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10 **IN THE UNITED STATES DISTRICT COURT**
11
12 **FOR THE DISTRICT OF ARIZONA**
13

14 Douglas A. Ducey, Governor of the State of
15 Arizona,

16 Plaintiff,

17 v.

Case No.: 2:22-cv-01814-PHX-DGC

18 Randy Moore, Chief of the United States
19 Forest Service, in his official capacity;
20 Camille Calimlim Touton, Commissioner of
21 the United States Bureau of Reclamation, in
22 her official capacity; Thomas J. Vilsack,
23 United States Secretary of Agriculture, in
24 his official capacity; United States Forest
25 Service; and United States Bureau of
26 Reclamation,

27 Defendants.
28

**MOTION BY ADVOCATES FOR VICTIMS OF ILLEGAL ALIEN CRIME FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

1 Pursuant to F.R.CIV.P. 7 and FED.R.APP.P. 29(a)(4)(E) , Advocates for Victims of
2 Illegal Alien Crime (hereinafter, “AVIAC”) respectfully requests this Court’s leave to file
3 the accompanying memorandum of law as *amicus curiae* in support of Plaintiff Douglas
4 A. Ducey’s, Governor of the State of Arizona. opposition to Defendants’ Motion to
5 Dismiss. Pursuant to Local Rule 7.2, AVIAC’s counsel has conferred with counsel for the
6 parties to this action.
7

8 Plaintiff does not object to AVIAC’s Motion for Leave.
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10 Per Intervenor Defendant Center for Biological Diversity’s request, AVIAC is
11 including the following statement: “Defendant-Intervenor Center for Biological Diversity
12 takes no position on [AVIAC’s] motion for leave”.
13

14 Federal defendants have responded to AVIAC’s request for their position as
15 follows: “Proposed amicus contacted Federal Defendants for their position on December
16 28, 2022. Counsel for Federal Defendants indicated that he was unable to adequately
17 confer with the client agencies by December 30, 2022. Federal Defendants reserve taking
18 a position on the motion for leave to file an amicus brief until after they have had the
19 opportunity to fully confer with the client agencies.”
20

21 Plaintiff filed its opposition based on the constitutional grounds that a governor of
22 a state has the right to remove aliens and prevent an invasion from their state when the
23 federal government fails to protect America’s borders and sovereignty. U.S. Const. Art.
24 IV, §4 (“The United States shall guarantee to every State in the Union, a Republican Form
25 of Government, and shall protect each of them against Invasion...”) and Art. I, §10, cl.
26 3 (“No State shall, without the Consent of Congress... engage in War, *unless actually*
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1 *invaded, or in such imminent Danger as will not admit of delay.”*(Emphasis added).

2 Further, The Federal Government’s contention that the Roosevelt Reservation is
3 exclusively in the realm of Defendant’s control is both unconstitutional and incorrect. In
4 1907, President Roosevelt issued a Presidential Proclamation that established the
5 reservation in order to keep all public lands along the border in California, Arizona, and
6 New Mexico "*as a protection against the smuggling of goods between the United States*
7 *and Mexico*". (emphasis added). See *Nuñez-Neto, Blas; Kim, Yule (2008-05-14). "[Border](#)*
8 *Security: Barriers Along the U.S. International Border" (PDF)*. Federation of American
9 Scientists. p. 24. Since then, not only has smuggling of contraband increased but also
10 human trafficking due to a lack of immigration enforcement by the federal government
11 and its agencies.

12 Selective and overzealous use of environmental regulations designed to undermine
13 a state’s sovereignty has routinely been held to be unlawful. The irony of the USFS
14 demanding a long application processes, through the guise of NEPA regulations, defeats
15 its very purpose. See NEPA at 42 U.S.C. §4331(a). The daily trespass of thousands of
16 aliens illegally crossing into Arizona has the effect of causing far more environmental
17 damage than a border barrier to reduce and eliminate this traffic.

18 Finally, the State of Arizona and its citizens have borne the brunt of increased
19 crime and skyrocketing financial and healthcare costs, as well as environmental damage.
20 Many Arizonans no longer feel safe and the increased crime statistics against Arizonans
21 by illegal aliens has dramatically increased since the start of the Biden Administration.
22 The most recent DHS data, from September 2022, illustrates the unprecedented nature of

1 the crisis. See www.DHS.gov/statistics (last checked December 29, 2022). These
2 numbers do not account for “got aways,” either.

3 **IDENTITY AND INTERESTS OF MOVANT**

4 AVIAC is a nonprofit 501(c)(3) non-profit organization, founded in 2017. AVIAC
5 is led by individuals who have lost family members because of crimes committed by
6 noncitizens. AVIAC’s mission includes being a source of support for such victims across
7 the country and an advocate for policies that will enforce the nation’s immigration laws
8 and prevent governmental incentives for non-citizens to adversely impact citizens.
9

10 **REASONS TO GRANT MOVANT *AMICUS CURIAE* STATUS**

11 Unlike the corresponding appellate rules, the federal and local rules applicable here
12 do not specifically address *amicus* briefs. Nonetheless, AVIAC looks to the appellate rules’
13 criteria for granting leave to file *amicus* briefs to support their motion here. The Advisory
14 Committee Note to the 1998 amendments to Rule 29 explains that “[t]he amended rule
15 ...requires that the motion state the relevance of the matters asserted to the disposition of
16 the case” as “ordinarily the most compelling reason for granting leave to file.” FED. R.
17 APP. P. 29, Advisory Committee Notes, 1998 Amendment. As now-Justice Samuel Alito
18 wrote while serving on the U.S. Court of Appeals for the Third Circuit, “I think that our
19 court would be well advised to grant motions for leave to file *amicus* briefs unless it is
20 obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted. I
21 believe that this is consistent with the predominant practice in the courts of appeals.”
22 *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002) (citing Michael E.
23 Tigar and Jane B. Tigar, FEDERAL APPEALS—JURISDICTION AND PRACTICE 181

1 (3d ed. 1999) and Robert L. Stern, APPELLATE PRACTICE IN THE UNITED STATES
2 306, 307-08 (2d ed. 1989)). Now-Justice Alito quoted the Tigar treatise favorably for the
3 statement that “[e]ven when the other side refuses to consent to an amicus filing, most
4 courts of appeals freely grant leave to file, provided the brief is timely and well-reasoned.”
5 293 F.3d at 133. With that background, movant AVIAC explains the relevance and value
6 of its brief to this Court’s consideration of the important issues presented here.
7

8 AVIAC supports Plaintiff Douglas A. Ducey, Governor of the State of Arizona.
9 AVIAC therefore takes an interest in the case at bar.
10

11 AVIAC believes that its proposed *amicus* brief will assist this Court in deciding the
12 issues before it. AVIAC will also highlight the potential legal, economic, national or social
13 consequences of a particular outcome. “The extent, if any, to which an *amicus curiae*
14 should be permitted to participate in a pending action is solely within the broad discretion
15 of the district court.” *Sierra Club v. Fed. Emergency Mgmt. Agency*, 2007 WL 3472851, at
16 *1 (S.D. Tex. Nov. 14, 2007). The proposed amicus brief is attached and proposed amicus
17 respectfully requests that this Court grant them leave to file it.
18

19 These issues are all relevant to this Court’s decision on the Defendants’
20 Consolidated Motion to Dismiss, and movant AVIAC respectfully submits that its
21 memorandum may aid the Court.
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23 For the foregoing reasons, movant AVIAC moves that this Court grant its Motion
24 for Leave to file the accompanying memorandum of law as *amicus curiae*.
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1 Respectfully submitted, this 30th day of December, 2022.
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