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

18 FRIENDLY HOUSE; SERVICE
EMPLOYEES INTERNATIONAL
19 UNION; SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 5;
20 UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION;
21 ARIZONA SOUTH ASIANS FOR SAFE
FAMILIES; SOUTHSIDE
22 PRESBYTERIAN CHURCH; ARIZONA
HISPANIC CHAMBER OF
23 COMMERCE; ASIAN CHAMBER OF
COMMERCE OF ARIZONA; BORDER
24 ACTION NETWORK; TONATIERRA
COMMUNITY DEVELOPMENT
25 INSTITUTE; MUSLIM AMERICAN
SOCIETY; JAPANESE AMERICAN
26 CITIZENS LEAGUE; VALLE DEL SOL,
INC.; COALICIÓN DE DERECHOS

No. CV-10-1061-PHX-SRB

[Related Cases: 10-CV-00926-PHX-SRB,
10-CV-0249-TUC-SRB, 10-CV-0943-PHX-
SRB, 10-CV-0951-PHX-SRB, and 10-CV-
01413 PHX-SRB]

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

CLASS ACTION

1 HUMANOS; PEDRO ESPINOZA; C.M., a
minor; LUZ SANTIAGO; JIM SHEE;
2 JOSE ANGEL VARGAS; MAURA
CASTILLO; MARIA MORALES; JOHN
3 DOE #1; and JANE DOE #3,

4 Plaintiffs,

5 v.

6 MICHAEL B. WHITING, Apache County
Attorney, in his official capacity;
7 EDWARD G. RHEINHEIMER, Cochise
County Attorney, in his official capacity;
8 DAVID W. ROZEMA, Coconino County
Attorney, in his official capacity; DAISY
9 FLORES, Gila County Attorney, in her
official capacity; KENNY ANGLE,
10 Graham County Attorney, in his official
capacity; DEREK D. RAPIER, Greenlee
County Attorney, in his official capacity;
11 SAM VEDERMAN, La Paz County
Attorney, in his official capacity;
12 RICHARD M. ROMLEY, Maricopa
County Attorney, in his official capacity ;
13 MATTHEW J. SMITH, Mohave County
Attorney, in his official capacity;
14 BRADLEY CARLYON, Navajo County
Attorney, in his official capacity;
15 BARBARA LAWALL, Pima County
Attorney, in her official capacity; JAMES
16 P. WALSH, Pinal County Attorney, in his
official capacity; GEORGE SILVA, Santa
17 Cruz County Attorney, in his official
capacity; SHEILA S. POLK, Yavapai
18 County Attorney, in her official capacity;
JON R. SMITH, Yuma County Attorney, in
19 his official capacity; JOSEPH DEDMAN
JR., Apache County Sheriff, in his official
20 capacity; LARRY A. DEVER, Cochise
County Sheriff, in his official capacity;
21 BILL PRIBIL, Coconino County Sheriff, in
his official capacity; JOHN R. ARMER,
22 Gila County Sheriff, in his official
capacity; PRESTON J. ALLRED, Graham
23 County Sheriff, in his official capacity;
STEVEN N. TUCKER, Greenlee County
24 Sheriff, in his official capacity; DONALD
LOWERY, La Paz County Sheriff, in his
25 official capacity; JOSEPH ARPAIO,
Maricopa County Sheriff, in his official
26 capacity; TOM SHEAHAN, Mohave
County Sheriff, in his official capacity;

1 KELLY CLARK, Navajo County Sheriff,
in his official capacity; CLARENCE W.
2 DUPNIK, Pima County Sheriff, in his
official capacity; PAUL BABEU, Pinal
3 County Sheriff, in his official capacity;
TONY ESTRADA, Santa Cruz County
4 Sheriff, in his official capacity; STEVE
WAUGH, Yavapai County Sheriff, in his
5 official capacity; and RALPH OGDEN,
Yuma County Sheriff, in his official
6 capacity,

7 Defendants.

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1 **PRELIMINARY STATEMENT**

2 1. This action challenges Arizona Senate Bill 1070, as amended (“SB 1070”), a
3 comprehensive set of state immigration laws expressly intended to “discourage and deter
4 the unlawful entry and presence of aliens and economic activity by persons unlawfully
5 present in the United States.” SB 1070 proclaims and implements an immigration policy
6 of “attrition through enforcement” for the State of Arizona. The legislation creates an
7 array of new state-law criminal offenses relating to immigration and imposes sweeping
8 requirements on state and local law enforcement officers to investigate alleged
9 immigration violations and to arrest and detain persons suspected of immigration
10 violations. The law was signed by Governor Janice Brewer on April 23, 2010, and is
11 scheduled to go into effect on July 28, 2010.

12 2. SB 1070 attempts to create a legal regime regulating and restricting
13 immigration and punishing those whom Arizona deems to be in violation of immigration
14 laws. It is an impermissible encroachment into an area of exclusive federal authority and
15 will interfere and conflict with the comprehensive federal immigration system enacted by
16 Congress and implemented through a complex web of federal regulations and policies.
17 According to law enforcement officials in Arizona and elsewhere, SB 1070 will cause
18 widespread racial profiling and will subject many persons of color—including countless
19 U.S. citizens, and non-citizens who have federal permission to remain in the United
20 States—to unlawful interrogations, searches, seizures and arrests.

