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(Plaintiffs' Attorneys continued on page 2)

UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

LEAGUE OF UNITED LATIN AMERICA CITIZENS; ANNA OCHOA O'LEARY; CORDELIA CHAVEZ CANDELARIA BEVERIDGE; MAGDALENA SCHWARTZ; JOSE DAVID SANDOVAL; JANE C.H.P. DOE; JANE E.C-J. DOE; JANE E.O. DOE, <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">- vs -</p> STATE OF ARIZONA; JANICE BREWER, GOVERNOR OF ARIZONA, <p style="text-align: center;">Defendants.</p>	Case No. 2:10-cv-1453 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF <p style="text-align: center;">[CLASS ACTION]</p>
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Plaintiffs allege as follows:

PRELIMINARY STATEMENT

1. In this action, the individual and organizational plaintiffs seek to declare invalid and preliminarily and permanently enjoin the enforcement of S.B. 1070, or portions thereof, as amended and enacted by the State of Arizona. Plaintiffs allege that S.B. 1070 is preempted by federal law and therefore violates the Supremacy Clause of the United States Constitution.

2. Both the United States Constitution and numerous acts of Congress grant the federal government preeminent authority to regulate immigration matters. Congress has assigned highly specific tasks relating to the enforcement of the nation's immigration laws and regulations to various federal agencies, including the United States Department of Homeland Security, Department of Justice, and the Department of State. In the process of implementing these laws and regulations, the federal agencies assigned enforcement responsibilities consider, weigh, and balance multifaceted and sometimes competing objectives that Congress seeks to achieve through enactment of a complex system of federal laws.

3. While Arizona may exercise its police power in a manner that has an incidental effect on aliens, it may not constitutionally enact and enforce its own immigration laws in a manner that interferes with the federal immigration laws or policies.

4. Nor may Arizona enact laws to control the flow of migrants into the state or force their departure from the state. Such competing state laws will simply drive immigrants from one state to the next, leaving national policies in shambles. The drafters of the Constitution and the scheme of federal immigration laws Congress has enacted envision and rely upon a national uniform policy in the area of international migration, not a patchwork of competing state and local immigration policies throughout the country.

5. The State of Arizona's S.B. 1070 includes a broad set of provisions that are designed to "work together to discourage and deter the unlawful entry and presence of aliens" by

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3 making “attrition through enforcement the public policy of all state and local government
4 agencies in Arizona.” *See* S.B. 1070 (as amended by H.B. 2162).

5 6. S.B. 1070’s provisions focus exclusively on forcing suspected undocumented
6 immigrants to leave the state through a policy of “attrition,” while ignoring numerous
7 other objectives established by Congress for migrants who may have entered the country
8 without inspection and have no current lawful status, including, for example, legalization
9 opportunities for family reunification, victims of serious crimes who cooperate with law
10 enforcement to put violent criminals behind bars, minors who have been abused,
11 abandoned, or neglected, survivors of domestic violence, and those who reasonably fear
return to their home countries on account of persecution.

12 7. S.B. 1070 also ignores the necessary priorities established by and resources of
13 federal agencies enforcing the immigration laws. While these federal agencies logically focus
14 their limited resources on identifying and detaining immigrants not eligible for legalization
15 of status, those who have committed criminal offenses, or those who recently arrived, S.B.
16 1070 makes no such distinctions. As the Complaint in *United States v. The State of Arizona*,
17 Case 2:10-cv-01413-NVW, filed July 6, 2010 (“U.S. v. Arizona”), states, S.B. 1070 “disrupts
18 federal enforcement priorities and resources that focus on aliens who pose a threat to
19 national security or public safety.” *Id.* at ¶ 4. Enforcement of S.B. 1070 “will impose
20 significant and counterproductive burdens on the federal agencies charged with enforcing
21 the national immigration scheme, diverting resources and attention from the dangerous
aliens who the federal government targets as its top enforcement priority.” *Id.*

22 8. Implementation of S.B. 1070 will also interfere with the United States
23 Government’s foreign policy and national security interests by disturbing the United States’
24 relationship with other countries.

25 9. The State of Arizona’s training materials developed and distributed to Arizona law
26 enforcement agencies to implement S.B. 1070 exacerbate the conflicts between the United
27 States Constitution and federal laws on the one hand, and Arizona law on the other hand,
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3 by *inter alia* failing to recognize adequately that numerous categories of immigrants who
4 did not enter the United States lawfully nevertheless are eligible for legalization of status,
5 and by permitting law enforcement officers to rely upon vague and ill-defined factors such
6 as a person's "dress," "difficulty communicating in English," "demeanor," and "claim of not
7 knowing others ... at [the] same location," as providing justification for a detention based
8 on suspected undocumented status.

9 10. Accordingly, Arizona's S.B. 1070 is void and should be struck down under the
10 Supremacy Clause of the United States Constitution.

