

AUG 30 2010

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED \_\_\_\_\_  
DOCKETED \_\_\_\_\_  
DATE \_\_\_\_\_ INITIAL \_\_\_\_\_

THE UNITED STATES OF AMERICA

Appellant,

v.

CA No. 10 - 16645

(CA No. 2:2010 cv 1413 SRB)

THE STATE OF ARIZONA and JANICE K.  
BREWER, GOVERNOR OF THE STATE  
ARIZONA, in her official capacity

Appellee.

**MOTION FOR LEAVE TO FILE AMICUS CURIAE MEMORANDUM IN  
SUPPORT OF DEFENDANTS OPPOSITION TO MOTION TO DISMISS  
FILED BY APPELLANT AFTER DOCKETING THE NOTICE OF APPEAL**

Petitioner, **Ray Elbert Parker**, an *amicus curiae* participant in this case in the lower court, hereby files simultaneous motions with this honorable court and the United States District Court for the District of Arizona, Phoenix Division, in support of the State of Arizona in this cause of action. Petitioner prays that this honorable court **grant** his motion and that the court accept his *good faith* Memorandum as *a friend of the court* in the interest of justice.

The arguments and case law contained in the accompanying Memorandum are incorporated herein pursuant to Rule 10 (c) of the Federal Rules of Civil Procedure, as if fully stated again.

Respectfully submitted,

/s/ Ray Elbert Parker  
RAY ELBERT PARKER pro se

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Alexandria, Virginia 22320  
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**IN THE  
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THE STATE OF ARIZONA and JANICE K. )  
BREWER, GOVERNOR OF THE STATE OF )  
ARIZONA, in her official capacity )  
)  
Appellee, )

**AMICUS CURIAE MEMORANDUM IN SUPPORT OF THE  
STATE OF ARIZONA'S OPPOSITION TO MOTION TO DISMISS**

Petitioner, **RAY ELBERT PARKER**, hereby submits the above captioned Memorandum as *a friend of the court*, which sets forth the grounds and the law to be dispositive of a *Motion to Dismiss* that was authorized to be filed by the 26<sup>th</sup> day of August, 2010, by the Honorable Susan R. Bolton, District Judge, for the United States District Court for the State of Arizona, and Petitioner states the following:

The United States Department of Justice, after the *timely* filing of the *Notice of Appeal* by the State of Arizona from the lower court Order of the 28<sup>th</sup> day of July, 2010, and after the appellate court's denial of Arizona's motion to *expedite* the case and the granting of an *enlargement of time* for the Department of Justice to file briefs, initiated this follow-up

stratagem in the lower court while the case is on appeal with willful intent to *preclude* any judicial review whatsoever of the constitutional issues on the “*merits*” of this case.

The Department of Justice Civil Rights Division itself initiated this litigation against the people of Arizona, and allegedly the nation; and thereby, denying the victims of the oppressive “War of Northern Civil Rights Aggression from Washington, D. C.” any *remedy* whatsoever by the use of *procedural subterfuge*, while on the other hand promoting the *flawed* policies and *bankrupt* constitutionality of President Barack Hussein Mohammad Obama’s leniency toward amnesty, lawlessness, anarchy, full citizenship for law-breakers and a second term ambition to be President of “The United States of Mexico” in 2012.

### **STATEMENT OF THE FACTS**

The United States District Court for the State of Arizona entered an Order on the 28<sup>th</sup> day of July, 2010, *granting in part and denying in part*, the Motion for a Preliminary Injunction filed by the United States Department of Justice. President Barack Hussein Mohammad Obama, and his appointed Attorney General, Eric Holder, initiated this litigation on their own against the State of Arizona public officials who were acting within the scope of their official *duty* and *obligation* to enforce promulgated law S. B.1070 to curb “out of control *criminal* anarchy” violating the borders of not only Arizona, but Texas, New Mexico and California as well a threat to both their citizenry and the national security.

The State of Arizona filed a *timely* notice of appeal to the United States Court of Appeals for the Ninth Circuit with a motion to expedite the case, a motion which was denied because

the United States Department of Justice alleged they didn't have enough time to prepare a pleading with their bottom-less pit of time, personnel and tax-payer money.

In granting the federal government's request for enlargement of time, the appellate court set forth a time table for the parties with a projected hearing date for the 1<sup>st</sup> day of November, 2010, just one day before the national elections.

