

1 Timothy J. Casey (#013492)
 2 SCHMITT, SCHNECK, SMYTH & HERROD, P.C.
 3 1221 East Osborn Road, Suite 105
 4 Phoenix, AZ 85014-5540
 5 Telephone: (602) 277-7000
 6 Facsimile: (602) 277-8663
 7 timcasey@azbarristers.com
 8 Attorney No. 013492
 9 Special Assistant Attorney General for Michigan
 10 For *Amici Curiae* Michigan, Florida, Alabama, Nebraska, Northern Mariana Islands,
 11 Pennsylvania, South Carolina, South Dakota, Texas, and Virginia

8 Michael A. Cox
 9 Attorney General of the State of Michigan

10 B. Eric Restuccia (MI Bar No. 49550)
 11 Solicitor General

12 Mark Sands (MI Bar No. 67801)
 13 Assistant Attorney General

14 P.O. Box 30212, Lansing, MI 48909
 15 Telephone: (517) 373-1124
 16 RestucciaE@michigan.gov
 17 SandsM1@michigan.gov

16 UNITED STATES DISTRICT COURT
 17 DISTRICT OF ARIZONA

18 The United States of America,

19 Plaintiff,

20 v.

21 The State of Arizona; and Janice K. Brewer,
 22 Governor of the State of Arizona, in her
 23 Official Capacity,

24 Defendants.

No. CV-10-1413-PHX-SRB

**MOTION AND MEMORANDUM
 FOR REQUEST TO FILE BRIEF
 OF *AMICI CURIAE* MICHIGAN,
 FLORIDA, ALABAMA,
 NEBRASKA, NORTHERN
 MARIANA ISLANDS,
 PENNSYLVANIA, SOUTH
 CAROLINA, SOUTH DAKOTA,
 TEXAS, AND VIRGINIA**

25 Pursuant to Fed. R. Civ. P. 7 and L.R. 7.2, Michigan respectfully moves for leave to file
 26 the concurrently-lodged brief as *amici curiae* on behalf of itself and Florida, Alabama, Nebraska,
 27 Northern Mariana Islands, Pennsylvania, South Carolina, South Dakota, Texas, and Virginia in
 28

1 opposition to Plaintiff's Motion for Preliminary Injunction (dkt. 6). The *amici*, as co-participants
2 with Arizona in the concurrent enforcement scheme envisioned by Congress, seek to offer their
3 expertise and perspective to this Court considering this important question of State authority
4 under the immigration law. Specifically, the *amici* wish to address the question of whether they
5 will be permitted to provide assistance to the Federal government in enforcing Federal
6 immigration law – and in particular whether the *amici* will continue to have the authority to
7 arrest a person for violating Federal immigration law.
8

9 This Court has full discretion in determining whether to grant amicus status to ILWU.
10 *Hoptowit v. Ray*, 682 F.2d 1237, 1261 (9th Cir. 1982); *Silver v. Babbitt*, 166 F.R.D. 418, 434 (D.
11 Ariz. 1994). Like Arizona, the *amici* are voluntary participants in the Congressional scheme to
12 provide for concurrent enforcement of Federal immigration law. The primary tool of the States
13 to assist the Federal government in enforcing Federal immigration law is the power of State law-
14 enforcement officers to arrest persons where there is probable cause that an individual is
15 unlawfully present in the United States, *Gonzalez v. Peoria*, 722 F.2d 468, 477 (9th Cir. 1983),
16 or to investigate an individual's immigration status where there is reasonable suspicion that the
17 person is in the country unlawfully. See *United States v. Salinas-Calderon*, 728 F.2d 1298, (10th
18 Cir. 1984). In fact, the Department of Justice itself in a 2002 memorandum expressed the view
19 that States have "inherent power" to arrest aliens for immigration violations.
20
21

22 If the United States's preemption argument were to prevail, and this Court were to
23 conclude that Arizona could not mandate that its law enforcement officers investigate potential
24 violations of Federal immigration law when there is "reasonable suspicion" that the laws have
25 been violated, the ability of the *amici* to assist in the enforcement of immigration law would be
26 compromised. In the place of the cooperative-enforcement scheme established by Congress, the
27
28

1 position of the United States would allow the executive branch on its own authority to
2 selectively enforce the laws enacted by Congress.

