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November 4, 2010

Molly Dwyer, Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *United States of America v. State of Arizona et al.*, Case No. 10-16645 (Judges Noonan, Paez, and Bea)

Dear Ms. Dwyer:

As counsel for *amicus curiae* the County of Santa Clara, California (“County”), in the above-referenced case, we are writing on behalf of the County to advise the Court of directly relevant authority on an important issue that arose during oral argument. Because this issue bears directly on the concerns raised by the County and our fellow local government *amici* that are responsible for funding, operating, and overseeing local law enforcement agencies, the County respectfully submits this supplemental letter in order to draw the Court’s attention to important authority not cited by the parties.

Specifically, the parties’ discussion at argument of Sections 2(B) and 6 of SB 1070 failed to address this Court’s decision in *Gonzales v. City of Peoria*, 722 F.2d 468, 474-76 (9th Cir. 1983), *overruled on other grounds*, *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999), and other authorities that reject or cast grave doubt on the authority of state and local law enforcement to enforce the *civil* provisions of federal immigration law. This Court has never held that state and local officers may enforce civil immigration law without specific authorization from Congress. To the contrary, the Court has drawn a firm line between enforcement of criminal and civil immigration laws by state and local police and has approved only enforcement of federal *criminal* immigration law. *See Gonzales*, 722 F.2d at 474-76.

In response to the Court’s questions about state and local authority to enforce immigration law, neither party noted this distinction. *See generally* Recording of Nov. 1, 2010 oral argument at 22:30-26:30 (argument for Defendants-Appellants); *id.* at 57:00-60:00 (argument for Plaintiff-Appellee). *Amici* in this case, however, have raised this issue. *See generally* Br. *Amicus Curiae* of *Friendly House* Plaintiffs at 17-23 (presenting authority from the Ninth Circuit and several sister Circuits distinguishing between enforcement of civil and criminal

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immigration law by state and local officers, as well as federal statutes and legislative history demonstrating that state and local officials have neither inherent authority nor blanket delegated authority to enforce federal civil immigration law).

In light of the public safety considerations described in our *amicus* brief, the County respectfully requests that the Court avoid adopting a new, permissive view of local governments' role in enforcement of civil as opposed to criminal immigration law. To do so is not necessary in this case and would destabilize the settled expectations of municipalities and individuals in states within this Circuit.

Respectfully submitted,

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