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Presiding Judge of the Arizona Superior Court in Maricopa County

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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

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

14 Plaintiffs,

15 v.

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

19 Defendants.

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

**JUDGE BARBARA RODRIGUEZ  
MUNDELL'S MOTION TO DISMISS  
COMPLAINT**

20  
21 The Honorable Barbara Rodriguez Mundell, Presiding Judge of the Arizona  
22 Superior Court in Maricopa County, by and through her counsel undersigned, hereby  
23 moves the Court to dismiss the Plaintiffs' Complaint pursuant to Fed. R. Civ. P. 12(b)(6).  
24 The grounds for this motion are more fully stated in the following Memorandum of  
25 Points and Authorities.  
26

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3            Plaintiffs ask this Court to declare that Arizona’s “Proposition 100 laws are

4 unconstitutional [and] are preempted by federal law and the plenary power of Congress to

5 regulate immigration.” (Complaint at 22.) Plaintiffs’ Complaint under 42 U.S.C. §1983

6 seeks prospective injunctive relief against Judge Mundell. (*Id.* at 23.) Plaintiffs’ asserted

7 basis for naming Judge Mundell in this action is that, as the presiding judge of the

8 Superior Court in Maricopa County, she “is responsible for aspects of implementing the

9 Proposition 100 laws.” (*Id.* at 6.) Plaintiffs ask that this Court enjoin Judge Mundell

10 from enforcing the Proposition 100 laws. (*Id.* at 23.) The Complaint must be dismissed

11 as it fails to state any claim upon which relief can be granted under 42 U.S.C. §1983

12 against Judge Mundell.

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14

15                                    **LEGAL ARGUMENT AND AUTHORITIES**

16                                    **Plaintiffs’ Complaint must be Dismissed Pursuant to Rule 12(b)(6) For**

17                                    **Failure to State a Claim upon which Relief can be granted against**

18                                    **Judge Mundell**

19            The central issue in this litigation is whether Article II, section 22 of the

20 Constitution of Arizona, governing bailable offenses, as amended by Proposition 100

21 (2006), and A.R.S. § 13-3961 (hereinafter “Proposition 100 laws”), governing offenses

22 not bailable, are constitutional. Plaintiffs’ allegations against Judge Mundell arise

23 solely out of her judicial acts taken in compliance with directives issued by the Arizona

24 Constitution, the legislature, and the Arizona Supreme Court relating to the

25

26

1 implementation of Proposition 100 in the Superior Court in Maricopa County.<sup>1</sup> In  
2 carrying out these directives, Judge Mundell's judicial acts concerning Proposition 100  
3 are inherently related to the judicial process of adjudicating bail determinations in  
4 Maricopa County Superior Court. These are acts taken in her judicial capacity.  
5

6 To determine whether an action is judicial or administrative, a reviewing court  
7 looks at the nature of the function performed. *Forrester v. White*, 108 S.Ct. 538 (1988).  
8 Similar to the issues presented in the matter before this Court, the District of Columbia  
9 Court of Appeals, in *Roth v. King III*, 449 F.3d 1272 (D.C. Cir. 2006), determined that  
10 certain acts of judicial officers who adopted rules implementing directives from  
11 Congress were judicial acts and not administrative. Specifically, a joint congressional  
12 committee "strongly urg[ed] the D.C. Superior Court to evaluate the legal services  
13 rendered by lawyers appointed . . . to handle juvenile delinquency cases" and to "take  
14 immediate affirmative steps to ensure that lawyers who lack the requisite training,  
15 experience and skills are not appointed to delinquency cases." *Id.* at 1275. Acting  
16 pursuant to this directive, the Chief Judge of the Superior Court of the District of  
17 Columbia appointed an *ad hoc* committee to recommend panels of qualified attorneys to  
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22 <sup>1</sup> For purposes of implementing Proposition 100 throughout the relevant state courts in Arizona  
23 in a uniform manner, Arizona Supreme Court Administrative Order 2007-030, effective until  
24 July 2007, set out required procedures for courts to follow in implementing Proposition 100, and  
25 ordered revisions to the pre-trial release questionnaire, Form 4, Arizona Rules of Criminal  
26 Procedure. This Order further instructed the Superior Court presiding judge in each of Arizona's  
fifteen counties to implement the procedures no later than May, 7, 2007. Emergency rules have  
since been adopted to further implement Proposition 100. See Arizona Supreme Court Order R-  
07-0003, amending Form 4 and Arizona Rules of Criminal Procedure 4.2, 7.2, 7.4, 27.7 and  
31.6, effective July 3, 2007.

