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**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA
 Phoenix Division**

CV-10-926-PHX-MEA

ROBERTO JAVIER FRISANCHO)

Case No. _____

Plaintiff, *pro se*)

COMPLAINT

vs.)

JAN BREWER, in her official)
 capacity as Governor of the State of)
 Arizona; and TERRY GODDARD, in his)
 official capacity as Attorney General of the)
 State of Arizona,)

Defendants.)

The Plaintiff alleges upon information and belief as follows:

NATURE OF THE CASE

1. In this civil rights case, the Plaintiff seeks to enjoin illegal, discriminatory and unauthorized enforcement of federal immigration laws against Hispanics in Arizona.

2. On April 23, 2010, the State of Arizona enacted a Hispanic Code, the Support Our Law Enforcement and Safe Neighborhoods Act (hereinafter "the Act"), Senate Bill 1070.

The Act will, in pertinent part:

- Require police officers to check the immigration status of anyone they have a "reasonable suspicion" to believe might be in the country illegally.
- Require legal immigrants to carry at all times paperwork proving their status.
- Make it a state crime to be in the country illegally.

- Allow people to sue local governments or agencies if they think federal or state immigration law is not being enforced.

The Act is attached as Exhibit A.

JURISDICTION AND VENUE

3. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 because the Plaintiff asserts claims under the Constitution of the United States and 42 U.S.C. § 1983.

4. Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

PARTIES

5. Plaintiff, Roberto Javier Frisancho, a Hispanic, is a natural born citizen of the United States and a resident of the District of Columbia. He plans on visiting Arizona in September 2010 and return over the next few years to research the “Chandler Roundup,” a joint operation of the Chandler Police Department and the Tucson Border Patrol Sector to capture undocumented immigrants that took place over a five-day period in July 1997. The Chandler Roundup cost the City of Chandler \$400,000 for the settlement of lawsuits in which plaintiffs alleged that they were stopped and questioned based solely on their apparent Mexican descent.

6. Defendant Jan Brewer is sued in her official capacity as the Governor of the State of Arizona. Governor Brewer signed a Hispanic Code, the Support Our Law Enforcement and Safe Neighborhoods Act, Senate Bill 1070, into law on April 23, 2010. Pursuant to Article 5, Section 4, of the Arizona Constitution, the Governor “shall take care that the laws be faithfully executed.”

7. Defendant Terry Goddard is sued in his official capacity as the Attorney General of the State of Arizona. The Attorney General is Arizona’s chief legal officer. Ariz. Rev. Stat. § 41-192(A).

PRELIMINARY STATEMENT

A. The Regulation of Citizenship and Immigration Matters: The Exclusive Province of the Federal Government.

8. Pursuant to Article I, Section 8, Clauses 3 and 4 of the United States Constitution, the federal government has the power to “establish a uniform Rule of Naturalization” and to “regulate Commerce with foreign Nations.” In fact, the Supreme Court of the United States has held that the federal government’s power to control immigration is inherent in the nation’s sovereignty.

9. Pursuant to its exclusive power over matters of immigration, the federal government has established a comprehensive system of administrative agencies, statutes, regulations, and procedures to determine, subject to judicial review, whether and under what conditions aliens may enter, live, and work in the United States—and, if desired, become citizens thereof.

10. The federal government has chosen to allow certain aliens to remain in the United States even though such persons may not have valid immigrant (permanent) or non-immigrant (temporary) status or may otherwise be removable or subject to deportation. For instance, under federal law, various categories of persons can receive federal permission to work, and implicitly to stay and reside, in the United States even though they may be violating immigration laws. Moreover, persons with pending applications to adjust to a lawful status are often permitted to remain in the United States despite being in the country unlawfully. Of course, determinations of who may continue living here are within the exclusive province of the United States government and any attempt by state or local officials to usurp that function constitutes an inappropriate interference with an exclusive federal function. Indeed, with limited exceptions,

only an immigration judge may determine whether an alien may be admitted or removed from the United States.

