

**No. 10-16645**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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United States of America,  
*Plaintiff-Appellee,*

v.

State of Arizona, et. al.,  
*Defendants-Appellants.*

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**ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT OF ARIZONA**

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**MOTION FOR LEAVE FOR *AMICI CURIAE*  
*FRIENDLY HOUSE* PLAINTIFFS TO PARTICPATE IN ORAL  
ARGUMENT**

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**MOTION FOR LEAVE FOR *AMICI CURIAE FRIENDLY HOUSE*  
PLAINTIFFS TO PARTICIPATE IN ORAL ARGUMENT**

Pursuant to Fed. R. App. P. 27, *amici Friendly House* plaintiffs, through undersigned counsel, hereby move the Court for an order allowing them to participate in the oral argument scheduled for November 1, 2010, and enlarging the time for argument so that this request does not reduce the time allocated for the Plaintiff-Appellee. *Amici* have contacted the parties regarding their position as to this request. Defendant-Appellant, Arizona, has indicated that it is neither “consenting nor responding” to the request because it considers the request to be an issue for the Court to address and decide. Plaintiff-Appellee, the United States, opposes any amicus request for oral argument time.

*Amici* recognize that such requests are not lightly granted. However, *amici* stand in an unusual position with respect to the pending appeal.<sup>1</sup> *Amici* have a direct interest in this Court’s upholding the preliminary injunction, which the district court held to have mooted *amici*’s own, fully submitted and argued

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<sup>1</sup> While there are a total of seven related cases challenging the constitutionality of SB 1070 pending in the court below, including Plaintiff-Appellee’s case, the *Friendly House* plaintiffs are thus far the only plaintiffs to have survived a motion to dismiss by Defendant-Appellant. *See Friendly House, et al. v. Whiting, et al.*, No. CV 10-1061-PHX-SRB, slip op. at 38 (attached as Exhibit A). The district court found, in its October 8, 2010 Order on Defendant-Appellant’s Motion to Dismiss, that *amici* have standing to bring a number of constitutional claims in their suit below but declared their motion for preliminary injunction moot in light of the district court’s order in Plaintiff-Appellee’s case. *Id.* at 16,-20, 22-27 32, 35.

preliminary injunction motion filed in a parallel case.<sup>2</sup> *Amici* also have distinct, though complementary, interests and viewpoints from those represented by Plaintiff-Appellee. As private individuals and organizations who stand to be irreparably harmed by the four provisions of SB 1070 that were enjoined by the district court, *amici* provide a powerful lens through which to view SB 1070's practical effect and true danger. Indeed, the district court's ruling in this case makes explicit reference to *amici*'s case and claims. *U.S. v. Arizona*, 703 F. Supp. 2d 980, 995 n.6 (D. Ariz. 2010) and *id.* at 997 n.11. *Amici* respectfully submit that presentation of their interests and viewpoints will assist the Court in reaching a full understanding both of the legal issues and the practical implications of the injunction.

Moreover, counsel for *amici* are highly experienced immigration and constitutional law practitioners who have litigated numerous preemption cases dealing with state and local efforts to regulate immigration and therefore have considerable expertise to offer the Court on the issues raised in this case. Various of *amici*'s counsel are or were counsel in, for example, *Chamber of Commerce v. Whiting*, No. 09-115 (U.S.) and its predecessor cases in this Court and the district

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<sup>2</sup> In its October 8th order, the district court found that were the *Friendly House* plaintiffs' preliminary injunction motion not moot, it "would have found [*amici*'s Fourth Amendment claim] persuasive in considering whether to enjoin Subsection 2(B) of S.B. 1070 prior to its enactment." *Friendly House*, slip op. at 35. This claim, however, has not been briefed in this appeal and *amici* do not seek to argue this issue if granted time at the November 1st argument.

court (*cited in U.S. v. Arizona, id.* at 988, 991, Brief of Appellees at 19, and throughout Brief of Appellants); *Lozano v. City of Hazleton*, No. 07-3531, 2010WL 3504538 (3d Cir. Sept. 9, 2010) (*cited in* Brief of Appellees at 31, 58) and its predecessor case; *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043 (S.D. Cal. 2006) (*cited in U.S. v. Arizona* at 995 and Brief of Appellant at 37 n.20); *Villas at Parkside Partners v. Farmers Branch*, 701 F. Supp. 2d 835 (N.D. Tex. 2010) (*cited in U.S. v. Arizona* at 1007); and *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995).

Linton Joaquin, one of the *Friendly House* plaintiffs' counsel, would present argument for *amici* were this motion to be granted. Mr. Joaquin has particularly relevant expertise that would aid the Court in its consideration of this appeal. Mr. Joaquin has over 30 years of experience litigating immigration and immigrants' rights issues and has handled more than 15 complex class action cases. Mr. Joaquin's experience includes work on dozens of cases in this Circuit. He has personally argued numerous cases before this Court, including *Orantes-Hernandez v. Holder*, 321 Fed. Appx. 625 (9th Cir. Apr. 6, 2009) (Unpub. Disp.) (upholding denial of government motion to vacate nationwide permanent injunction and establishing standards and procedures for processing and detention of class members in immigration custody); *Montero-Martinez v. Ashcroft*, 277 F.3d 1137 (9th Cir. 2002) (addressing the scope of the statutory bar to judicial review of

discretionary determinations – 8 U.S.C. § 1252(a)(2)(B)(i)) (argued as amicus); *Andrieu v. Ashcroft*, 253 F.3d 477 (9th Cir. 2001) (*en banc*) (determining that 8 U.S.C. § 1252(f)(2) does not impose a restrictive standard that must be met for the court of appeals to stay a removal order pending judicial review) (argued as appointed counsel); *Walters v. Reno*, 145 F.3d 1087 (9th Cir. 1998) (upholding nationwide permanent injunction of Immigration and Nationality Service procedures for giving notice of civil document fraud proceedings); *El Rescate Legal Services v. E.O.I.R.*, 959 F.2d 742 (9th Cir. 1991) (upholding jurisdiction for class action challenge to immigration court policies of not interpreting all portions of deportation hearings, reversing summary judgment and remanding case); *Echeverria-Hernandez v. INS*, 946 F.2d 1481 (9th Cir. 1991) (*en banc*) (vacating as moot panel decision on application of international law in deportation case); *Rojo-Anguiano v. INS*, 730 F.2d 769 (Table) (9th Cir. Feb. 21, 1984) (unpublished disposition vacating and remanding deportation order); *Contreras-Buenfil v. INS*, 712 F.2d 401 (9th Cir. 1983) (addressing standard for determining extreme hardship requirement for suspension of deportation).

As discussed above, *amici* have a particularly strong interest in arguing in support of the injunction that, in the district court's view, rendered their own request for a preliminary injunction moot. If granted leave to participate in oral



argument in this matter, *amici* will be able to provide an important perspective to the Court to supplement that provided by the Plaintiff-Appellee.

For the foregoing reasons, the *Friendly House* plaintiffs request that the Court enlarge the time for argument and grant *amici* an opportunity to provide their perspective on the issues before the Court.

Respectfully Submitted,

Dated: October 12, 2010

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On Behalf of Counsel for *Amici*

## **CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2010, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the participants in this appeal, all of whom are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

By: /s/ Linton Joaquin  
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