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14 Attorneys for Plaintiffs

15  
16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE DISTRICT OF ARIZONA**

18 David Salgado and Chicanos Por La  
19 Causa, Inc.,

20 plaintiffs,

21 vs.

22 Jan Brewer, individually and in her  
capacity as Governor of Arizona, and  
23 the City of Phoenix, an Arizona  
municipal corporation,

24 defendants.

No. CV 10-00951-PHX-ROS

**AMENDED COMPLAINT**

(Declaratory and Injunctive Relief)

25 For their Amended Complaint against Defendants, Plaintiffs allege the following:

- 26 1. This is an action seeking equitable relief against the "Support Our Law  
27 Enforcement and Safe Neighborhoods Act," Senate Bill 1070, as amended by  
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House Bill 2162 (the “Act”), because its enforcement would violate Plaintiffs’ rights under the Fourteenth Amendment to the Constitution of the United States, and the Act is preempted under the supremacy clause of Article VI of the Constitution of the United States by the Immigration and Nationality Act, as amended. See, e.g., 8 U.S.C. §§1252c(a), 1304(e), and 1357(g).

2. Plaintiffs assert this action pursuant to the Civil Rights Act of 1871, 42 U.S.C. §1983, and the Declaratory Judgment Act of 1934, 28 U.S.C. §2201.

3. This Court has jurisdiction over this dispute under 28 U.S.C. §1331.

4. Venue is proper in the United States District Court for the District of Arizona under 28 U.S.C. §1391(b).

5. Plaintiff David Salgado is a native-born citizen of the United States of America.

6. Mr. Salgado is Mexican in ancestry and race.

7. Mr. Salgado resides in Maricopa County, Arizona.

8. Mr. Salgado is employed as a full-time Patrol Officer for the Police Department of the City of Phoenix.

9. Mr. Salgado is certified to act as a law enforcement officer in the State of Arizona by the Peace Officer Standards and Training Board of the State of Arizona.

10. Plaintiff Chicanos Por La Causa, Inc. (“CPLC”) is headquartered in Phoenix, Arizona and is the largest Hispanic Community Development Corporation in Arizona.

11. CPLC was incorporated in 1969 by a group of Latino and Latina civil rights activists in Phoenix, Arizona in order to improve the quality of life for Arizona’s Mexican-American population.

12. After more than four decades of sustained effort and strategic planning, CPLC now has more than 800 employees, has offices in 11 out of 15 counties in Arizona, and annually renders services to more than 125,000 people throughout the state of Arizona in the areas of economic development, housing, social

welfare, and education.

13. As part of its mission to educate economically disadvantaged children, CPLC operates three high schools and twelve “Head Start” centers in Arizona which over the years have helped to educate thousands of children of Mexican ancestry.

14. Defendant Jan Brewer is the Governor of Arizona.

15. Acting in her official capacity as the Governor of Arizona, on April 23, 2010, Governor Brewer elected to sign into law the “Support Our Law Enforcement and Safe Neighborhoods Act,” Senate Bill 1070.

16. Once again acting in her official capacity as the Governor of Arizona, on April 30, 2010, Governor Brewer elected to sign into law various amendments to the “Support Our Law Enforcement and Safe Neighborhoods Act” in the form of House Bill 2162.

17. A true and correct copy of the Act (as amended) is attached hereto as Exhibit A.

18. Had Governor Brewer exercised her authority to veto the Act, it would not have become law.

19. In her capacity as Governor of Arizona, Governor Brewer has a legal obligation under the Arizona Constitution to ensure that the laws of Arizona “shall . . . be faithfully executed.” See Ariz. Const. Article 5, §4.

20. Correspondingly, Governor Brewer is statutorily authorized to “direct” the Attorney General of Arizona “in any challenge” of the Act in state or federal court. House Bill 2162 §8A.

21. Governor Brewer also has the statutory authority to “direct [legal] counsel other than the attorney general to appear on behalf of [Arizona] to defend any challenge” of the Act. House Bill 2162 §8B.

22. Thus, Governor Brewer signed the Act into law, has an obligation under the Arizona Constitution to execute the Act, and has an obligation under Arizona

