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March 1, 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)
Rule 28(j) Statement of Supplemental Authority Regarding the U.S. Supreme Court's Opinion in *Williamson v. Mazda Motor of Am., Inc.*, No. 08-1314

Dear Ms. Dwyer:

Pursuant to F.R.A.P. 28(j), Appellants the State of Arizona and Governor Janice K. Brewer submit this statement to notify the panel of the U.S. Supreme Court's February 23, 2011 opinion in *Williamson v. Mazda Motor of America, Inc.*, No. 08-1314. In *Williamson*, the Supreme Court addressed whether Federal Motor Vehicle Safety Standard 208, which permits automobile manufacturers to install on rear, inner car seats *either* lap belts *or* lap-and-shoulder belts, preempts state tort liability based on a manufacturer's failure to install lap belts. The *Williamson* Court found no conflict preemption—even though Standard 208 provides manufacturers a choice that the state tort suit would prohibit—because Standard 208's "seatbelt choice is not a significant objective of the federal regulation." Slip Op. at 1.

Williamson is pertinent to the appeal in *United States v. Arizona* in two respects. First, it clarifies the standard for conflict preemption, which is the primary basis upon which the district court enjoined Sections 2(B), 3, 5(C), and 6 of S.B. 1070. The injunction cannot be affirmed, therefore, absent a showing that these provisions conflict with a "significant objective" of some federal statute or regulation.

Second, *Williamson* prevents *National Center for Immigrants' Rights v. INS*, 913 F.2d 1350, 1370 (9th Cir. 1990) ("*NCIR*") from controlling the constitutionality of Section 5(C). In *NCIR*, this Court found that Congress did not intend to sanction employees when it enacted IRCA. Although *NCIR* confirms that Congress chose not to sanction employees (as the DOT

chose not to require lap-and-shoulder belts), nothing in *NCIR* suggests that imposing such sanctions would interfere with any "significant" congressional objective. To the contrary, in reversing *NCIR*, the Supreme Court found that the challenged no-work bond conditions (an employee sanction) were consistent with Congress' objectives in enacting both INA and IRCA. *See INS v. Nat'l Center for Immigrants' Rights*, 502 U.S. 183, 194 & n.8 (1991).

For the foregoing reasons, Appellants respectfully request that the Court consider *Williamson* and its application to the issues on appeal before issuing its decision.

Sincerely,

SNELL & WILMER L.L.P.

s/John J. Bouma
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