

No. 10-16645

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

United States of America,

Plaintiff-Appellee,

v.

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

Defendants-Appellants.

Appeal from the United States
District Court for the District of
Arizona

No. CV 10-1413-PHX-SRB

APPELLANTS' SECOND REQUEST FOR JUDICIAL NOTICE

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Pursuant to Fed. R. Evid. 201, Defendants-Appellants the State of Arizona and its Governor, Janice K. Brewer (collectively, “Arizona”), request that the Court take judicial notice of pertinent portions of the following legislative history from the Immigration and Reform Act of 1986 (“IRCA”): *Immigration Reform and Control Act of 1985: Hearings before the Senate Subcommittee on Immigration and Refugee Policy*, 99th Cong., 1st Sess., S. Hrg. 99-273 (1985). Copies of the pertinent portions of these hearings are attached as Exhibit A.

Both the district court and the United States have relied on this legislative history to support the conclusion that Congress intended to preclude states from imposing the sanctions that section 5(C) of S.B. 1070 imposes on aliens who perform unauthorized work. Specifically, both the district court and the United States relied on *Nat’l Ctr. for Immigrants’ Rights, Inc. v. INS*, 913 F.2d 1350, 1368 (9th Cir. 1990), *rev’d on other grounds*, 502 U.S. 183 (1991), in which this Court relied on the hearings referenced above in finding that “[w]hile Congress initially discussed the merits of fining, detaining or adopting criminal sanctions against the *employee*, it ultimately rejected all such proposals.” *See id.* at 1368; Appellee Br. at 21, 37-38; [ER 26.] Arizona also relies on these hearings to show that it was not the “clear and manifest purpose” of Congress to preclude states from regulating aliens who perform unauthorized work. Reply at 16-17.

It is proper for the Court to take judicial notice of legislative history.

See, e.g., Chaker v. Crogan, 428 F.3d 1215, 1223 n.8 (9th Cir. 2005) (granting request to take judicial notice of a statute's legislative history). Here, the legislative history is over 25 years old and, therefore, is not readily available via a standard subscription to Lexis or Westlaw. To ensure that the Court has easy access to the portions of these hearings that are relevant to this appeal, Arizona respectfully requests that the Court take judicial notice of the legislative history attached as Exhibit A.

Dated: October 12, 2010

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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 following CM/ECF registrants:

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