11. The Act will require police to check the immigration status of anyone they have “reasonable suspicion” to believe might be in the United States illegally. The Act provides:

For any lawful contact made by a law enforcement official or agency of this state or a county, city, town or other political subdivision of this state where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person. The person’s immigration status shall be verified with the federal government pursuant to 8 United States Code Section 1373(c).

S.B. 1070 § 2 (adding Article 8 to Title 11, chapter 7, Arizona Revised Statutes).

12. Under 8 U.S.C. § 1373, the now abolished Immigration and Naturalization Service was authorized to provide citizenship or immigration information to federal, state, and local government agencies only for a “purpose authorized by law.”

B. The Act Violates Due Process.

13. The Fourteenth Amendment guarantees due process of law, and proscribes laws that are so vague that persons of common intelligence must necessarily guess at their meaning. A law is unconstitutionally vague where it fails to provide those targeted by the law a reasonable opportunity to know specifically what conduct is prohibited, or is so indefinite as to allow arbitrary and discriminatory enforcement. A law is void for vagueness under the due process clause if it lacks standards or if its enforcement depends upon arbitrary discretion vested in those ultimately responsible for achieving its objectives. Further, due process requires the government to provide notice and a hearing before depriving any person of life, liberty, or property.

14. The Act imposes criminal penalties for violations which the State fails to define with sufficient clarity for ordinary people to understand how to comply. As such, the Act invites

arbitrary and discriminatory enforcement practices and violates the constitutional requirement of due process.

C. The Consequences of the City's Unlawful Scheme: Plaintiff Will Suffer Injury in the Absence of the Court's Intervention and Issuance of Appropriate Relief.

15. Unless this Court declares the Act to be invalid and enjoins enforcement thereof, the Plaintiff will suffer irreparable injury. As a Hispanic, the Plaintiff is likely to be asked for his papers based on the "reasonable suspicion" that he is undocumented on the basis of his ethnicity.

16. The State's adoption and threatened enforcement of the Act has violated, and will continue to do injury to, the Plaintiff's constitutional, statutory, and common law rights. Therefore, judicial intervention and appropriate declaratory and injunctive relief is necessary to prevent further deprivations and violations of the Plaintiff's rights.

**FIRST CLAIM FOR RELIEF
Violation of The Supremacy Clause.**

17. Plaintiff hereby incorporates the allegations in the preceding paragraphs as if fully set forth herein.

18. Article VI of the United States Constitution provides: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding."

19. The power to regulate immigration is exclusively given to the federal government by the Constitution. Any regulation of immigration by a state or local government intrudes on that federal authority and is preempted by the Supremacy Clause. Further, the Supremacy Clause mandates that federal law preempts state and local government laws in areas where

Congress has expressly or impliedly exercised exclusive authority and when those laws conflict with federal law.

20. The Act is a regulation of immigration in a field where Congress has exercised exclusive authority. Moreover, the Act conflicts with federal law. Accordingly, the Act is preempted by the Supremacy Clause of the Constitution of the United States.

a. The Act is an improper attempt to regulate immigration.

21. The Act is an improper attempt to regulate immigration because it intrudes on the federal government's exclusive power to regulate immigration. A regulation of immigration is a determination of whether an alien should or should not be admitted in the United States and the conditions under which the alien can remain. The Act limits individuals' rights to travel in Arizona based on immigration status, and does so in a manner different than that set out by Congress.

22. Specifically, through the Act the State seeks to identify aliens traveling in Arizona and assess whether they are lawfully present in the United States. Deciding who may stay and who must depart, and expelling the latter, is the very core of immigration regulation.

23. Arizona has, independent of the federal government, designed its own system of regulation that seeks to regulate the presence of foreign nationals with the State's borders. Accordingly, the Act is a regulation of immigration that is preempted under the Supremacy Clause of the Constitution of the United States.

b. The Act conflicts with federal law and federal policies.

24. The Act also violates the Supremacy Clause because it conflicts and interferes with clear federal policies.

25. Further, by requiring the use of federal government resources to verify the immigration status of people travelling in Arizona, the Act places a burden on the resources of the federal immigration system without federal authorization. As such, the Act conflicts with the administrative apparatus designed to enforce the immigration laws.

c. Because the Act is preempted, it must be enjoined.

