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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH - CENTRAL DIVISION**

Utah Coalition of La Raza, *et al.*,
Plaintiffs,
v.
Governor Gary R. Herbert, *et al.*,
Defendants.

**NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF
PLAINTIFFS' MOTIONS FOR
PRELIMINARY INJUNCTION**
Case No. 2:11-cv-00401-BCW;
Case No. 2:11-cv-1072-CW
Judge: Honorable Clark Waddoups

In support of their Motion for Preliminary Injunction (Doc. 36) and their Motion for Preliminary Injunction against HB 497 § 5 (Doc. 201), Plaintiffs Utah Coalition of La Raza, *et al.*, respectfully submit the Ninth Circuit's recent decision in *Valle del Sol v. Whiting*, No. 12-17152 (9th Cir. Oct. 8, 2013) (attached as Exhibit A). *Valle del Sol* provides additional support for the conclusion that HB 497 is invalid on Supremacy Clause grounds.

In *Valle del Sol*, the Ninth Circuit affirmed a preliminary injunction against an Arizona statute nearly identical to § 10 of HB 497, holding that the provision was field and conflict preempted by federal immigration law. Ex. A at 31-43. Like § 10, the Arizona law would have criminalized transporting, moving, concealing, harboring, or shielding from detection an alien with knowledge or reckless disregard of "the fact that the alien has come to, has entered or remains in the United States in violation of law." Ex. A at 8-10. The Arizona law would also have criminalized encouraging or inducing such an alien to come to or reside in the state. *Id.* at 9-10; *cf.* HB 497 § 10. In finding these provisions preempted, the Ninth Circuit joins the Eleventh, Fourth, Third, and Fifth Circuits in invalidating analogous state or local harboring laws on Supremacy Clause grounds, based on the Supreme Court's guidance in *Arizona v. United States*, 132 S. Ct. 2492 (2012). See Pl. Notice of Suppl. Auth., July 30, 2013 (Doc. 224) (citing cases); Pl. Resp. to Amicus Curiae's Notice of Suppl. Auth., Aug. 27, 2013 (Doc. 227) (citing cases).

In reaching its conclusion, *Valle del Sol* recognized that federal law contains an anti-harboring scheme that "provides 'a full set of standards' designed to work as a 'harmonious whole,'" and accordingly, held the Arizona statute field preempted because it attempts to regulate in a field fully occupied by the federal scheme. Ex. A at 33-35 (quoting *Arizona*, 132 S.

Ct. at 2501); 37-38. *See also* Pl. Mem. in Supp. Prelim. Inj., May 6, 2011 (Doc. 37), at 25; Pl. Suppl. Auth. (*Arizona v. United States*), July 20, 2012 (Doc. 195), at 11-12.

In addition, the Ninth Circuit found the Arizona statute conflict preempted on several grounds that apply equally to § 10. *See, e.g.*, Ex. A. at 39 (noting that the Arizona statute imposes “additional and different” penalties for harboring); *id.* at 42 (explaining that the state law seeks to “punish conduct that Congress chose not to punish”); *id.* at 39 (stating that “[b]y allowing state prosecution of the same activities in state court, Arizona has conferred upon its prosecutors the ability to prosecute those who transport or harbor unauthorized aliens in a manner unaligned with federal immigration enforcement priorities”). *See generally id.* at 38-43. *See also* Pl. Mem. in Supp. Prelim. Inj., May 6, 2011 (Doc. 37), at 25-26; Pl. Reply Mem. in Supp. Prelim. Inj., Sept. 2, 2011 (Doc. 116), at 11-13; Pl. Suppl. Auth. (*Arizona v. United States*), July 20, 2012 (Doc. 195), at 10-13.

Dated: October 15, 2013

Respectfully submitted,

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/s/ Karen C. Tumlin
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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing **NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION** was served by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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