- 1 statutory law to defend the legality of the Act in any challenge of the Act.
- 2 23. Defendant City of Phoenix is an Arizona municipal corporation that operates the
- 3 Police Department of the City of Phoenix.
- 4 24. As a law enforcement agency in the state of Arizona, the Police Department of
- 5 the City of Phoenix is obligated to enforce the Act by the express language of the
- 6 Act. See A.R.S. §11-1051B.
- 7 25. The Act compels any state law enforcement officer involved in “any lawful stop,
- 8 detention or arrest” in connection with the “enforcement of any other law or
- 9 ordinance of a county, city or town or this state” to “attempt . . . to determine the
- 10 immigration status of the person” when a “reasonable suspicion exists that the
- 11 person is an alien and is unlawfully present in the United States . . . .” A.R.S.
- 12 §11-1051B (emphasis added).
- 13 26. The Act also authorizes all state law enforcement officers to arrest without a
- 14 warrant any person whom the officer has “probable cause to believe . . . has
- 15 committed any public offense that makes the person removable from the United
- 16 States.” A.R.S. §13-3883 A5.
- 17 27. The Act also mandates that “no official or agency of this state or county, city,
- 18 town or other political subdivision of this state may limit or restrict the
- 19 enforcement of federal immigration laws to less than the full extent permitted by
- 20 federal law.” A.R.S. §11-1051A.
- 21 28. The Act also creates its own private enforcement mechanism by establishing a
- 22 private right of action by any “legal resident” of Arizona against any state or local
- 23 “official” or “agency” that “adopts or implements a policy that limits or restricts the
- 24 enforcement of federal immigration laws . . . to less than the full extent permitted
- 25 by federal law.” A.R.S. §11-1051 H.
- 26 29. In his capacity as a Phoenix Police Officer, Officer Salgado regularly stops
- 27 individuals of Mexican and Latin-American ancestry in the City of Phoenix, many
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of these individuals are children and minors.

30. Most children in Arizona do not have any form of state or federal identification regardless of their race, ethnicity, national origin, or immigration status.

31. In fact, children—whether they be undocumented immigrants, documented immigrants, or citizens of the United States—are not required to carry proof of identification, citizenship, or immigration status under federal law. See 8 U.S.C. §1304(e).

32. Officer Salgado routinely interacts with such children and minors in and around schools in the City of Phoenix.

33. Officer Salgado reasonably suspects that some of these children are not lawfully in the United States.

34. The government of the United States of America, acting through the Secretary of the Department of Homeland Security of the United States in accordance with the Immigration and Nationality Act, 8 U.S.C. §1357(g), has not authorized all of the law enforcement officers employed by the Police Department of the City of Phoenix—including Officer Salgado—to enforce federal immigration law to the “full extent permitted by federal law” as required by the Act.

35. Nor will every member of the City of Phoenix Police Department—including Officer Salgado—receive federally approved training regarding the enforcement of federal immigration law or obtain written certification of their receipt of such training as expressly required by the Immigration and Nationality Act, 8 U.S.C. §1357(g), before the local law enforcement officer purports to enforce federal immigration law.

36. Nor will all of the members of the City of Phoenix Police Department—including Officer Salgado—be subject to the supervision of United States Immigration and Customs Enforcement officers when engaged in the conduct mandated by the Act, which violates the express requirements of the Immigration and Nationality

1 Act, 8 U.S.C. §1357(g).

2 37. Notwithstanding the fact that the Police Department of the City of Phoenix lacks  
3 the requisite authorization from the Department of Homeland Security of the  
4 United States to enforce federal immigration law to the “full extent permitted by  
5 federal law,” the Phoenix Police Department is already planning to prepare its  
6 officers—including Officer Salgado—to enforce federal immigration law as required  
7 by the Act.

8 38. The Act is unlawful because it is preempted by the Immigration and Nationality  
9 Act, as amended. See, e.g., 8 U.S.C. §§1252c(a), 1304(e), and 1357(g).

10 39. For example, the Act is preempted by 8 U.S.C. §1252c(a) because Section  
11 1252c(a) expressly limits the authority of state and local law enforcement officers  
12 to detain and arrest only those undocumented immigrants who have already  
13 been convicted of a felony in the United States, have left or been deported from  
14 the United States after their conviction, and have unlawfully reentered the United  
15 States.

16 40. The Act is also preempted by 8 U.S.C. §1357(g) because—except as provided by  
17 8 U.S.C. §1252c(a)—state and local law enforcement officials can enforce federal  
18 immigration law only after executing a “memorandum of agreement” with the  
19 Secretary of Homeland Security in accordance with all of the specific  
20 requirements of Section 1357(g).

21 41. The Act is also preempted by 8 U.S.C. §1304(e) because the Act requires “any  
22 person”—irrespective of age—lawfully stopped, detained, or arrested by local law  
23 enforcement officials whom the officer “reasonably suspects” to be unlawfully in  
24 the United States to prove that they are lawfully in the United States when no  
25 such requirement exists under federal law for individuals under eighteen years  
26 of age. See 8 U.S.C. §1304(e).

27 42. The Act is also preempted by the supremacy clause of Article VI of the United  
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1 States Constitution because it purports to give the courts of Arizona jurisdiction  
2 to adjudicate violations of federal immigration law.

3 43. Absent a judicial declaration that the Act is lawful, Officer Salgado does not  
4 intend to enforce the Act because he believes that he lacks the authority to do so  
5 under the Immigration and Nationality Act, 8 U.S.C. §§1252c(a) and 1357(g).

6 44. Correspondingly, absent a judicial declaration that the Act is lawful, Officer  
7 Salgado does not intend to enforce the Act because he believes that in so doing  
8 he would violate the rights of Latinos and Latinas under the due process and  
9 equal protection clauses of the Fourteenth Amendment of the Constitution of the  
10 United States because the Act will require him to use race as a primary factor in  
11 enforcing the Act.

