

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

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

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

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

16 UNITED STATES DISTRICT COURT  
 17 DISTRICT OF ARIZONA

18 The United States of America,

No. CV-10-1413-PHX-SRB

19 Plaintiff,

**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**

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.

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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

**CERTIFICATE OF SERVICE**

1  
2 I hereby certify that on July 14, 2010, I electronically transmitted the attached document  
3 (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:

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

6 Varu Chilakamarri Email: varudhini.chilakamarri@usdoj.gov

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

9 Joseph G Adams Email: jgadams@swlaw.com

10 Joseph Andrew Kanefield Email: jkanefield@az.gov

11 Robert Arthur Henry Email: bhenry@swlaw.com

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

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

15 Ellen London, Email: elondon@fklaw.com

16 Jessica Alexandra Murzyn, Email: jmurzyn@fklaw.com

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

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

19 s/Timothy J. Casey

20 Timothy J. Casey #013492

21 timcasey@azbarristers.com

22 Special Assistant Attorney General for Michigan

23 For *Amici Curiae* Michigan, Florida, Alabama,

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

Texas, and Virginia

24 In addition a COURTESY COPY was mailed to:

25 HONORABLE SUSAN R. BOLTON

26 United States District Court

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

28 401 West Washington Street, SPC 50, Phoenix, AZ 85003-2153