11 JURISDICTION

12 11. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1345, (federal
13 question jurisdiction) and 1343(3)-(4); plaintiffs seek remedies authorized by 28 U.S.C.
14 §§ 1651, 2201 and 2202.

15 12. Venue is properly in this court pursuant to 28 U.S.C. § 1391(b) and (e)(1), (2),
16 and (4), because the acts complained of occurred in this district, several of the plaintiffs
17 and defendants reside in this district, and no real property is involved in this action.

18 PARTIES

19 13. Plaintiff the LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) is the largest
20 and oldest Hispanic organization in the United States. It is a civil rights organization with
21 chapters and members located throughout the country including in Arizona. LULAC's
22 primary goals include the promotion and protection of the legal, political, social, and
23 cultural interests of Latino people living in the United States. Members of plaintiff LULAC
24 are being and will continue to be injured by the imminent or actual implementation of S.B.
25 1070 and the training materials prepared and distributed by the State of Arizona inasmuch
26 as Hispanic members of LULAC face interrogation, temporary detention, or arrest because
27 of the vague and ill-defined terms in S.B. 1070 and in Arizona's training materials relating to
28 the formation of reasonable suspicion to detain or probable cause to arrest persons
suspected of being deportable for having committed a public offense, or suspected of

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3 having failed to register with the federal Government pursuant to 8 U.S.C. § 1302, S.B.
4 1070's and Arizona's training materials' failure to define adequately reasonable suspicion to
5 detain or probable cause to arrest persons for allegedly having committed a public offense
6 making them deportable from the United States or not having timely registered with the
7 federal Government, and S.B. 1070's and Arizona's training materials' failure to adequately
8 address how to address situations in which Arizona law enforcement officials detain or
9 arrest an individual pursuant to S.B. 1070 when federal officials do not timely take such
10 detained or arrested persons into federal custody or verify their immigration status. S.B.
11 1070 has also reasonably caused Plaintiff LULAC to divert its limited resources to address
12 the injuries faced by Hispanic residents of Arizona as a result of the imminent
implementation of S.B. 1070.

13 14. Plaintiff Anna Ochoa O'Leary is lawfully residing in the State of Arizona in the
14 City of Tucson, is employed, and is a state and local taxpayer. She joins this action to
15 challenge the illegal expenditure of funds by defendants and their agents through
16 implementation of S.B. 1070 and Arizona's training materials relating to the implementation
of S.B. 1070.

17 15. Plaintiff Cordelia Chavez Candelaria Beveridge is lawfully residing in the State of
18 Arizona in the City of Tempe, and is a state and local taxpayer. Plaintiff Beveridge joins this
19 action to challenge the illegal expenditure of funds by defendants and their agents through
20 implementation of S.B. 1070 and Arizona's training materials relating to the implementation
21 of S.B. 1070.

