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8  
9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF ARIZONA**

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

13 Plaintiffs,

14 v.

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

20 Defendants.

Case No. CV2008-00660-PHX-SRB-(ECV)

**JUDGE BARBARA RODRIGUEZ  
MUNDELL'S ANSWER TO  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF AND  
RESPONSE TO MOTION FOR  
PRELIMINARY INJUNCTION**

21  
22  
23 The Honorable Barbara Rodriguez Mundell, Presiding Judge of the Arizona  
24 Superior Court in Maricopa County, by and through her counsel undersigned, hereby  
25 gives her answer as follows:

1           1.       Admits that plaintiffs have brought a proposed class action for declaratory  
2 injunctive and habeas relief, challenging the constitutional amendment commonly known  
3 as Proposition 100; admits the general description of Proposition 100; and denies the  
4 remaining allegations of the introductory paragraph and paragraph 1.

5           2.       Denies the allegations of paragraph 2.

6           3.       Admits that plaintiffs make the demands they describe, and denies the  
7 remaining allegations of paragraph 3.

8           4.       Denies the allegations of paragraph 4.

9           5.       Admits the language of Proposition 100 and denies the remaining  
10 allegations of paragraph 5.

11          6.       Denies the allegations of paragraph 6.

12          7.       Denies the allegations of paragraph 7.

13          8.       Denies the allegations of paragraph 8, except admits that, under the U.S.  
14 Constitution, the federal government has exclusive power in certain areas of immigration  
15 law.

16          9.       Denies the allegations of paragraph 9.

17          10.       Admits that Proposition 100 requires certain judicial officers to make  
18 certain determinations about immigration status at a very preliminary stage of a state  
19 criminal prosecution; admits that in Maricopa County, a criminal defendant is  
20 commonly not appointed counsel for purposes of an initial appearance; admit that  
21 plaintiffs and some members of the proposed class have been detained; and denies the  
22 remaining allegations of paragraph 10.

23          11.       Denies the allegations of paragraph 11.

24          12.       Denies the allegations of paragraph 12.

25

1           13. Denies the allegations of paragraph 13 to the extent they claim that this  
2 court has subject matter jurisdiction over this defendant.

3           14. Admits the allegations of paragraph 14, except denies that this defendant is  
4 an officer or employee of Maricopa County Arizona; denies that both plaintiffs are  
5 currently detained; and affirmatively alleges that this defendant is an official of the  
6 judicial branch of the government of the state of Arizona.

7           15. Denies the allegations of paragraph 15.

8           16. Admits the allegations of paragraph 16.

9           17. Admits the allegations of paragraph 17, except lacks knowledge or  
10 information sufficient to form a belief as to the truth and accuracy of the allegation that  
11 Maricopa County is responsible for the official decision to forbid the use of public funds  
12 for the appointment of counsel for indigent criminal defendants and initial appearance  
13 proceedings.

14           18. Admits the allegations of paragraph 18, except denies that both plaintiffs  
15 are currently detained.

16           19. Admits the allegations of paragraph 19, except denies that both plaintiffs  
17 are currently detained.

18           20. Admits the allegations of paragraph 20, except denies that this defendant is  
19 generally responsible for implementing the Proposition 100 laws, and denies that  
20 defendant Mundell is not sued in her judicial capacity, because she has been sued as the  
21 presiding judge of the Superior Court of Arizona in Maricopa County; denies any  
22 remaining allegations of paragraph 20; and affirmatively alleges that at all relevant  
23 times, this defendant and the pretrial services personnel have sought to carry into effect  
24 the laws of Arizona and the directives of the Arizona Supreme Court; that as of the time  
25 of this answer, this defendant has taken steps to change the questionnaire form used by

1 pretrial services personnel to omit any questions pertaining to immigration status other  
2 than asking whether the criminal defendant is a citizen of the United States; and that this  
3 defendant would lack the authority to implement any rule changes or create any local  
4 rule pertaining to this subject matter without the express approval of the Supreme Court  
5 of the State of Arizona.

6 21. Admits the allegations of paragraph 21.

7 22. Admits the allegations of paragraph 22, except denies that Section 22 does  
8 not permit an individualized bail hearing.

9 23. Admits the allegations of paragraph 23.

10 24. Admits that on June 18, 2007 the Arizona legislature passed Senate Bill  
11 1265 as an amendment to A.R.S. § 13-3961; admits that prior to the enactment of Senate  
12 Bill 1265, the Arizona Supreme Court had issued an administrative order dealing with  
13 the level of proof for a defendant who had entered or remained in the United States  
14 illegally; and denies the remaining allegations of paragraph 24.

15 25. Admits that Proposition 100 has an effect on the determination of whether a  
16 person will be subject to mandatory pretrial detention; and denies the remaining  
17 allegations of paragraph 25.

18 26. Admits the allegations of paragraph 26, except denies that the Arizona bail  
19 statute prior to the passage of Proposition 100 accounted for all of the legitimate state  
20 governmental interests that may be considered in a bail determination.