26. By implementing a law based on immigration status, the Act ignores the complex system of federal classification and discretion. Ultimately, the effect of the Act is to upset the system established by Congress in order to implement Arizona's own enforcement mechanisms, penalties, and interpretations in place of the federal system.

27. In addition, the chilling effects of the Act will generally discourage travelers of Hispanic descent to visit Arizona.

28. Accordingly, this Court should declare the Act unconstitutional and preliminarily and permanently enjoin its effectuation and enforcement.

SECOND CLAIM FOR RELIEF
Violation of 42 U.S.C. § 1983.

29. Plaintiff hereby incorporates the allegations in the preceding paragraphs as if fully set forth herein.

30. The Act deprives the Plaintiff of the rights, privileges, and immunities secured by the United States Constitution and federal laws.

31. Arizona was acting under color of law when it passed the Act, and all agents of Arizona attempting to effectuate or enforce the Act are, and will be, acting under color of law.

32. The Act has deprived the Plaintiff, and subjects the Plaintiff to the future deprivation, of rights secured by the Constitution and federal law. Accordingly, the Plaintiff is entitled to a declaration that the Act is unconstitutional and injunctive relief prohibiting the

effectuation and enforcement of the Act and remedying the discriminatory effects results from the enactment of the Act.

THIRD CLAIM FOR RELIEF

The Act violates the Due Process Clause of the Fourteenth Amendment.

33. The Plaintiff hereby incorporates the allegations in the preceding paragraphs as if fully set forth herein.

34. The Fourteenth Amendment of the Constitution of the United States provides that: “No state . . . shall deprive any person of life, liberty or property without due process of law.” The Due Process Clause of the Fourteenth Amendment applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. The Act violates the Due Process Clause of the Fourteenth Amendment because it deprives the Plaintiff of substantial liberty without either substantive or procedural due process of law.

a. The Act fails to provide sufficient procedural due process.

35. The Act does not contain sufficient procedural safeguards to protect these important interests.

36. The Act would require police officers to check the immigration status of anyone they have a “reasonable suspicion” to believe might in the country illegally.

37. The Act would essentially require racial and ethnic profiling by police officers, who would inevitably come up with their own characteristics based on physical appearance and accent to determine if someone might be in the country illegally.

38. Due to their ethnicity, Hispanics are likely to have their immigration status questioned based on the “reasonable suspicion” that they are undocumented.

39. Accordingly, the Act denies due process because it establishes a crime of being Hispanic. Therefore, the Act is void for vagueness.

40. The Act would deprive the Plaintiff of substantial rights without due process. The sheer number of constitutional shortcomings make it imperative for the Court to enjoin the Act before it goes into effect.

b. The Act fails to meet the requirements of substantive due process.

41. The Act substantially burdens the liberty interest of the Plaintiff. This burden is imposed on the Plaintiff without due process of law because the Act is not rationally related to any legitimate state interest. The sole function of the scheme created by the Act is to detain certain aliens. Regulation of immigration is not a legitimate state interest as that function is reserved to the federal government. Accordingly, the Act is not rationally related to any state interest and must be enjoined because it substantially burdens the liberty interest of the Plaintiff without due process of law.

42. The Act, therefore, deprives the Plaintiff of liberty interest without either substantive or procedural due process. Accordingly, the Court should preliminarily and permanently enjoin the effectuation and enforcement of the Act.

FOURTH CLAIM FOR RELIEF

The Act violates the Equal Protection Clause of the Fourteenth Amendment.

43. The Plaintiff hereby incorporates the allegations in the preceding paragraphs as if fully set forth herein.

44. The Fourteenth Amendment of the Constitution of the United States provides that “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” Generally, the Equal Protection Clause requires that all similarly situated persons be treated

substantially alike. The Equal Protection Clause also prohibits states from creating laws for the purpose of treating people differently based on race, alienage, or national origin.