22 16. Plaintiff Magdalena Schwartz is a resident of Mesa, Arizona. She is a citizen and
23 national of Chile who has been residing in the United States for over twenty years. She is a
24 respondent in removal proceedings initiated by the former Immigration and Naturalization
25 Service (INS) before the Executive Board of Immigration review (EOIR). These proceedings
26 have been pending for approximately twenty years. She has been released on her own
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2 recognizance during the pendency of the removal proceedings. She has not been required
3 to register with the DHS pursuant to 8 U.S.C. § 1302 and has not done so. She therefore
4 does not have in her possession proof of registration under 8 U.S.C. § 1302. She has not
5 been issued employment authorization by the federal authorities. She has not been issued
6 any documentary evidence by the DHS or DOJ showing that she is authorized to be in the
7 United States or authorized to be employed. Plaintiff Magdalena Schwartz is not in federal
8 custody and therefore faces interrogation, detention, arrest, or prosecution under SB 1070
9 despite the fact that her presence is authorized by federal law pending the outcome of her
10 administrative removal proceedings. Plaintiff Schwartz seeks injunctive relief to prevent
11 her unlawful detention, arrest, or prosecution under SB 1070, and a declaratory judgment
12 that she may not be prosecuted for seeking employment or engaging in employment in
13 Arizona.
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15 17. Plaintiff Jose David Sandoval is a resident of Phoenix, Arizona, and a national and
16 citizen of El Salvador. Plaintiff Sandoval has applied to an Immigration Judge of the
17 Executive Office for Immigration Review (EOIR) of the Department of Justice (DOJ) for
18 political asylum pursuant to 8 U.S.C. § 1158. His application for asylum was denied on or
19 about March 19, 2008. In February 2010 the United States Court of Appeals for the Ninth
20 Circuit reversed his removal order and remanded for further administrative proceedings
21 before the EOIR pursuant to the *Trafficking Victims Protection Reauthorization Act (TVPPRA)* of
22 2005. While his presence is known to the federal authorities, Plaintiff Sandoval has not been
23 required by the DHS to “register” pursuant to 8 U.S.C. § 1302, and has not done so. He
24 does not possess any documentary evidence issued by the DHS establishing his right to
25 seek employment or to be employed, or showing that he is lawfully present in the United
26 States. Plaintiff Sandoval is not in federal custody and therefore faces interrogation,
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2 detention, arrest, or prosecution under SB 1070 despite the fact that his presence is
3 authorized by federal law pending the outcome of his administrative proceedings. Plaintiff
4 Sandoval seeks injunctive relief to prevent his unlawful detention, arrest, or prosecution
5 under SB 1070, and a declaratory judgment that he may not be prosecuted under SB 1070
6 for seeking employment or engaging in employment in Arizona.
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8 18. Plaintiff Jane C. H-P. Doe is a resident of Phoenix, Arizona and a citizen and
9 national of Mexico. On or about May 12, 2010, pursuant to the Victims of Trafficking and
10 Violence Protection Act of 2000, she presented an application for a U visa to the United
11 States Citizenship and Immigration Service (USCIS), of the DHS as the victim of a violent
12 crime who cooperated with local law enforcement officials in the investigation or
13 prosecution of the crime. While her presence is known to the federal authorities, Plaintiff
14 Jane C. H-P. Doe has not been required by the DHS to “register” pursuant to 8 U.S.C. §
15 1302, and has not done so. She does not possess any documentary evidence issued by the
16 DHS establishing his right to seek employment or to be employed, or showing that she is
17 lawfully present in the United States. Plaintiff Jane C. H-P. Doe is not in federal custody and
18 therefore faces interrogation, detention, arrest, or prosecution under SB 1070 despite the
19 fact that her presence is authorized by federal law pending the outcome of any
20 administrative proceedings that the federal authorities may initiate against her. Plaintiff Jane
21 C. H-P. Doe seeks injunctive relief to prevent her unlawful detention, arrest, or prosecution
22 under SB 1070, and a declaratory judgment that she may not be prosecuted under SB 1070
23 for seeking employment or engaging in employment in Arizona.
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25 19. Plaintiff Jane E.C-J Doe is a resident of Mesa, Arizona and a citizen and national of
26 Mexico. On or about March 4, 2009, pursuant to the Victims of Trafficking and Violence
27 Protection Act of 2000, she presented an application for a U visa to the United States
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2 Citizenship and Immigration Service (USCIS), of the DHS as the victim of a violent crime
3 who cooperated with local law enforcement officials in the investigation or prosecution of
4 the crime. While her presence is known to the federal authorities, Plaintiff Jane E.C-J. Doe
5 has not been required by the DHS to “register” pursuant to 8 U.S.C. § 1302, and has not
6 done so. She does not possess any documentary evidence issued by the DHS establishing
7 his right to seek employment or to be employed, or showing that she is lawfully present in
8 the United States. Plaintiff Jane E.C-J Doe 1 is not in federal custody and therefore faces
9 interrogation, detention, arrest, or prosecution under SB 1070 despite the fact that her
10 presence is authorized by federal law pending the outcome of any administrative
11 proceedings that the federal authorities may initiate against her. Plaintiff Jane E.C-J Doe 1
12 seeks injunctive relief to prevent her unlawful detention, arrest, or prosecution under SB
13 1070, and a declaratory judgment that she may not be prosecuted under SB 1070 for seeking
14 employment or engaging in employment in Arizona.

16 20. Plaintiff Jane E.O. Doe is a resident of Arizona and a foreign national. Plaintiff Jane
17 E.O. has applied for and been granted a visa pursuant to the Violence Against Woman Act
18 (VAWA) as a result of being battered by her United States citizen husband, however is
19 ineligible to adjust her status to a lawful permanent resident because of an alleged prior
20 false claim to U.S. citizenship. Plaintiff Jane E.O. Doe is eligible to apply for a U visa
21 pursuant to the Victims of Trafficking and Violence Protection Act of 2000, but must first
22 obtain a certification from the Tempe Police Department confirming that she cooperated in
23 the investigation or prosecution of her United States citizen husband. Such a certification is
24 required to apply for a U visa. The Tempe Police Department has adopted a policy or
25 practice of refusing to issue U certifications because of the enactment of SB 1070. While her
26 presence is known to the federal authorities, Plaintiff Jane E. O. Doe has not been required
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2 by the DHS to “register” pursuant to 8 U.S.C. § 1302, and has not done so. She does not
3 possess any documentary evidence issued by the DHS establishing his right to seek
4 employment or to be employed, or showing that she is lawfully present in the United
5 States. Plaintiff Jane E.O. Doe is not in federal custody and therefore faces interrogation,
6 detention, arrest, or prosecution under SB 1070 despite the fact that her presence is
7 authorized by federal law pending the outcome of any administrative proceedings that the
8 federal authorities may initiate against her. Plaintiff Jane E.O. Doe seeks injunctive relief to
9 prevent her unlawful detention, arrest, or prosecution under SB 1070, and a declaratory
10 judgment that she may not be prosecuted under SB 1070 for seeking employment or
11 engaging in employment in Arizona.
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13 21. Defendant JANICE BREWER is the Governor of the State of Arizona and the
14 individual charged with executing the provisions of SB 1070. She is sued in her official
15 capacity.
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17 22. Defendant, the State of Arizona, is a state of the United States that entered the
18 Union as the 48th State in 1912.