After the *timely* filing of the *Notice of Appeal*, the Department of Justice filed a *Motion to Dismiss* in the United States District Court for Arizona, Phoenix Division, while the case is pending on appeal. President Barack *Hussein Mohammad* Obama and his clonally renegade Department of "*Just Us*" [sic] Civil Rights Division of legally sanctioned race sanitizers are carrying out their own personal macabre vendetta and *McCarthyite* destruction of the character and integrity of states against American citizens allegedly for three reasons:

*First*, this litigation was initiated against Arizona for political reasons, not in the interest of justice. The White House motivation and goal at all times relevant is to commandeer the Latino vote by placing the onus of discrimination on Arizona and its public officials by allowing the Democrat Party to claim credit for a pyrrhic legal victory for minorities and illegal aliens that evidences an alleged *betrayal of America* in violation of the Constitution of the United States, a betrayal that's been *ongoing* for the past eighteen years under three Presidents, but carried to the extreme by the current incumbent.

*Second*, The federal government law suits that penalize the innocent and that anoint

the guilty under the banner of Arab deism serve the President well by shifting the blame away from President Barack *Hussein Mohammad* Obama and his Attorney General's responsibility, or the lack thereof, to enforce America's statutory immigration law. **Article I § 8**, Const. U. S.

reads:

" . . . The Congress shall have the power  
 . . . to provide for the 'common defense'  
 and 'general welfare' of the United States.  
 To provide for calling forth the militia to  
 *execute the laws of the union, suppress*  
 *Insurrection and repel invasions.*"

(Emphasis added)

*Third*, the Constitution of the United States (**Article II § 2**) places the responsibility for the *protection of America's borders* squarely on the shoulders of the President of the United States (Barack *Hussein Mohammad Obama*), the Vice President ( *Joe Biden*) and all other civil officers of the United States (including Eric Holder's Department of Justice and Homeland Security), who by their ongoing failure year-after-year to perform a duty they are required to perform, by law, are collectively and arrogantly thumbing their nose at America in violation of their constitution duty.

It is submitted that President Barack *Hussein Mohammad Obama's* ongoing willful failure to enforce the immigration laws of this nation is an alleged *impeachable offense* in violation of **Article II § 4**, Const. U. S.

The federal agencies and the federal officials such as the United States Attorney

General, Eric Holder, are by law *responsible* for immigration *enforcement*, not its legislation.

The statutory *Immigration and Nationality Act ("INA")*, 8 U. S. C. § 1101 et seq., empowers various agencies (including the *conflict of interest* Department of Justice) to *administer* and *enforce* the statutory immigration laws promulgated by the Congress of the United States.

The Commonwealth of Virginia is attempting to implement laws similar to Arizona only to discover the threat of law suits from President Barack *Hussein Mohammad* Obama and his Department of Justice illegal alien defenders, who always see *black as white and white as black* as well as allegedly being in violation of legal ethics and their bar oath by advising the illegal aliens to engage in civil disobedience and to ignore the laws. In Arizona, the U. S. Department of Justice is threatening to sue the local sheriff, not supporting your local sheriff; and in Virginia the America Civil Liberties Union (ACLU) announced it would sue each and every officer enforcing any Virginia immigration law affecting illegal aliens. America is clearly in a "tail wagging the dog" situation when it comes to enforcing the nations immigration laws.

If you can't protect your borders, then you can't protect you're the nation! Arizona and Virginia are teaching the nation, by example, about the threat of the invasion and conquering of America without firing a shot.

In the light of this *out of control* and *lawless* invasion of America by illegal aliens, and President Barack *Hussein Mohammad* Obama's autocratic message to Arizona and the nation condoning anarchy over law and order in exchange for a Latino voting constituency, the fate of

the southwestern states, and perhaps the nation, rests solely with the conscience of the courts of this circuit to deal with an inept one party rule displaying a flaunty attitude for the constitution and the judicial system that communicates to every legal American citizen that “the federal government won’t and you can’t!”

Under the constitutional guarantees delegated to the states as well as under their own state constitution, and a failure by the courts to provide a *remedy*, a decision in favor of the Department of Justice will leave the Governor of Arizona and the public officials without a satisfactory alternative to restore cultural sanity to replace anarchy; protect its citizens and tourist from crime and crime lords; and to resist the tactics, stratagem and politically motivated boycotting by organized opportunist, outlaw sanctuary cities, self-serving non-profit profiteers and misguided *sanctuary* religious groups and others, who place their self-serving agenda above *patriotism* that’s having the effect of *dividing* America with their racial and ethnic *radicalism* disguised as “*change*” by the Sheik of Araby in his 2008 Presidential campaign. The judicial system may have been born at night, but hopefully, not last night!

Consistent with the above, petitioner moves both courts to *deny* the Motion to Dismiss proffered by the United States Department of Justice Civil Rights activists for the former reasons and the reasons below.