45. The Act is facially unconstitutional because it treats Hispanics and non-Hispanics differently. Due to their ethnicity, Hispanics are likely to have their immigration status questioned based on the “reasonable suspicion” that they are undocumented.

46. Further, the State adopted the Act because of, not merely in spite of, its adverse effect upon a discrete and insular minority—Hispanics. Merely by enacting the Act, the State achieved its purpose of discouraging Hispanics from travelling and living in Arizona. As the State intended, the Act will have a discriminatory effect if enforced because Hispanics are more likely to be stopped when travelling in Arizona on the basis of “reasonable suspicion” that they are undocumented immigrants.

47. The Act serves no compelling government purpose. In fact, the Act exists solely to discriminate against Hispanics.

48. The Court should declare the Act unconstitutional and enjoin the effectuation and enforcement of the Act because it violates the Equal Protection Clause. Further, because the enacting of discriminatory ordinances, including the Act, has had a discriminatory effect, Arizona should be ordered to take affirmative action to encourage Hispanics to travel and live in Arizona.

FIFTH CLAIM FOR RELIEF
The Act infringes on the right to travel.

49. The Plaintiff hereby incorporates the allegations in the preceding paragraphs as if fully set forth herein.

50. Citizens of the United States have the right to travel and move from one state to another and within one state. This right is protected by the Privileges and Immunities Clause of

Article IV, Section 2, of the Constitution of the United States. A state cannot deny a citizen the right to travel in that state, nor can it deter or attempt to deter a citizen from moving into the state.

51. Accordingly, the Act deters interstate travel (and commerce) by placing considerable burdens on the ability of Hispanic citizens to visit Arizona without being questioned about their immigration status on the basis of “reasonable suspicion.” Because the Act interferes with the right to travel without serving a legitimate public interest, the Plaintiff requests that the Court enjoin the effectuation and enforcement of the Act.

SIXTH CLAIM FOR RELIEF
Violation of the Due Process Clause of the Arizona Constitution.

52. The Plaintiff hereby incorporates the allegations in the preceding paragraphs as if fully set forth herein.

53. Article II, § 4 of the Arizona Constitution provides: “No person shall be deprived of life, liberty, or property without due process of law.”

54. As described above, the Act will violate the due process rights guaranteed to the Plaintiff under Article II, § 4 of the Arizona Constitution.

55. The Plaintiff will suffer tremendous harm and public humiliation and be subjected to unlawful discrimination unless the Act is enjoined and declared unconstitutional.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

REQUEST FOR RELIEF

In light of the foregoing, the Plaintiff requests that the Court, upon notice to the Defendants, issue a temporary restraining order and, following any necessary hearing with respect thereto, enter a preliminary injunction prohibiting the effectuation and enforcement of the

Act pending entry of a final judgment in favor of the Plaintiff and against Arizona, providing for the following relief:

1. A declaration that the Support Our Law Enforcement and Safe Neighborhoods Act, S.B. 1070, is unconstitutional and contrary to applicable federal and state law;
2. A permanent injunction prohibiting the effectuation, enforcement, and threatened enforcement of the Support Our Law Enforcement and Safe Neighborhoods Act, S.B. 1070;
3. A declaration that the State adopted the Support Our Law Enforcement and Safe Neighborhoods Act, S.B. 1070, for the unlawful purpose of discriminating against Hispanics;
4. A permanent injunction prohibiting the State from enacting, effectuating, or enforcing any laws which address citizenship or immigration status without making, recording, and retaining factual findings concerning the problem to be resolved and considering available alternatives;
5. An order requiring the State to take affirmative steps to remedy past discrimination, including the publication of statements in at least two newspapers of general circulation, and on its official Web page, that Arizona welcomes minority, and especially Hispanics, travelers and residents.
6. Other affirmative injunctive relief to remediate the discriminatory effect of the State's unconstitutional actions;
7. Costs of Court; and
8. Any other relief, at law or in equity, to which the Plaintiff may be entitled and which the Court deems just and proper.

Respectfully submitted,

Dated: April 26, 2010

By: Roberto Javier Frisancho
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