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9 Attorneys for Department of Homeland Security

10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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|----|-------------------------|---|---------------------------------|
| 12 |                         | ) |                                 |
| 13 | ISAAC KIGONDU KINITI,   | ) | No. 3:05-cv-01013-DMS-PCL       |
| 14 | Plaintiff,              | ) |                                 |
| 15 | v.                      | ) | <b>MEMORANDUM IN SUPPORT OF</b> |
| 16 | BARBARA WAGNER, et al., | ) | <b>MOTION FOR LEAVE TO FILE</b> |
| 17 | Defendant.              | ) | <b>BRIEF AS AMICUS CURIAE</b>   |
| 18 |                         | ) |                                 |

19 The Department of Homeland Security ("DHS"), submits this  
 20 memorandum in support of its motion for leave to file a brief as  
 21 *amicus curiae* in opposition to plaintiff's motion for leave to  
 22 amend the first amended complaint and add parties ("motion to  
 23 amend").

24 On January 24, 2007, DHS was provided a courtesy copy of  
 25 plaintiff's motion to amend and the proposed Second Amended  
 26 Complaint by the American Civil Liberties Union (ACLU). The  
 27 proposed Second Amended Complaint names four United States  
 28 Immigration and Customs Enforcement (ICE) officials as

1 defendants. ICE is an organization within DHS. Thus, it has a  
2 direct and immediate interest regarding whether four ICE  
3 officials, one of whom is an Assistant Secretary, will become  
4 parties to this action. Therefore, as plaintiff's motion to  
5 amend will affect DHS's interests, DHS respectfully requests that  
6 the Court grant it leave to file an *amicus* brief in opposition to  
7 plaintiff's motion to amend, in order to have the opportunity to  
8 be heard on the motion. The Ninth Circuit Court of Appeals has  
9 recognized that the *Amicus Curiae* status for the United States is  
10 proper when its interests are affected. See *Faith Center Church*  
11 *Evangelistic Ministries v. Glover*, 462 F.3d 1194, 1213, n.17 (9th  
12 Cir. 2006); *U.S. ex rel. Hindow v. University of Phoenix*, 461  
13 F.3d 1166, 1170 (9th Cir. 2006); *Bugenig v. Hoopa Valley Tribe*,  
14 229 F.3d 1210, 1215, n.4 (9th Cir. 2000).

15 DHS's *Amicus Curiae* Brief in opposition to plaintiff's  
16 motion to amend is hereby attached as Exhibit A. In the event  
17 that the Court grants DHS's motion for leave to file as an *Amicus*  
18 *Curiae*, DHS respectfully requests that the Court consider the  
19 attached *Amicus Curiae* brief.

20 Dated: February 7, 2007

Respectfully Submitted,

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s/ Samuel P. Go  
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