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January 6, 2011

VIA CM/ECF

Molly C. Dwyer
Clerk of the Court
United States Court of Appeals
for the Ninth Circuit
95 7th Street
San Francisco, CA 94103-1526

Re: *United States v. Arizona*, Case No. 10-16645 (Judges Bea, Paez, and Noonan)
Response to the Rule 28(j) Statements of Supplemental Authority filed by Amicus Curiae American Unity Legal Defense Fund and the United States

Dear Ms. Dwyer:

On November 24, 2010, the American Unity Legal Defense Fund ("AULDF") submitted a statement in which it asserted that the parties had erroneously cited *National Center for Immigrants' Rights v. INS*, 913 F.2d 1350, 1370 (9th Cir. 1990) ("*NCIR*") as having been reversed on other grounds by the Supreme Court's decision in *INS v. National Center for Immigrants' Rights*, 502 U.S. 183 (1991). On December 17, 2010, the United States argued that AULDF "incorrectly suggest[ed] that the Supreme Court disapproved of this Court's analysis of IRCA in [*NCIR*]" and that "the Supreme Court's opinion is fully consistent with this Court's analysis of IRCA's legislative history."

Arizona respectfully disagrees with the United States' analysis of *INS*. The *INS* Court did not directly address this Court's analysis of IRCA's legislative history, which is why Arizona cited *NCIR* as having been "reversed on other grounds." However, the Supreme Court held that the no-work bond conditions at issue in *NCIR* (an *employee* sanction) were consistent with the congressional policies underlying both the INA and IRCA because one of Congress' primary goals in "'restricting immigration is to preserve jobs for American workers'" and that "[t]his policy of immigration law was forcefully recognized most recently in the IRCA." 502 U.S. at 194 & n.8 (citations omitted). Because the Supreme Court found that the no-work bond conditions *were* consistent with Congress' intent in enacting both INA and IRCA, the Supreme Court's decision was *not* "fully consistent with" this Court's finding that the conditions were inconsistent with Congress' intent in enacting IRCA.

More importantly, the *NCIR* decision should not control this appeal because the *NCIR* court addressed whether Congress had empowered an executive agency (the INS) to impose employee sanctions. *See NCIR*, 913 F.2d 1350. The issue before this Court, however, is whether there is sufficient evidence in IRCA and its legislative history to overcome the presumption against preemption and demonstrate that it was "the clear and manifest purpose of Congress" to prohibit *states* from imposing sanctions on unauthorized employees. *See De Canas v. Bica*, 424 U.S. 351, 356-57 (1976).

Sincerely,

SNELL & WILMER L.L.P.

s/John J. Bouma
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Janice K. Brewer and the State of Arizona

cc (by CM/ECF): All Counsel of Record

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