1 represent indigent parties, which ultimately resulted in an administrative order issued by  
2 the Chief Judge implementing the Congressional directive. Plaintiffs sought injunctive  
3 relief under 42 U.S.C. §1983 against the judges involved in the development and  
4 implementation of the panel system, including the Chief Judge, and alleged that they  
5 were not entitled to immunity due to the administrative, and not judicial, nature of the  
6 acts. *Id.* at 1286. The court disagreed, finding that the acts were related to the judicial  
7 process and were not administrative in that they did not involve supervision of court  
8 employees or oversight of the efficient operation of a court. *Id.* (distinguishing *Forester*  
9 *v. White*, 108 S.Ct. 538, wherein the United State Supreme Court found acts of judicial  
10 officer relating to employee discipline to be administrative). That is the case before  
11 this Court as well.

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15 Indeed, plaintiffs have not demonstrated, and cannot demonstrate, that Judge  
16 Mundell's role with respect to Proposition 100 is anything other than related to the  
17 judicial process of adjudicating bail determinations in Maricopa County Superior Court.  
18 Accordingly, by its express terms, Judge Mundell is absolutely immune under 42 U.S.C.  
19 §1983 from the injunctive relief Plaintiffs seek against her.<sup>2</sup>

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21 While Judge Mundell is absolutely immune from the relief sought against her,  
22 the Ninth Circuit has emphasized that even in those cases where immunity is not  
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24 <sup>2</sup> In 1996, 42 U.S.C. § 1983 was amended to add the following: "in any action brought against a  
25 judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief  
26 shall not be granted unless a declaratory decree was violated or declaratory relief was  
unavailable." Federal Courts Improvement Act of 1996, Pub. L. No. 104-317, § 309(c), 110  
Stat. 3847, 3853 (codified as amended at 42 U.S.C. § 1983 (2000)). Neither limitation applies in  
this case.

1 available, ““a court should not enjoin judges from applying statutes when complete  
2 relief can be afforded’ by enjoining other parties, because ‘it is ordinarily presumed that  
3 judges will comply with a declaration of a statute’s unconstitutionality without further  
4 compulsion.’” *Wolfe v. Strankman*, 392 F.3d 358, 366 (9<sup>th</sup> Cir. 2004) (citing *In re*  
5 *Justices of Supreme Court of Puerto Rico*, 695 F.2d 17, 23 (1st Cir.1982)); *See also*,  
6 *Grant v. Johnson*, 15 F.3d 146 (9<sup>th</sup> Cir. 1994). Judge Mundell does not have legal  
7 interests adverse to the plaintiffs or remaining defendants in this case. In the event that  
8 the Proposition 100 laws are determined to be unconstitutional, Judge Mundell is  
9 presumed to and will comply with that determination. Indeed, complete relief is  
10 available to plaintiffs if they succeed on the merits of their claims against the remaining  
11 defendants. Accordingly, “there is no relief related basis for including [Judge Mundell]  
12 acting in her judicial capacity in this lawsuit.” *Id.*

### 16 CONCLUSION

17 For the reasons set forth above, this Court should dismiss Plaintiffs’ Complaint  
18 against Judge Mundell as the complaint fails to state a claim upon which relief can be  
19 granted.

21 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of April, 2008.

22 TERRY GODDARD  
23 Attorney General

24 /s/ Eryn M. McCarthy  
25 Eryn M. McCarthy  
26 Assistant Attorney General  
Attorneys for the Honorable Barbara  
Rodriguez Mundell

1 Electronically filed this 30<sup>th</sup> day  
2 of April, 2008 with:

3 Clerk of the U.S. District Court  
4 for the District of Arizona  
401 West Washington  
Phoenix, Arizona 85003

5 Copy mailed this 30<sup>th</sup> day  
6 of April, 2008 to:

7 The Honorable Edward Voss  
8 Magistrate Judge, United State District Court  
9 District of Arizona  
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