19 23. Plaintiffs are informed and believe, and on such basis allege, that defendants, their
20 agents, and their employees customarily and as a matter of practice or usage, engage in the
21 acts here complained of. Plaintiffs are further informed and believe, and on such basis
22 allege, that defendants, and each of them, are aware of and acquiesce in or encourage their
23 agents and employees in doing the acts here complained of. In doing the acts alleged herein,
24 defendants, and each of them, have acted and will continue to act, under color of state law.

25 CLASS ACTION ALLEGATIONS

26 24. Pursuant to Rules 23(a)(1)-(4) and (b)(2) of the Federal Rules of Civil Procedure,
27 plaintiffs bring this action as a class action on behalf of the following proposed class:

28 All persons present in the State of Arizona who are not the subject of final non-

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3 appealable orders of removal issued by the United States Government and who
4 have in the past or may in the future be detained or arrested by Arizona law
5 enforcement authorities for allegedly not being in possession of an alien
6 registration receipt, or for allegedly having violated 8 U.S.C. § 1306(a), or for
7 allegedly having committed a public offense that makes them removable from
8 the United States.

9 The size of the class is so numerous that joinder of all members is impracticable.

10 25. The claims of plaintiffs and those of the proposed class members raise
11 common questions of law and fact concerning, *inter alia*, whether S.B. 1070 and
12 Arizona's training materials to implement S.B. 1070 are constitutional. These questions
13 are common to the named parties and to the members of the proposed class because
14 defendants have acted or will act on grounds generally applicable to both the named
15 parties and proposed class members. Plaintiffs' claims are also typical of the class claims.

16 26. The prosecution of separate actions by individual members of the class would
17 create a risk of inconsistent or varying adjudications establishing incompatible
18 standards of conduct for defendants. Prosecution of separate actions would also create
19 the risk that individual class members will secure court orders that would as a practical
20 matter be dispositive of the claims of other class members not named parties to this
21 litigation, thereby substantially impeding the ability of unrepresented class members to
22 protect their interests.

23 27. Defendants, their agents, employees, and predecessors and successors in office
24 have acted or refused to act, or will act or refuse to act, on grounds generally applicable to
25 the class, thereby making appropriate injunctive relief or corresponding declaratory relief
26 with respect to the class as a whole. Plaintiffs will vigorously represent the interests of
27 unnamed class members. All members of the proposed class will benefit by the action
28 brought by plaintiffs. The interests of the named plaintiffs and those of the proposed class
29 members are identical. Plaintiffs' counsel include attorneys experienced in federal class

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3 action litigation involving the rights of foreign nationals and refugees within the United
4 States.

5 STATEMENT OF THE PLAINTIFFS' CLAIMS

6 A. Federal Authority Over the Status of Immigrants and Immigration Laws

7 28. The United States Constitution provides that "[t]his Constitution, and the Laws of
8 the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of
9 the Land . . . any Thing in the Constitution or Laws of any State to the Contrary
10 notwithstanding." U.S. Const., art. VI, cl. 2.

11 29. The Constitution further extends *only* to the federal government the power to
12 "establish an uniform Rule of Naturalization," U.S. Const., art. I § 8, cl. 4, and to "regulate
13 Commerce with foreign Nations," U.S. Const., art. I § 8, cl. 3.

14 30. The federal courts have long held that immigration regulation, policies, and
15 enforcement priorities have direct and indirect impacts on the nation's foreign policy and
16 should be exercised by federal not local authorities.

17 31. The Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, et seq., and
18 regulations duly promulgated by various federal agencies assigned responsibilities under
19 the INA, have established a complex and exclusive scheme regarding the admission of
20 immigrants to the United States, the circumstances under which such immigrants may
21 remain in the United States, the terms of their presence in the United States, and the
22 penalties on persons who violate the procedures established for entry, conditions of
23 residence, and employment of immigrants in the United States. *See* 8 U.S.C. § 1101, et seq.