3 Because the *amici* derive their authority to concurrently enforce Federal immigration
4 laws for sources other than the Arizona law at issue, this brief will serve the important role of
5 "bring[ing] relevant matter[s]" to the attention of the Court that have not already been brought to
6 its attention by the parties. See *Funbus Systems, Inc. v. Cal. Pub. Util. Comm'n*, 801 F.2d 1120,
7 1124-25 (9th Cir. 1986); see also *Neonatology Assocs. v. Commissioner*, 293 F.3d 128, 132-33
8 (3d Cir. 2002) (Alito, J.) (discussing standards for acceptance of amicus briefs). Accordingly,
9 this Court should grant the motion of the *amici* to participate as *amici curiae*.

11 CONCLUSION

12 WHEREFORE, Michigan, on behalf of itself and Florida, Alabama, Nebraska, Northern
13 Mariana Islands, Pennsylvania, South Carolina, South Dakota, Texas, and Virginia seek leave to
14 provide this Court with the prospective harm that could result to their ability to assist in
15 enforcement of immigration law if Plaintiff's Motion for Preliminary Injunction were to be
16 granted.
17

18 Respectfully submitted,

19 SCHMITT, SCHNECK, SMYTH &
20 HERROD, P.C.
21 s/Timothy J. Casey
22 Timothy J. Casey #013492
23 1221 East Osborn Road, Suite 105
24 Phoenix, AZ 85014-5540
25 Telephone: (602) 277-7000
26 Facsimile: (602) 277-8663
27 timcasey@azbarristers.com
28 Special Assistant Attorney General for Michigan
For *Amici Curiae* Michigan, Florida, Alabama,
Nebraska, Northern Mariana Islands,
Pennsylvania, South Carolina, South Dakota,
Texas, and Virginia

Dated: July 14, 2010

Michael A. Cox
Attorney General of the State of Michigan
B. Eric Restuccia (MI Bar No. 49550)
Solicitor General
Mark Sands (MI Bar No. 67801)
Assistant Attorney General
P.O. Box 30212, Lansing, MI 48909
Telephone: (517) 373-1124
RestucciaE@michigan.gov
SandsM1@michigan.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2010, I electronically transmitted the attached document (Motion and Memorandum) to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Plaintiff United States of America
represented by Joshua Wilkenfeld Email: joshua.i.wilkenfeld@usdoj.gov

Varu Chilakamarri Email: varudhini.chilakamarri@usdoj.gov

Defendant State of Arizona and Janice K Brewer Governor of the State of Arizona
represented by John J Bouma Email: jbouma@swlaw.com

Joseph G Adams Email: jgadams@swlaw.com

Joseph Andrew Kanefield Email: jkanefield@az.gov

Robert Arthur Henry Email: bhenry@swlaw.com

Amicus Center on the Administration of Criminal Law
represented by Anne Milgram Email: anne.milgram@nyu.edu

Anthony S Barkow, Email: anthony.barkow@nyu.edu

Ellen London, Email: elondon@fklaw.com

Jessica Alexandra Murzyn, Email: jmurzyn@fklaw.com

Ricardo Solano, Jr, Email: rsolano@fklaw.com

By: SCHMITT, SCHNECK, SMYTH & HERROD, P.C.

s/Timothy J. Casey

Timothy J. Casey #013492

timcasey@azbarristers.com

Special Assistant Attorney General for Michigan

For *Amici Curiae* Michigan, Florida, Alabama,

Nebraska, Northern Mariana Islands, Pennsylvania, South Carolina, South Dakota,

Texas, and Virginia

In addition a COURTESY COPY was mailed to:

HONORABLE SUSAN R. BOLTON

United States District Court

Sandra Day O'Connor U.S. Courthouse, Suite 522

401 West Washington Street, SPC 50, Phoenix, AZ 85003-2153