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7

8 **IN THE UNITED STATES DISTRICT COURT**

9
10 **IN AND FOR THE DISTRICT OF ARIZONA**

11 ANGEL LOPEZ-VALENZUELA and
12 ISAAC CASTRO-ARMENTA,

13 Plaintiffs,

14 vs.

15 MARICOPA COUNTY; JOE ARPAIO,
Maricopa County Sheriff, in his official
16 capacity; ANDREW THOMAS, Maricopa
County Attorney, in his official capacity;
17 and BARBARA RODRIQUEZ
MUNDELL, Presiding Judge, Maricopa
County Superior Court, in her official
18 capacity,
Defendants.

NO.: CV08-660-PHX-SRB (ECV)

**ANSWER OF DEFENDANTS
MARICOPA COUNTY, ARPAIO, AND
THOMAS**

19
20 For their Separate Answer to plaintiffs' Complaint, defendants Maricopa County,
21 Hon. Joseph Arpaio, and Hon. Andrew Thomas ("the County Defendants") admit, deny, and
22 allege as follows:

23 1. The County Defendants deny the allegations in Plaintiffs' Complaint at the
24 sections entitled "*Nature of the Case*" and "*Introduction*" and assert that the same constitute
25 improper narratives and arguments of counsel and violate F.R.C.P. 8(a)(2) and 8(d)(1) and,
26 therefore, should be stricken in their entirety or amended to conform to the rules of civil
27 procedure.
28

1 2. The County Defendants admit the allegations of paragraph numbers 13, 14
2 (except as to the last sentence which is expressly denied), and 17-19 of Plaintiffs' Complaint.

3 3. The County Defendants allege that Proposition 100 and A.R.S. § 13-3961 and
4 the legislative history of the same speak for themselves and are the best evidence of what the
5 same laws state, provide, intended, or otherwise require and, therefore, deny the allegations
6 contained within paragraph numbers 21-27 and 31 of Plaintiffs' Complaint.

7 4. The County Defendants are without knowledge or information sufficient to
8 form a belief as to the truth of the allegations contained within paragraph numbers 15-16, 20,
9 28, 33-50 of Plaintiffs' Complaint and, therefore, deny the same.

10 5. The County Defendants deny the allegations contained within paragraph
11 numbers 29-30, 32 and 51-78.

12 6. The County Defendants allege that the Court has dismissed Count Seven
13 (Violation of the Supremacy Clause) of Plaintiffs' Complaint and the allegations contained
14 therein at paragraph numbers 78-82 and, therefore, no responses are necessary, appropriate,
or required as to these allegations.

15 7. The County Defendants deny each and every material allegation contained
16 within Plaintiff' Complaint not heretofore expressly admitted or otherwise pleaded to.

17 **SEPARATE, ALTERNATIVE AND AFFIRMATIVE DEFENSES**

18 As separate, alternative, and affirmative defenses, this answering defendant alleges as
19 follows:

20 1. The Proposition 100 laws are valid and constitutional in all respects.

21 2. The Proposition 100 laws are constitutionally permissible regulations in their
22 overall intent, nature, and affect.

23 3. The conduct, actions, and implementation by the defendants of the Proposition
24 100 laws are reasonable, appropriate, and constitutional in each and every respect.

25 4. Bail itself is not a constitutional right.

26 5. There is no constitutional right to have defense counsel at an initial
27 appearance.
28

1 6. Illegal aliens subject to criminal charges and/or deportation may pose an
2 increased flight risk.

3 7. The Proposition 100 laws deny bail to illegal aliens charged with Class 1, 2, 3,
4 and 4 felonies under Arizona law.

5 8. Rule 6.1, Arizona Rules of Criminal Procedure, is lawful and constitutional.

6 9. Arizona citizens and crime victims have certain rights under the Arizona
7 Constitution that comport and comply with all federal laws and the federal constitution.

8 10. Plaintiffs' Complaint fails to state a municipal liability claim under 42 U.S.C. §
9 1983.

10 11. Plaintiffs' Complaint is so vague and ambiguous in part that these Defendants
11 cannot reasonably prepare a response to those parts and the Court should order Plaintiffs to
12 file a more definite statement.

13 12. Plaintiffs' claims are subject to any and all absolute and/or qualified
14 immunities afforded these answering Defendants.

15 13. Plaintiffs fail to join a necessary party under Rule 19, Fed.R.Civ.P.

16 14. The Court should dismiss this action under the *Younger* abstention doctrine.

17 15. Plaintiffs' Complaint fails to state a claim upon which relief can be granted
18 against these each of these answering Defendants.

19 16. These Defendants reserve their right to assert any and all additional factual
20 and/or legal defense to plaintiffs' liability claims as discovered or developed throughout the
21 course of this litigation.

22 WHEREFORE, having fully answered plaintiffs' Complaint, these answering
23 Defendants request the following relief:

24 1. That the Court issue its Order holding that the Proposition 100 laws are
25 constitutional;

26 2. That the Court issue its Order holding that the conduct, actions, and
27 implementation by the defendants of the Proposition 100 laws are reasonable, appropriate,
28 and constitutional in each and every respect.

 3. That Plaintiffs' Complaint be dismissed with prejudice;

4. That Plaintiffs take nothing and be denied all their requested relief;

5. That these answering Defendants be awarded all costs and attorney's fees incurred herein; and

6. For such other and further relief as the Court might deem appropriate.

RESPECTFULLY SUBMITTED this 22nd day of December, 2008.

SCHMITT, SCHNECK, SMYTH
& HERROD, P.C.

By: *s/Timothy J. Casey*
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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2008, I electronically transmitted the attached 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:

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