24 32. As the federal Government states in *United States v. Arizona*, "In exercising its
25 significant enforcement discretion, the federal government prioritizes for arrest, detention,
26 prosecution, and removal those aliens who pose danger to national security or risk to public
27 safety. Consistent with these enforcement priorities, the a federal government principally
28 targets aliens engaged in or suspected of terrorism or espionage; aliens convicted of crimes,
with particular emphasis on violent criminals, felons, and repeat offenders; certain gang

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3 members; aliens subject to outstanding criminal warrants; and fugitive aliens, especially
4 those with criminal records." *Id.* at ¶ 18.

5 33. DHS may initiate removal (deportation) proceedings against an Immigrant by the
6 issuance of a Notice to Appear ("NTA"), and may ultimately remove an alien who entered
7 the United States unlawfully or violated the conditions of his or her admission to the United
8 States. *See, e.g.*, 8 U.S.C. §§ 1182, 1225, 1227, 1228(b), 1229, 1229a, 1231.

9 34. The Department of Justice through the Executive Office for Immigration Review
10 ("EOIR") may order an immigrant removed from the United States for numerous reasons,
11 including if the immigrant violated the terms of his or her visa, engaged in certain forms of
12 misconduct in the United States, or remained longer than authorized. *See* 8 U.S.C. §§ 1227,
13 1229a. In addition, the INA authorizes DHS and DOJ to implement civil and criminal
14 sanctions against an immigrant for immigration violations, including, for example, entry
15 without inspection, entry by fraud, and failing to timely register with the federal
16 government. *See, e.g.*, 8 U.S.C. §§ 1325, 1306, 1324c.

17 35. However, as the federal Government makes clear in *United States v. Arizona*, in
18 the exercise of discretion, "the administering agencies may decide not to apply a specific
19 sanction and may, among other steps, permit the alien to depart the country voluntarily at
20 his or her own expense and may even decide not to pursue removal of the alien if deferred
21 federal enforcement will help pursue some other goal of the immigration system." *United*
22 *States v. Arizona*, ¶ 20, *citing* 8 U.S.C. § 1229c.

23 36. Furthermore, the INA itself and regulations promulgated thereunder provide
24 numerous grounds upon which an immigrant who entered the United States without
25 inspection, or by fraud, or who overstayed his or her visa, may still qualify for legalization
26 of status. *See, e.g.*, 8 U.S.C. § 1158 (providing asylum eligibility for aliens who have a well-
27 founded fear of persecution on account of race, religion, nationality, membership in a
28 particular social group, or political opinion, if removed); 8 U.S.C. § 1254a (providing
temporary protected status for otherwise eligible nationals of a foreign state that the

Secretary of Homeland Security has specially designated as undergoing ongoing armed conflict, a natural disaster, or another extraordinary circumstance); 8 U.S.C. § 1227(a)(1)(E)(iii) (providing discretion to waive ground of deportability “for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest” for aliens who are otherwise deportable for encouraging unlawful entry of an immediate family member); 8 U.S.C. § 1229b (granting the Attorney General discretion to cancel removal for certain aliens). DHS also has the authority to permit aliens, including those who would be inadmissible, to enter the United States temporarily for “urgent humanitarian reasons” or “significant public benefit.” 8 U.S.C. § 1182(d)(5). DHS may also refrain from enforcement actions, in appropriate circumstances, against persons unlawfully present in the United States. *See* 8 C.F.R. § 274a.12(c)(14) (discussing deferred action).

37. Under the INA, unlawful presence without more does not subject an immigrant to federal criminal penalties.

38. Any immigrant who is 14 year of age or over, who has not been registered and fingerprinted under the INA, and who is present in the United States for 30 days or longer, must apply to be registered by DHS. *See* 8 U.S.C. § 1302(a). The INA provides that any immigrant required to register who willfully fails to do so may be fined and imprisoned not more than six months. *See* 8 U.S.C. § 1306(a); 18 U.S.C. § 3571.

39. However, as the United States Government concedes, there are many circumstances in which an alien would “not be provided with evidence of registration notwithstanding the federal government’s knowledge of the alien’s presence.” *United States v. Arizona*, ¶ 26. Federal law provides a variety of humanitarian options for aliens – including unlawfully present aliens – who have been victimized or fear persecution or violence, including but not limited to asylum, special visas for victims of trafficking, visas for abused or neglected minors, visas for survivors of domestic violence, and special visas for victims of serious crimes. During the pendency of the application process, an immigrant in most cases will *not have any evidence of registration* even though the federal government

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3 is fully aware of the immigrant's presence, has decided against removing the
4 immigrant, and has no interest in prosecuting the immigrant for a crime on the basis of his
5 or her immigration status.

