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December 17, 2010

VIA CM/ECF

Ms. Molly C. Dwyer
Clerk, United States Court of Appeals
for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *United States of America v. Arizona*, No. 10-16645 (9th Cir.)
Argued November 1, 2010 before Judges Noonan, Paez, and Bea

Dear Ms. Dwyer:

Pursuant to F.R.A.P. 28(j), the United States hereby responds to the November 24, 2010, letter filed by Amicus Curiae American Unity Legal Defense Fund. Amicus belatedly and incorrectly suggests that the Supreme Court disapproved this Court's analysis of IRCA's legislative history in *National Center for Immigrants' Rights v. INS*, 913 F.2d 1350, 1367-69 (9th Cir. 1990), when it reversed this Court's holding on grounds unrelated to that analysis. This Court determined that "[w]hile Congress initially discussed the merits of fining, detaining or adopting criminal sanctions against the *employee*" for working without authorization, "it ultimately rejected all such proposals." *Id.* at 1368. The Supreme Court cast no doubt on that observation. Instead, the Supreme Court disagreed with this Court's construction of the regulation and statute at issue in that case, neither of which is relevant here. *See INS v. Nat'l Ctr. for Immigrants' Rights*, 502 U.S. 183 (1991). The Supreme Court also described this Court's reliance on cases construing the Attorney General's detention authority as "misplaced" and "too cramped." *See id.* at 193 (citing *United States v. Witkovich*, 353 U.S. 194 (1957); *Carlson v. Landon*, 342 U.S. 524 (1952)). That conclusion likewise has no bearing on this Court's analysis of IRCA.

The Supreme Court's observation that immigration restrictions have been designed in part to "preserve jobs for American workers," *id.* at 194 (internal quotation marks omitted), echoes this Court's observation that Congress sought to address "serious problems associated with illegal employment, including loss of jobs for low-income Americans," 913 F.2d at 1367. It in no way calls into question this Court's conclusion about the means Congress chose to address that problem.

Amicus notes that *before* the passage of IRCA this Court had characterized the INA's concern with employment as "peripheral." *See INS*, 502 U.S. at 186-87 (quoting *Nat'l Ctr. for Immigrants' Rights, Inc. v. INS*, 791 F.2d 1351, 1356 (9th Cir. 1986)). That prior characterization has no bearing on this Court's subsequent analysis of IRCA's legislative history.

In short, the Supreme Court's opinion is fully consistent with this Court's analysis of IRCA's legislative history.

Sincerely,

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