ longstanding history of unlawful and unconstitutional policing practices, *see generally* DOJ Report, the only way to ensure that the Proposed Plaintiff-Intervenors will no longer be exposed to further unlawful conduct by Defendants is through the federal intervention, oversight, and monitoring in the Proposed Consent Decree. And, while the Proposed Consent Decree entered into by the parties addressed

many of Proposed Plaintiff-Intervenors' concerns, the United States has subsequently revealed a change in goal, direction, and priority that is inconsistent with, and adverse to, the continued federal oversight that Proposed Plaintiff-Intervenors believe is urgently required, as demonstrated most recently by its eleventh-hour attempt to delay the scheduled public hearing on the Proposed Consent Decree.

The United States acknowledges, in its Motion for Continuance, at 2-3, that the change in Presidential administrations and the confirmation of a new Attorney General have resulted in a shift in its priorities. Consistent with those priorities, on March 31, 2017, the Attorney General—who, by virtue of his authority as the country's leading law enforcement officer, dictates the manner and extent of the United States' involvement in the instant matter—issued a Memorandum regarding “Supporting Federal State, Local and Tribal Law Enforcement,” which sets forth the new principles that guide the United States' involvement with local law enforcement agencies and are dissonant with the relief sought in the instant proceedings. *See* Plaintiff's Memorandum for Heads of Dep't, at 1. These new guidelines dictate that, “Local control and local accountability are necessary for effective policing. It is not the responsibility of the federal government to manage non-federal law enforcement agencies.” *Id.* All existing or contemplated consent decrees—like the one at bar—must be brought into compliance with these principles. *Id.*

This policy is consistent with the new Attorney General's longstanding disdain for the use of consent decrees overall, and in the policing context in particular. *See, e.g.,* John Fritze, *Sessions voices concern about use of consent decrees for police*, Baltimore Sun, (Jan. 10, 2017), <http://www.baltimoresun.com/news/maryland/politics/blog/bal-jeff-sessions-voices-concern-about-use-of-consent-decrees-for-police-20170110-story.html> (consent decree cases “undermine

the respect for police officers and create an impression that the entire department is not doing their work consistent with fidelity to law and fairness, and we have to be careful before we do that.”); Eric Lichtblau, *Sessions Indicates Justice Department Will Stop Monitoring Troubled Police Departments*, N.Y. Times, (Feb. 28, 2017) (speaking of consent decrees, Mr. Sessions said, “So we’re going to try and pull back on some of this, and I don’t think it’s wrong, or mean or insensitive to civil rights or human rights.”); Jeffrey Sessions, *Forward, Consent Decrees in Institutional Reform Litigation*, Alabama Policy Institute (2008), <http://www.alabamapolicy.org/wp-content/uploads/API-Research-Consent-Decrees.pdf> (“Consent decrees . . . constitute an end run around the democratic process.”).

The President’s Executive Order—to which the Attorney General alluded in his March 31, 2017 Memorandum—clearly states the law enforcement priorities of this Administration: “to focus on law and order” and to “develop policies that comprehensively address illegal immigration, drug trafficking and violent crime.” Presidential Executive Order on a Task Force on Crime Reduction and Public Safety, Feb. 9, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/09/presidential-executive-order-task-force-crime-reduction-and-public>.

Addressing unconstitutional policing is not among those priorities, despite the Department’s ongoing involvement in multiple enforcement activities under 42 U.S.C. § 14141 against police departments around the country. In fact, although a separate Executive Order speaks repeatedly of prioritizing “law and order” and the enforcement of laws “to protect the enhancement and safety of Federal, State, tribal and local law enforcement officers,” Presidential Executive Order on Preventing Violence Against Federal, State, Tribal, and Local Law Enforcement Officers, Feb. 9, 2017, at <https://www.whitehouse.gov/the-press-office/2017/02/09/presidential-executive->

order-preventing-violence-against-federal-state, there is simply no mention of confronting unconstitutional policing practices.

The Attorney General's motion for continuance, on April 3, 2017, by its own terms, sought time to determine whether the proposed Baltimore consent decree "dovetails" with the President's priorities. *Motion for Continuance*, at 4. The motion—and the rationale offered for it—demonstrates that Baltimore City residents have cause. In it, the Attorney General has substituted a commitment, stated repeatedly, to "helping the BPD, and all law enforcement officers who work in Baltimore," *Motion for Continuance*, at 4, for the statutory obligation to vigorously protect the rights of citizens to be free of unconstitutional "patterns and practices" of policing. Thus, it is clear that the Attorney General misreads his obligations under 42 U.S.C. § 14141, which was not enacted to provide material support to police officers or to support strategies for fighting illegal immigration, drug trafficking or violent crime. The appropriately named "Law Enforcement Misconduct Statute" was enacted to protect citizens against unlawful conduct by police officers. The Attorney General's recent actions demonstrate his unwillingness or reluctance to prioritize that vital and unequivocal statutory obligations in this case.

Under Fourth Circuit law, there is no adequacy of representation under circumstances like these. In *Feller v. Brock*, the circuit court concluded that the District Court's denial of intervention was "untenable" where the U.S. Department of Labor (DOL) made clear that it would argue against a position proposed by the intervenors, and, absent the intervenors, the argument would not be heard by the Court. 802 F.2d at 730. This is indistinguishable from the situation at bar: Proposed Plaintiff-Intervenors urge federal oversight of Defendants while the United States has now adopted a policy discouraging federal supervision of state and local law

enforcement agencies (like Defendants). Under these circumstances, the United States cannot and do not adequately represent the interests of the Plaintiff-Intervenors.