12 45. Similarly, absent a judicial declaration that the Act is lawful, Officer Salgado does  
13 not intend to enforce the Act as to school children and other minors because he  
14 believes that in so doing he would violate the Supreme Court of the United  
15 States' ruling in Plyler v. Doe, 457 U.S. 202 (1982).

16 46. If Officer Salgado does not enforce the Act to "the fullest extent permitted by  
17 federal immigration law," he will be subject to (among other things) discipline by  
18 Defendant City of Phoenix.

19 47. Similarly, if Officer Salgado does not enforce the Act to "the fullest extent  
20 permitted by federal law," he will be subject to costly lawsuits by private parties  
21 under the Act. A.R.S. §11-1051H.

22 48. Moreover, in order to be prepared to comply with the Act, Officer Salgado will be  
23 forced to expend his scarce time and resources in order to thoroughly familiarize  
24 himself with the Act's requirements and the Act's complex interaction with federal  
25 immigration law.

26 49. Officer Salgado is also suffering increasing pressure from individuals within the  
27 Phoenix Police Department and from various political entities within and outside  
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the state of Arizona to enforce the Act.

50. This pressure is chilling Officer Salgado from exercising his First Amendment right to speak out against the Act as unlawful and discriminatory.

51. But for Governor Brewer's signing the Act into law, Officer Salgado would not be chilled from exercising his First Amendment rights and subject to the private enforcement actions created by the Act.

52. Under these circumstances, Officer Salgado finds himself in a dilemma: on one hand, if he refuses to enforce the Act, he can be disciplined by his employer or subjected to costly private enforcement actions under the Act; on the other hand, if he enforces the Act, he can be subjected to costly civil actions alleging the deprivation of the civil rights of the individual against whom he enforces the Act.

53. CPLC is currently providing educational services to more than twelve hundred children throughout the state of Arizona, most of whom are of Mexican ancestry.

54. CPLC is legally obligated to work with state and local law enforcement agencies and officers—including the City of Phoenix Police Department—to help insure the safety and welfare of its students. See, e.g., A.R.S. §13-3620.

55. CPLC reasonably suspects that some of its students are undocumented immigrants.

56. Like Officer Salgado, CPLC believes that the Act is unlawful because it is preempted by the Immigration and Nationality Act, e.g., 8 U.S.C. §§ 1252c(a), 1304(e), and 1357(g).

57. Like Officer Salgado, CPLC also believes that it would be unlawful for any state, county, or municipal law enforcement agency or official to enforce the Act at any of CPLC's schools or educational programs based on the Supreme Court of the United States' ruling in Plyler v. Doe, 457 U.S. 202 (1982).

58. Under these circumstances, CPLC finds itself in a dilemma: if CPLC continues to work with local law enforcement agencies and officials to help insure the safety



1 and well-being of its students, its students will be threatened with unlawful  
2 interrogation, detention, and arrest if they cannot quickly prove that they are  
3 lawfully in the United States; on the other hand, if CPLC stops working with local  
4 law enforcement agencies and officials, it will be in violation of state law and its  
5 students' safety and welfare will be undermined.

6 59. Because CPLC's students of Mexican ancestry include children who, due to their  
7 tender years and economic impoverishment are unable to assert this action on  
8 their own behalf, CPLC asserts this action on their behalf as their next best  
9 friend.

10 60. CPLC also asserts this action on its own behalf as a statewide civil rights  
11 organization devoted to protecting the rights of individuals of Mexican ancestry  
12 regardless of citizenship or immigration status and as an operator of Head Start  
13 centers and schools.

14 61. Accordingly, Plaintiffs have no plain, speedy, or adequate remedy at law and  
15 require this Court's prompt equitable relief.

16 **WHEREFORE**, Plaintiffs respectfully request the Court to:

- 17 A. Issue a judgment declaring that the enforcement of the Act would violate  
18 Plaintiffs' rights under the laws of the United States, including the Civil  
19 Rights Act of 1871, 42 U.S.C. §1983;
- 20 B. Issue a judgment declaring that the Act is preempted by the Immigration  
21 and Nationality Act, e.g., 8 U.S.C. §§1252c(a), 1304(e), and 1357(g);
- 22 C. Issue preliminary and permanent injunctions enjoining Defendants from  
23 enforcing the Act;
- 24 D. Issue a judgment awarding Plaintiffs their reasonable costs and attorney  
25 fees against Defendants, jointly and severally, pursuant to 42 U.S.C.  
26 §1988 and any other applicable law; and
- 27 E. Issue a judgment awarding Plaintiffs all other relief that is just and proper

1 under the circumstances.

2  
3 Respectfully submitted this 17<sup>th</sup> day of May 2010.

4 **MONTOYA JIMENEZ**  
A Professional Association

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19 I hereby certify that on May 17, 2010, I electronically transmitted the foregoing  
20 document to the Clerk of Court using the CM/ECF System for filing and transmittal of  
21 a Notice of Electronic Filing.

22 s/ Stephen Montoya  
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