IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. STATE OF ARIZONA, Defendant-Appellant,	No. 10-16645

UNITED STATES' RESPONSE TO
STATE OF ARIZONA'S MOTION TO EXPEDITE BRIEFING AND HEARING
SCHEDULE FOR PRELIMINARY INJUNCTION APPEAL

The United States agrees with the State of Arizona that its appeal of the district court's order enjoining provisions of S.B. 1070 should be briefed and resolved quickly. The United States respectfully believes, however, that the time frame for consideration of this appeal should be the one set forth in Circuit Rule 3-3(b) and the United States therefore files this response to the motion for expedited briefing and hearing schedule filed by the State of Arizona.

The State appeals from the portions of the district court's order of July 28 that preliminarily enjoin portions of S.B. 1070. The appropriate time frame for consideration of the appeal therefore is the one expressly set forth in Ninth Circuit Rule 3-3(b) to govern preliminary injunction appeals. The schedule contemplated by Circuit Rule 3-3(b) fully accommodates the interest in achieving expedited review, without needlessly foreshortening the time for preparing the parties' appellate briefs in this important case.

The only effect of the district court's injunction in this case is to preserve a status quo that has existed for a long period of time, thereby casting doubt on a claim of irreparable harm to the State as of the effective date of the injunction. Accordingly, we oppose the State's motion insofar as it would provide the United States only 14 days from the due date of appellant's brief in which to file its brief as appellee.

Rule 3-3(b) establishes a highly expedited briefing schedule for preliminary injunction appeals. The appellant's brief is due 28 days from the docketing of a notice of appeal; the appellee's brief is due 28 days after service of the appellant's brief; and appellant's reply is 14 days after service of appellee's brief. Pursuant to that rule, Arizona's opening brief would be due no later than August 26, 2010. The United States' response brief then would be due no later than September 23, 2010, or earlier if the opening brief were filed earlier, and the reply brief due no later than October 7, 2010, or earlier.

The United States stands ready to file its responsive brief within 28 days from the service of the State's brief. Arizona's motion identifies no reason for limiting the briefing time of the United States to 14 days instead of the 28 days contemplated by Rule 3-3(b). The State suggests that its proposed schedule is consistent with the time constraints for the preliminary injunction briefing in district court. The district court's briefing schedule, however,

was keyed to the interest shared by the parties and the court in obtaining a ruling on the preliminary injunction motion prior to the July 29 effective date of the Arizona statute. No similar concern for obtaining an appellate decision by a date certain exists here. Moreover, many of the issues in this case already had been briefed before the district court in earlier filings in other cases raising similar challenges to S.B. 1070. Indeed, the State, on July 9, provided the district court with briefing in response to a similar preliminary injunction motion that had been filed on June 4 in another case.

The State also observes that the parties have already briefed before the district court the questions that are now on appeal. That is generally the case in appeal from a preliminary injunction. Rule 3-3(b) reflects the recognition that even expedited preparation of an appellate brief will nevertheless require 28 days.

The State notes the importance of the issues and it thus would be particularly inappropriate to limit briefing time more strictly than the schedule established by this Court's rules.

In sum, the United States believes that expedition as provided by Rule 3-3(b) is proper, with oral argument to be scheduled at the Court's earliest convenience. The United States opposes the State's motion only insofar as it would provide the United States with less than 28 days from the service of appellant's brief in which to file its brief as appellee.

Respectfully submitted,

TONY WEST
Assistant Attorney General

DENNIS K. BURKE
United States Attorney

BETH S. BRINKMANN
Deputy Assistant Attorney General

s/ Daniel Tenny
MARK B. STERN
(202) 514-5089
MICHAEL P. ABATE
(202) 616-8209
DANIEL TENNY
(202) 514-1838
Attorneys
Civil Division, Room 7215
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2010, I filed and served the foregoing via the court's CM/ECF system.

s/ Daniel Tenny
Daniel Tenny