Similarly, in *United States v. City of Los Angeles*, the Ninth Circuit concluded that then-President (and Presidential candidate) George W. Bush's critiques of consent decrees in policing cases supported a finding that the United States did not adequately represent the proposed plaintiff-intervenors. The evidence relied on by the proposed intervenors in *City of Los Angeles* was strikingly similar to the evidence in the case at bar:

Throughout his campaign for the presidency, now President George W. Bush repeatedly expressed strong opposition to federal oversight of local police departments. President Bush was quoted as saying that the federal government should not be "constantly second-guessing local law enforcement decisions." During the second presidential debate on national television, he stated that "I don't want to federalize the local police forces." He was quoted as professing a policy against "the Justice Department . . . routinely seek[ing] to conduct oversight investigations, issu[ing] reports or undertak[ing] other activity that is designed to function as a review of police operations in states, cities and towns."

Appellant's Opening Brief, *United States v. Garcia*, No. 01-55453, 2001 WL 34091668 (9th Cir. June 18, 2001) (internal citations omitted). The Ninth Circuit concluded that the "presumption of adequacy of government representation is overcome [where the President], who took office after this suit was filed, expressed opposition to consent decrees between the federal government and local law enforcement agencies . . . ," *United States v. City of Los Angeles*, 288 F.3d 391, 403 (2002). The circumstances here are indistinguishable: the Attorney General, who took office after the instant suit was filed, has consistently disparaged the use of consent decrees and, consistent with those views, has now implemented agency-wide policy guidelines discouraging federal oversight of law enforcement agencies like Defendants. These facts firmly demonstrate the inadequacy of representation in the instant case.

II. In the Alternative, Permissive Intervention is Appropriate in this Case.

Although Proposed Plaintiff-Intervenors respectfully assert their ability to intervene as of right, Rule 24(b) of the Federal Rules of Civil Procedure provides an alternative basis for intervention. In the Fourth Circuit, “liberal intervention is desirable to dispose of as much of a controversy ‘involving as many apparently concerned persons as is compatible with efficiency and due process.’” *See Feller*, 802 F.2d at 729 *see also* Wright et al., *supra* p. 14 at § 1904. A judge may grant non-statutory permissive intervention when a party: (1) “has a claim or defense that shares with the main action a common question of law or fact” and (2) seeks to intervene “on timely motion.” Fed. R. Civ. P. 24(b)(1). The decision-maker must also consider whether intervention would (3) “unduly delay or prejudice the adjudication of the original parties’ rights.” Rule 24(b)(3). The decision to deny permissive intervention “lies within the sound discretion of the trial court.” *Smith v. Pennington*, 352 F.3d 884, 892 (4th Cir. 2003) (citation omitted).

Proposed Plaintiff-Intervenors satisfy all elements of the Fourth Circuit standard and accordingly request that this Court permit them to intervene pursuant to Rule 24(b).

A. Proposed Plaintiff-Intervenors Have Claims That Share a Common Question of Law or Fact.

Proposed Plaintiff-Intervenors’ claims have questions of fact and law in common with those already before this Court. Organizationally, CCCD has had longstanding concerns about the systemic problems within the BPD that have directly led to persistent constitutional violations inflicted on its members. In addition, CCCD represents the interests of the individuals attending its member churches, who have suffered constitutional violations at the hands of the BPD and personally have a direct and cognizable interest in the outcome of the instant litigation. Likewise, Mr. Moore’s past and likely future abuse at the hands of BPD officers—as well as the

impact of such abuses on the communities in which he works as a social worker and the attendant effect on his professional responsibilities—establish his interest in the disposition of this case. As active members in the communities most impacted by BPD’s unconstitutional conduct, Proposed Plaintiff-Intervenors have substantial knowledge and expertise about the policing issues raised in this litigation, and their intervention in this matter will aid the Court’s understanding of the underlying legal and factual issues and, thereby, assist in the proper resolution of this action. *See City of Los Angeles*, 288 F.3d at 291 (remanding denial of permissive intervention to “Community Intervenors” in a Section 14141 pattern-and-practice lawsuit brought by DOJ against Los Angeles Police Department).

B. Proposed Plaintiff-Intervenors’ Amended Motion to Intervene Is Timely.

For all the reasons stated above regarding the timeliness of this Amended Motion in support of intervention as of right, this Amended Motion is likewise timely for permissive intervention.

C. Intervention Will Not Unduly Delay or Prejudice This Matter.

Moreover, intervention in this case will not delay the litigation nor would any party be prejudiced by Proposed Plaintiff-Intervenors’ intervention. Proposed Plaintiff-Intervenors seek intervention for the very limited purpose of supporting the approval of the Consent Decree and seeking its enforcement against the BPD. Indeed, rather than delaying this matter any further (as recently requested by the United States in its motion for continuance), Proposed Plaintiff-Intervenors seek the prompt review of the decree by this court after consideration of community testimony at the April 6th public hearing, followed by timely approval of the Consent Decree so that systemic reform of the BPD can commence without delay.

Taken together, these considerations clearly demonstrate the propriety of the Proposed Plaintiff-Intervenors' permissive intervention request. This Court should, therefore, grant the Proposed Plaintiff-Intervenors' alternative request for permissive intervention in the event that it declines to grant intervention as of right.

CONCLUSION

For the reasons set forth above, the Amended Motion to Intervene should be granted.

Dated: April 6, 2017

Respectfully submitted,

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