## **THE FILING OF THE NOTICE OF APPEAL DIVEST THE UNITED STATES DISTRICT COURT OF JURISDICTION**

The filing of a timely and valid *Notice of Appeal* is an event of jurisdictional significance that *divests* a trial court of *jurisdiction* over matters related to the appeal and confers jurisdiction on an appellate court. *Giggs v. Provident Consumer Disc. Co.*, 459 U. S. 56, 58 (1982); 20 James Wm. Moors, *Moore's Federal Practice* § 303.32 (1) (3<sup>rd</sup> ed. 1997); *People v. Mendez*, 19 Cal. 4<sup>th</sup> 1084 (1999).

Once a notice of appeal is filed, a lower trial court *may not* vacate or amend its own judgment or order nor do any other act that would affect the rights of the parties or impact the issues on appeal; and most certainly, not to alter the issues or dismiss the case, and thereby, deny an appellee any opportunity whatsoever to present a defense in a court of law in response to a *socialist government's demand for conformity and conformity in silence* for those who still believe in *state rights* and the Constitution of the United States guaranteed right to due process of law. *Mendez Valvo v. University of Southern California*, 67 Cal. App. 3d 887 (1977).

Logic and a "reasonable" interpretation of the law assisted by common sense should dictate that *jurisdiction* over a case can only be in one court at a time. There should be no further proceedings in the lower court during the pendency of an appeal filed in a *timely* manner because of a shift in focus to the higher court and the avoidance of dual *schizophrenic*

litigation that's not cost and time efficient to either the parties or the courts should be void.

A district court loses jurisdiction over an action when (1) a party perfects an appeal that is filed in a *timely* manner; (2) the appeal is from an appealable order of the lower court; and (3) the issues were never decided on the *merits* by the lower court.

The timeliness of the filing of the notice of appeal, as indicated, has come to be of critical importance in jurisdictional terms, the Supreme Court of the United States itself stating with clarity and specificity that "timely filing of a notice of appeal in a civil case is a jurisdictional requirement that confers jurisdiction on a higher court." *Bowles v. Russell*, 127 S. Ct. 2366, 2366 (2007). The critical date for determining whether jurisdiction passes to the court of appeals is the date of the filing of the notice of appeal. See *Gibbs*, *supra*, 459 U. S. 58,

When a notice of appeal is timely filed, a trial court is divested of jurisdiction at the time the notice is filed, not when the appeal is subsequently docketed by the appellate court. Therefore, to allow the trial court to exercise jurisdiction over the Department of Justice *Motion to Dismiss* would not only have the untoward effect of allowing two courts to have jurisdiction over the same case at the same time, but it would *prejudice* appellees rights in this case.

The *rationale* behind the rule that the filing of a notice of appeal *transfers* jurisdiction from the district court to the appellate court is "*to promote judicial economy and avoid the confusion and inefficiency that might flow from putting the same issue(s) before two courts at the same time.*" 20 Moore, supra. § 303.23 (1); *Gibbs*, supra, 459 U. S. at 58. A district court and an appellate court of appeals should not attempt to assert jurisdiction over a case

Simultaneously,

The *purpose* of the jurisdictional bar is to protect the role of the reviewing court by *preserving the status quo* until the appeal can be decided. Otherwise, a trial court could interfere with an appeal by changing the result or the record under review, and thereby, possibly mooted the entire appellate process or significantly altering or materially affecting the presentation of the issues to be reviewed. *Townsel v. Superior Court*, 20 Cal. 4<sup>th</sup> 1084 (1999); *In re Marriage of Varner*, 68 Cal. App. 4<sup>th</sup> 932 (1998) (“The trial court may not make any order which will lessen the effectiveness of the appellate court’s opinion”).

The rule exists to prevent a district court from *materially* modifying its decision pending appellate review because an appellate court is entitled to review a *fixed*, rather than a *mobile* record. *Kern Oil & Refining Company v. Tennessee Oil Company*, 840 F. 2d 730 (CA 9<sup>th</sup> Cir. – 1988).

It is submitted that allowing the lower court to entertain Appellant’s *Motion to*

*Dismiss* after the appeal process is in motion will prejudice Appellees rights. The issues presented in this case should be tested in court in a manner that's consistent with the right to "a day in court" guaranteed by the Constitution of the United States and the Federal Rules of Appellate Procedure. *United States v. Estate Preservation Services*, 202 F. 3d 1093, 1097 [ 1, 2 ] (CA 9<sup>th</sup> Cir. – 2000).

The federal government always prefers to have a case decided by using procedural tactics to delay cases for years, bankrupt the opposition and never having to answer a complaint or alternatively, never having to address the issues on the *merits*. These procedural gymnastics are the standard tools of the Department of Justice legal compendium for the practicing of law in a manner analogous to that of philosophers who argued for centuries over "*How many Angels can dance on the head of a pin?*"

The *burden* in this case is not on the State of Arizona as the direct result of the *sell out* of America to the Mexican government, illegal aliens and terrorists by President Barack *Hussein Mohammad Obama*; the U. S. Departments of Justice, State and

Homeland Security; and a “*do nothing*” Congress with empty-suits strutting while sitting down dressed in Star-spangled attire.