6 40. Congress has enacted several statutes that set forth ways in which states may
7 assist the federal government in the enforcement of the nation's immigration laws. *See, e.g.,*
8 8 U.S.C. § 1103(a)(10) (authorizing DHS to empower state or local law enforcement with
9 immigration enforcement authority when an "actual or imminent mass influx of aliens . . .
10 presents urgent circumstances requiring an immediate Federal response"); 8 U.S.C. §
11 1357(g)(1)-(9) (authorizing DHS to enter into agreements to provide appropriately trained
12 and supervised state and local officers with the authority to perform functions related to the
13 investigation, apprehension, and detention of aliens); 8 U.S.C. § 1373(a)-(b) (preempting
14 state and local laws that prohibit information-sharing between local law enforcement and
15 federal immigration authorities and proscribing such a prohibition); 8 U.S.C. § 1252c
16 (authorizing state and local law enforcement to arrest aliens who are unlawfully present in
17 the United States and were previously removed after being convicted of a felony in the
18 United States).

19 41. In *United States v. Arizona*, the federal Government describes a variety of
20 programs that the DHS has established to work cooperatively with local governments to
21 enforce the federal immigration laws. *United States v. Arizona* ¶ 31. Among these efforts is
22 the Law Enforcement Agency Response program ("LEAR"), an Arizona-specific program
23 that is operational 24 hours a day, 7 days a week, for responding to calls from state and
24 local law enforcement officers seeking assistance from ICE regarding suspected unlawfully
25 present immigrants. ICE also administers the Law Enforcement Support Center ("LESC"),
26 also operational 24 hours a day, 7 days a week, which serves as a national enforcement
27 operations center and promptly provides immigration status and identity information to
28 local, state, and federal law enforcement agencies regarding aliens suspected of, arrested
for, or convicted of criminal activity ICE and CBP officers also respond to requests from

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3 local law enforcement officers on a variety of immigration matters, including assisting with
4 translation, determining alienage, and evaluating immigration documentation. *Id.*

5 B. The terms of Arizona's S.B. 1070

6 42. On April 23, 2010, defendant Governor Brewer signed into law S.B. 1070 the
7 stated purpose of which is to "discourage and deter the unlawful entry and presence of
8 aliens" in Arizona by a process of "attrition through enforcement" of the new law. S.B.
9 1070 at §1, p. 1.

10 43. Shortly after S.B. 1070 became law, the Arizona Legislature passed, and defendant
11 Governor Brewer signed, H.B. 2162, which amended S.B. 1070. H.B. 2162 made minor
12 modifications to S.B. 1070 for the purpose of responding to those who "expressed fears that
13 the original law would somehow allow or lead to racial profiling." Statement by Governor
14 Jan Brewer (Apr. 30, 2010), *available at* http://azgovernor.gov/dms/upload/PR_043010_StatementGovBrewer.pdf.

15 44. The law provides that "[n]o official or agency of this state or a county, city town
16 or other political subdivision of the state may adopt a policy that limits or restricts the
17 enforcement of federal immigration laws to less than the full extent permitted by Federal
18 Law." S.B. 1070 at § 2.A, p.1; Ariz. Rev. Stat. § 11-1051A. However what is "permitted by
19 Federal law" is now unclear given that the United States Government itself holds that the
20 law itself is unconstitutional. *See United States v. Arizona.*

21 45. S.B. 1070 includes a provision that requires, in the context of a lawful stop,
22 detention, or arrest, the verification of an individual's immigration status when practicable
23 where there is "reasonable suspicion" that the individual is unlawfully present in the United
24 States (Section 2). The law is unclear as to how defendants' law enforcement agents are
25 supposed to arrive at a "reasonable suspicion," and defendants S.B. 1070 training materials
26 permit the use of several vague and imprecise factors including a person's dress, demeanor,
27 lack of English-speaking skills, and not being familiar with other people in the vicinity.
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3 46. S.B. 1070 also creates or amends several state law criminal provisions, which
4 impose criminal penalties for an immigrant's alleged failure to federally register or carry his
5 or her federal registration documents including minors over the age of 14 (Section 3), for
6 the so-called smuggling, transporting, or harboring of an unlawfully present immigrant
7 (Sections 4 and 5), for encouraging an unlawfully present immigrant to move to Arizona
(Section 5), and for an unauthorized immigrant's attempt to seek work (Section 5).

8 47. The new statute, as amended by HB 2162, also requires that "[a]ny person who is
9 arrested shall have the person's immigration status determined before the person is
10 released." A.R.S. § 11-1051(B). This section requires the indefinite detention of an individual
11 even if the sole reason for detention is status verification.

12 48. As the United States Government states:

13 By pursuing attrition and ignoring every other objective embodied in the
14 federal immigration system (including the federal government's prioritization
15 of the removal of dangerous aliens), S.B. 1070 conflicts with and otherwise
16 stands as an obstacle to Congress's demand that federal immigration policy
17 accommodate the competing interests of immigration control, national
18 security and public safety, humanitarian concerns, and foreign relations – a
19 balance implemented through the policies of the President and various
20 executive officers with the discretion to enforce the federal immigration laws.
21 *See* 8 U.S.C. § 1101, *et seq.* Enforcement of S.B. 1070 would also effectively
22 create state crimes and sanctions for unlawful presence despite Congress's
23 considered judgment to not criminalize such status. S.B. 1070 would thus
24 interfere with federal policy and prerogatives in the enforcement of the U.S.
immigration laws.