21 27. Admits that Proposition 100 may deny bail based on a probable cause  
22 determination of a person's immigration status, but lacks knowledge or information  
23 sufficient to form a belief as to the truth and accuracy of the remaining allegations of  
24 paragraph 27.

25

1           28. Lacks knowledge or information sufficient to form a belief as to the truth  
2 and accuracy of the allegations of paragraph 28.

3           29. Lacks knowledge or information sufficient to form a belief as to the truth  
4 and accuracy of the allegations of paragraph 29.

5           30. Lacks knowledge or information sufficient to form a belief as to the truth  
6 and accuracy of the allegations of paragraph 30.

7           31. Denies that Proposition 100 does not “provide for basic procedural  
8 protections for the criminal defendants”; lacks knowledge or information sufficient to  
9 form a belief as to the truth and accuracy of the remaining allegations of paragraph 31.

10          32. Denies the allegations of paragraph 32.

11          33. Lacks knowledge or information sufficient to form a belief as to the truth  
12 and accuracy of the allegations of paragraph 33.

13          34. Denies the allegations of paragraph 34.

14          35. Denies the allegations of paragraph 35.

15          36. Denies the allegations of paragraph 36.

16          37. Admits the allegations of paragraph 37, except denies that initial  
17 appearances are conducted by a “county commissioner, who is not a state court judge.”

18          38. Denies the allegations of paragraph 38, except lacks knowledge or  
19 information sufficient to form a belief as to the truth and accuracy of the allegations  
20 pertaining to the county attorney and the county; and affirmatively alleges that  
21 sometimes counsel appear at initial appearances and sometimes they do not, and that  
22 there is no legal impediment to such appearances, and that no act of this defendant  
23 generally affects the timing of appointment of counsel in particular matters.

24          39. Denies the allegations of paragraph 39.

25

1           40. Denies the allegations of paragraph 40, except admits that there are studies  
2 correlating pre-trial detention with the likelihood that a defendant will be convicted;  
3 further admits the incomplete citation of language from *Barker v. Wingo*, 407 U.S. 514  
4 (1972).

5           41. To the extent paragraph 41 is intended to state a policy and practice of this  
6 defendant, the allegations of paragraph 41 are denied. To the extent these allegations are  
7 intended to include other defendants, this defendant lacks knowledge or information  
8 sufficient to form a belief as to the truth and accuracy of said allegations.

9           42. Admits the language from A.R.S. § 13-3961, and denies the remaining  
10 allegations of paragraph 42.

11           43. Admits the citations to the Arizona Rules of Criminal Procedure; denies the  
12 categorization of this defendant's policies and practices; and denies the remaining  
13 allegations of paragraph 43.

14           44. Admits that plaintiffs purport to act on behalf of a class; and denies the  
15 remaining allegations of paragraph 44.

16           45. Denies the allegations of paragraph 45.

17           46. Denies the allegations of paragraph 46.

18           47. Denies the allegations of paragraph 47.

19           48. Denies the allegations of paragraph 48.

20           49. Lacks knowledge or information sufficient to form a belief as to the truth  
21 and accuracy of the allegations of paragraph 49.

22           50. Denies the allegations of paragraph 50.

23           51. Denies the allegations of paragraph 51.

24           52. Denies the allegations of paragraph 52.

25           53. Denies the allegations of paragraph 53.

1           54.   Denies the allegations of paragraph 54.

2           55.   Incorporates the foregoing responses to plaintiffs' allegations as though  
3 fully set forth herein.

4           56.   Denies the allegations of paragraph 56.

5           57.   Denies the allegations of paragraph 57.

6           58.   Denies the allegations of paragraph 58.

7           59.   Incorporates the foregoing responses to plaintiffs' allegations as though  
8 fully set forth herein.

9           60.   Denies the allegations of paragraph 60.

10          61.   Incorporates the foregoing responses to plaintiffs' allegations as though  
11 fully set forth herein.

12          62.   Admits that there are due process requirements at pre-trial detention  
13 hearings and denies the remaining allegations of paragraph 62.

14          63.   Denies the allegations of paragraph 63.

15          64.   Denies the allegations of paragraph 64, as to this defendant.

16          65.   Denies the allegations of paragraph 65.

17          66.   Incorporates the foregoing responses to plaintiffs' allegations as though  
18 fully set forth herein.

19          67.   Denies the allegations of paragraph 67 to the extent they purport to state  
20 any policy, practice or procedure of this defendant.

21          68.   Denies the allegations of paragraph 68.

22          69.   Denies the allegations of paragraph 69, except admits that some information  
23 may be used in substantive criminal trials.

24          70.   Denies the allegations of paragraph 70.

25

1           71. Incorporates the foregoing responses to plaintiffs' allegations as though  
2 fully set forth herein.