The *burden* on the appellant pursuing a “*facial challenge*” (hypothetical injury) is much heavier than the *burden* on the State of Arizona pursuing an “*as applied*” *challenge* (actual injury). *Gentala v. City of Tucson*, 213 F. 3d 1055, 1060 [ 1 – 4 ] (CA 9<sup>th</sup> Cir. -2000). If the Ninth Circuit elects to ignore the cancer of immigration that will inevitably *divide* this nation, then Arizona and America are without any remedy under law with the alternative encouraging anarchy in reverse. *Dieser v. Continental Casualty Co.*, 440 F. 3d 920, 923 [ 2 – 4 ] (CA 8<sup>th</sup> Cir. – 2006).

The Arizona case is a *criminal* case involving illegal aliens breaking the law of the land, and allegedly, political criminals committing *borderline* (no pun intended) *treason* by failing to perform their responsibilities dictated by the Constitution of the United States. A “reasonable” person cannot deny the fact that every man, woman and child entering this country illegally are *criminals* by legal definition, if they’re breaking our

laws.

The federal governments sly move to have the district court grant their Motion to Dismiss to alter the appeal jurisdiction is a feeble effort on their part to avoid the possibility of the Department of Justice themselves having to appeal what is basically a criminal matter. It is *well settled law* that the United States cannot appeal in a criminal case without the express congressional authorization. *United States v. Martin linen Supply*, 430 U. S. 564, 568, 97 S. Ct. 1349; 18 U. S. C. A. § 3731; *United States v. Sisson*, 399 U. S. 267, 291 – 192 n. 20, 90 S. Ct. 2117.

The *Federalist Papers* warned of *one party control* over all three branches of our government. This litigation, initiated by our government against the State of Arizona and its citizens, is allegedly a coercive attempt to have the federal court system *condone* what can only be described as *a betrayal of America*, and supporting a reasonable hypothesis, that under President Barack *Hussein Mohammad* Obama *democracy* in America is *descending* while *fascist socialism* is beginning its ascension.

WHEREFORE, petitioner moves this honorable court to dismiss the governments *out of time* motion filed after the State of Arizona filed its Notice of Appeal, without oral argument and without opposing briefs being required, and that the appeal be allowed to continue on the path and time table set forth by Order of the appellate court.

POINTS: As stated above.

AUTHORITIES: As stated above.

Respectfully submitted,

/s/ Ray Elbert Parker

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(703) 328 – 2366

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**CERTIFICATE OF SERVICE**

Petitioner, **RAY ELEBERT PARKER**, hereby states *under oath* that a true copy of the above pleading has been mailed, postage prepaid, this **25<sup>th</sup> day of August, 2010**, to the following: **The Honorable Janice K. Brewer, Governor of the State of Arizona**, Appellee, Executive Tower of State Capitol, 1700 West Washington Street, Phoenix, Arizona 85007; **The Honorable Terry Goddard, Esq., Attorney General for the State of Arizona**, Counsel for Appellee, Office of the Attorney General for the State of Arizona, 1275 West Washington Street, Phoenix, Arizona 85007; and to counsel for the Department of Justice Appellant: **Troy West, Esq., Assistant United States Attorney** on behalf of all of appellant's team, namely, **Davis K. Burke, Esq., United States Attorney; Arthur R. Goldberg, Assistant Director, Federal**



**Programs Branch; Vhur Chilakamarri, Esq.; and Joseph Wilkenfeld, Esq., United States**

Department of Justice, Civil Division, 20 Massachusetts Avenue, NW, Washington, D. C. 20530.

Respectfully submitted,

/s/   
RAY ELBERT PARKER, pro se

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**ORDER**

Petitioner, **RAY ELBERT PARKER'S** amicus *curiae* motion and *Memorandum* having come before this honorable court, the contribution to this court's decision making process having been considered, and the entire pleadings of opposing parties having been reviewed and considered, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2010,

**ORDERED**, that petitioner's motion be, and the same is hereby, **granted**; and it is,

**FURTHER ORDERED**, that petitioner's pleading be made part of the court's official record for purposes of a *final judgment* rendered by this court and at all times relevant as part of the record on appeal.

/s/ \_\_\_\_\_  
UNITED STATES APPELLATE JUDGE

/s/ \_\_\_\_\_  
UNITED STATES APPELLATE JUDGE

/s/ \_\_\_\_\_  
UNITED STATES APPELLATE JUDGE