25 *United States v. Arizona*, ¶ 37.

26 49. S.B. 1070's mandatory immigration status inspection scheme and federal
27 verification requirements will "impair and burden the federal resources and activities of
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DHS.” *United States v. Arizona* ¶ 44. S.B. 1070’s mandate for verification of immigrant status will clearly result in a major increase in the number of verification requests being issued to DHS by Arizona law enforcement officers, “necessitating reallocation of DHS resources away from its policy priorities.” *Id.* As such, the federal government will be required to divert resources from carefully considered enforcement priorities – dangerous aliens who pose a threat to national security and public safety – to address the work that Arizona will now create for it. In the view of the Government of the United States, “[s]uch interference with federal priorities ... constitutes a violation of the Supremacy Clause.” *Id.*

50. Section 3 of S.B. 1070, which requires the arrest and prosecution of all immigrants who do not possess certain enumerated registration documents, is preempted by the comprehensive federal immigration registration laws – 8 U.S.C. §§ 1201, 1301-1306, and 8 C.F.R. Part 264 – which provide a federal scheme for alien registration in a single integrated and all-embracing system. Section 3 fails to take into account that several classes of immigrants who are eligible and apply for legalization of status are not provided with “registration” documents while their status is being adjudicated by the federal government, notwithstanding the federal government’s knowledge that these immigrants are present in the United States. Because S.B. 1070 and Arizona’s S.B. 1070 training materials seek to criminalize immigrants whose presence may be known to and accepted by the federal government while it adjudicates their legalization applications, the Government of the United States concludes that Section 3 thus “conflicts with and otherwise stands as an obstacle to the full purposes and objectives of Congress in providing certain forms of humanitarian relief.” *United States v. Arizona*, ¶ 48.

51. Section 4 of S.B. 1070 amended Ariz. Rev. Stat. 13-2319 (“smuggling prohibition”) makes it a felony for “a person to intentionally engage in the smuggling of human beings for profit or commercial purpose.” Ariz. Rev. Stat. 13-2319. The smuggling prohibition is preempted by federal law, including 8 U.S.C. § 1324. There are material differences between the federal and Arizona alien smuggling. Arizona’s smuggling law, unlike federal anti-

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3 smuggling laws, is not limited to transportation that is provided “in furtherance” of
4 unlawful immigration, but rather prohibits the knowing provision of any commercial
5 transportation services to an alien unlawfully present in the United States. Ariz. Rev. Stat.
6 13-2319(A).

7 52. Ariz. Rev. Stat. 13-2928 makes it a crime for any immigrant who is
8 “unauthorized” and “unlawfully present” in the United States to solicit, apply for, or
9 perform work. S.B. 1070, Section 5(C)-(E). This prohibition on unauthorized immigrants
10 seeking or performing work is preempted by the federal scheme of sanctions related to the
11 employment of unauthorized aliens –8 U.S.C. §§ 1324a-1324c. As stated by the
12 Government of the United States, this provision “conflicts with Congress’s decision not to
13 criminalize such conduct for humanitarian and other reasons.” *United States v. Arizona*, ¶ 54.

14 53. S.B. 1070 Section 6 provides law enforcement officers with authority to make
15 warrantless arrests of any person whom they have probable cause to believe has
16 committed a “public offense,” without explaining what this term means, that would make
17 the person “removable,” regardless of where the offense was committed. Defendants’
18 training materials fail to adequately explain what a “public offense” means, or what classes
19 of immigrants are in fact “removable” under federal law, or what classes of immigrants are
20 not “removable” under federal law. Section 6 makes no exception for aliens whose
21 removability has already been resolved by federal authorities, despite the fact that only the
22 federal government can actually issue removal decisions. Section 6 will therefore necessarily
23 result in the arrest of aliens based on out-of-state crimes, even if the criminal and
24 immigration consequences of the out-of-state crime have already been definitively
25 resolved. For that reason, “Section 6 of S.B. 1070 interferes with the federal government’s
26 enforcement prerogatives and will necessarily impose burdens on lawful aliens in manner
27 that conflicts with the purposes and practices of the federal immigration laws.” *United*
28 *States v. Arizona*, ¶ 59. Additionally, Section 6 will result in the arrest of immigrants whose
out-of-state crimes “would not give rise to removal proceedings at all.” *Id.*

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3 IRREPARABLE INJURY

4 54. For the foregoing reasons, SB 1070 and Arizona's S.B. 1070 training materials
5 have caused and will continue to cause substantial and irreparable harm to the plaintiffs for
6 which the plaintiffs have no adequate remedies at law. Plaintiffs do not, however, seek to
7 enjoin or interfere with state proceedings that were underway before initiation of this case
8 or otherwise would require abstention under *Younger v. Harris*, 401 U.S. 37 (1971).