3           72. Denies the allegations of paragraph 72 to the extent they purport to state a  
4 policy, practice or procedure of this defendant.

5           73. Admits that initial appearances are an important stage for criminal  
6 proceedings in Maricopa County and denies the remaining allegations of paragraph 73.

7           74. Denies the allegations of paragraph 74.

8           75. Admits the citation of text from the Eighth Amendment to the U.S.  
9 Constitution; admits that there is Supreme Court jurisprudence about the excessive bail  
10 clause of the Eighth Amendment; admits that bail may be imposed in order to insure a  
11 defendant's presence at trial; and denies the remaining allegations of paragraph 75.

12           76. Denies the allegations of paragraph 76.

13           77. Denies the allegations of paragraph 77.

14           78. Incorporates the foregoing responses to plaintiffs' allegations as though  
15 fully set forth herein.

16           79. Admits that the general power to regulate immigration is an exclusively  
17 federal power; admits that the Federal government's power to control immigration may  
18 be inherent in the nation's sovereignty; and denies the remaining allegation of paragraph  
19 79.

20           80. Denies the allegations of paragraph 80.

21           81. Denies the allegations of paragraph 81.

22           82. Denies the allegations of paragraph 82.

23                   **ADDITIONAL AFFIRMATIVE ALLEGATIONS**

24           1. This Court lacks subject matter jurisdiction over defendant Barbara  
25 Mundell as the presiding judge of the Superior Court of Arizona in Maricopa County.



1           2.       As presiding judge, this defendant has no substantial role in the creation,  
2 passage or enforcement of Proposition 100, except her duties as an official of the judicial  
3 branch of Arizona state government.

4           3.       As the presiding judge of the Superior Court of Arizona in Maricopa  
5 County, this defendant is entitled to immunity from this sort of action, both under well-  
6 established principles of judicial immunity and under the Eleventh Amendment to the  
7 U.S. Constitution.

8           4.       Neither the Arizona constitution nor any statute requires or even authorizes  
9 the presiding judge to take an active role in defending the constitutionality of State  
10 legislation.

11          5.       The actions of the plaintiffs in inappropriately adding the presiding judge as  
12 a party defendant were taken intentionally to try to create an untenable situation where  
13 the members of the purported plaintiff class would be adverse litigants to the presiding  
14 judge. Under established principles governing proper judicial conduct, judges are to  
15 avoid becoming litigants themselves and certainly to avoid becoming adverse litigants to  
16 those who may appear before them, except in limited circumstances generally involving  
17 the defense of court policies. This inappropriate action of the plaintiffs should be  
18 rejected for those reasons.

19          6.       The plaintiffs have not alleged one single action of the presiding judge that  
20 violates any laws or denies plaintiffs any rights. Instead the complaint inappropriately  
21 “lumps” the presiding judge of the Superior Court of Arizona in Maricopa County with  
22 the Maricopa County Attorney and the Maricopa County Sheriff.

23          7.       The presiding judge is not a necessary party to this action, as she takes no  
24 position on the claims raised by plaintiffs and she would be bound by the decision of a  
25 court of competent jurisdiction on the constitutional questions raised, whether she is

1 made a formal party or not. Further, as of the date of this answer, the presiding judge has  
2 taken steps to change the questionnaire form used by pretrial services personnel to  
3 delete any questions about the criminal defendant's immigration status, except for the  
4 inquiry about whether the criminal defendant is a citizen of the United States.

5 8. The plaintiffs and all members of the putative class have state remedies to  
6 seek immediate review of any bail determination they may think inappropriate. These  
7 remedies include motions to assigned judges and commissioners and, in an appropriate  
8 case, special action review by appellate courts.

9 **PRAYER FOR RELIEF**

10 For all the foregoing reasons, this defendant prays the court to enter an order  
11 dismissing this action as against this defendant on the merits and with prejudice, with an  
12 award of costs and attorneys fees in favor of this defendant, and for such other and further  
13 relief as the court may deem appropriate.

14 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of December, 2008.

15  
16 Terry Goddard  
Attorney General

17  
18 s/ Rex C. Nowlan  
19 Rex C. Nowlan  
Assistant Attorney General  
20 Attorney for the Honorable Barbara  
Rodriguez Mundell,  
21 Presiding Judge of the Superior Court in  
Maricopa County

22 **CERTIFICATE OF SERVICE**

23 X I hereby certify that on December 23, 2008, I electronically transmitted the attached  
24 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a  
25 Notice of Electronic Filing to the following CM/ECF registrants:

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Mexican American Legal Defense and Education Fund  
Attorneys for Plaintiffs

16   X   I hereby certify that on December 23, 2008, I caused the attached document to be  
17 sent by first class mail to:

18 The Honorable Susan R. Bolton  
19 Judge, United State District Court  
20 District of Arizona  
21 401 West Washington  
22 Phoenix, Arizona 85003

23 s/ Rex C. Nowlan

24 358559  
25