9 FIRST CLAIM FOR RELIEF

10 VIOLATION OF THE SUPREMACY CLAUSE

11 55. Plaintiffs reallege and incorporate by reference the allegations set out in
12 paragraphs 1 through 54, inclusive, of this Complaint as though fully set forth here.

13 56. SB 1070, Sections 1-6, as amended is an impermissible attempt by state actors to
14 regulate immigration, conflicts with federal law and foreign policy, disregards well-
15 established federal policies, interferes with federal enforcement priorities in areas
16 committed to the discretion of the United States, and otherwise impedes the
17 accomplishment and execution of the full purposes and objectives of federal law and foreign
18 policy.

19 57. As such Sections 1-6 of SB 1070 violates the Supremacy Clause and is invalid
20 under the United States Constitution Art. I, § 8, cl. 4 (the federal power to establish a
21 uniform rule of naturalization) and Art. I, § 8, cl. 3 (the federal power to regulate commerce
22 with foreign nations).

23 SECOND CLAIM FOR RELIEF

24 PREEMPTION UNDER FEDERAL LAW

25 58. Plaintiffs reallege and incorporate by reference the allegations set out in
26 paragraphs 1 through 54, inclusive, of this complaint as though fully set forth here.

27 59. Sections 1-6 of S.B. 1070 are preempted by federal law, including 8 U.S.C. § 1101,
28 et seq., and by U.S. foreign policy

THIRD CLAIM FOR RELIEF

VIOLATION OF THE COMMERCE CLAUSE

60. Plaintiffs reallege and incorporate by reference the allegations set out in paragraphs 1 through 54, inclusive, of this complaint as though fully set forth here.

61. Section 5 of S.B. 1070 (adding Ariz. Rev. Stat. 13-2929) restricts the interstate movement of immigrants in a manner that is prohibited by Article One, Section Eight of the Constitution and violates the Commerce Clause.

FOURTH CLAIM FOR RELIEF

DENIAL OF DUE PROCESS AND EQUAL PROTECTION;

VIOLATION OF 42 U.S.C. § 1983

62. Plaintiffs reallege and incorporate by reference the allegations set out in paragraphs 1 through 54, inclusive, of this complaint as though fully set forth here.

63. Sections 1-6 of SB 1070 deny plaintiffs and their class members due process of law and the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution, by –

- (a) failing to provide fair warning of the acts which are made punishable as a crime;
- (b) failing to explain or define when a person has committed a “public offense”;
- (c) permitting detentions and arrests based upon vague and ill-defined facts such as dress, demenaor, and limited English-speaking ability;
- (d) permitting detention and arrests of persons for purported immigration law violations whose presence is known to the federal government which has not required their registration or detention;
- (e) failing to establish procedures for the release of detained or arrested persons whose lawful presence the federal is unable or unwilling to verify.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court –

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3 1. Assume jurisdiction over this action;

4 2. Order that plaintiffs may maintain this action as a class action pursuant to Rule 23,
5 Federal Rules of Civil Procedure;

6 3. Only to the extent relief does not interfere with state proceedings that were
7 underway before initiation of this case or otherwise require abstention under *Younger v.*
8 *Harris*, 401 U.S. 37 (1971), issue declaratory judgment that Sections 1-6 of S.B. 1070 are
9 invalid, null, and void;

10 4. Only to the extent relief does not interfere with state proceedings that were
11 underway before initiation of this case or otherwise require abstention under *Younger v.*
12 *Harris*, 401 U.S. 37 (1971), issue preliminary and permanent injunctions restraining
13 defendants, their agents, employees, and successors in office from further implementing
14 Sections 1-6 of SB 1070;

15 5. Issue a declataory judgment that the named individual immigrant plaintiffs may
16 not be detained, arrested, or prosecuted by defendants or their agents for not having
17 registered pursuant to 8 U.S.C. 1302, not carrying registration receipt cards pursuant to 8
18 U.S.C. § 1306, or for seeking or accepting employment in Arizona.

19 6. Award plaintiffs their costs of suit and attorney's fees pursuant to 42 U.S.C. §
20 1988(b); and

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7. Grant such further relief as the Court deems just.

Dated: July 9, 2010

PETER A. SCHEY
CARLOS HOLGUIN
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/s/ _____
Peter A. Schey

/s/ _____
T. Anthony Guajardo

Attorneys for Plaintiffs

/ / /

CERTIFICATE OF SERVICE

I hereby certify that I am over the age of 18, not a party to this action, and on July 9, 2010, I electronically transmitted the foregoing document 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 on record and also emailed them directly at their email addresses below.

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S
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