21 3. SB 1070 is unconstitutional. It violates the Supremacy Clause and core civil
22 rights and civil liberties secured by the United States Constitution, including the First
23 Amendment right to freedom of speech and expressive activity, the Fourth Amendment
24 right to freedom from unreasonable searches and seizures, and the Equal Protection
25 Clause guarantee of equal protection under the law.

26

1 4. The plaintiffs in this action will suffer serious violations of their constitutional
2 rights and civil liberties if SB 1070 goes into effect. The named plaintiffs bring this
3 action on behalf of themselves and a class of all others similarly situated to obtain
4 preliminary and permanent injunctive relief and a declaration that SB 1070 violates the
5 U.S. and Arizona Constitutions.

6 **JURISDICTION AND VENUE**

7 5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343
8 over Plaintiffs’ claims under the U.S. Constitution, as well as under 42 U.S.C. §§ 1981
9 and 1983. The Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201
10 and 2202. The Court has jurisdiction over Plaintiffs’ state-law claim under 28 U.S.C. §
11 1367.

12 6. Venue is proper in this District under 28 U.S.C. § 1391(b). All Defendants are
13 sued in their official capacity and their official places of business are all located within
14 this District. All of the events giving rise to this Complaint occurred within this District.

15 **PARTIES**

16 **Organizational Plaintiffs**

17 7. Plaintiff Friendly House is a non-profit organization whose mission is to foster
18 excellence in the community by serving the educational and human service needs of its
19 residents. It provides comprehensive services to about 40,000 families, youth, and
20 children each year and numerous direct services in several program areas, including
21 immigration, family, youth, and adult services, workforce development, home care
22 services, and charter school education. Among other immigration services, Friendly
23 House assists applicants for asylum and victims and witnesses of crime who are eligible
24 for visas. The clients served by Friendly House include citizens, non-citizens, and racial
25 minorities, including Latinos. SB 1070 will force Friendly House to divert scarce
26 resources from critical programs in order to educate and assist individuals affected by SB

1 1070. Friendly House's mission and organizational goals will also be negatively impacted
2 by SB 1070 because its staff will have a harder time encouraging clients to seek services
3 in its various program areas to the extent that they involve interacting with government
4 agencies and police. Friendly House also fears that its current and prospective clients will
5 be deterred from seeking immigration relief because local law enforcement will continue
6 to stop and detain them, notwithstanding their application for relief, on the basis that they
7 do not have any registration documents that are acceptable under SB 1070.

8 8. Plaintiff Service Employees International Union ("SEIU") is one of the largest
9 labor organizations in the world, representing 2.2 million working men and women who
10 work primarily in the public sector and in the janitorial, health services, long-term care,
11 and security industries. Many of SEIU's members are recent immigrants to the United
12 States and many of its members come from racial minority groups. SEIU has long called
13 for and worked toward comprehensive reform of U.S. immigration laws. Another priority
14 for SEIU is fighting discrimination against minorities, women and other groups in the
15 workplace and in society in general. In Arizona, SEIU has three affiliates: SEIU/Workers
16 United Western Regional Joint Board; National Association of Government Employees;
17 and Plaintiff Service Employees International Union, Local 5 ("SEIU Arizona").
18 Together, these three affiliates have approximately 2,300 members spanning every county
19 in the state, about 40 percent of whom are Latino and some of whom are other racial
20 minorities. SEIU works in partnership with SEIU Arizona and other groups to combat
21 discrimination and mobilize for immigration reform at the national level. SB 1070's
22 impact on already distressed county and municipal budgets will harm SEIU's members to
23 the extent that it will result in further pay cuts, furloughs, and layoffs. Furthermore, some
24 of SEIU's Latino members or their families have already been subjected to stops by local
25 law enforcement where they have been asked to produce proof of immigration status.
26 SEIU is concerned that its minority members will be even more likely to be stopped,

1 detained, arrested, and questioned by state and local police after SB 1070 goes into effect.
2 This will cause hardship for members of SEIU. In addition, SEIU is concerned that
3 members and potential members will be fearful to attend rallies, demonstrations, and
4 union meetings or to engage in leafleting or other traditional labor activities because of the
5 possibility of being stopped by the police under SB 1070. This will significantly impact
6 the ability of SEIU to protect its existing members and to organize new members. SEIU
7 joins this lawsuit to preserve its ability to organize new members and to protect the rights
8 and interests of its members and prospective members.

9 9. Plaintiff Service Employees International Union, Local 5 (“SEIU Arizona”), is
10 a labor union and an affiliate of Plaintiff SEIU. SEIU Arizona represents state, county,
11 and municipal public service employees and has 1,800 members in Arizona, including
12 members in every county throughout the state. Approximately one-quarter of SEIU
13 Arizona’s membership is Latino, and its membership also includes other racial minorities.
14 The primary mission of SEIU Arizona is to organize, represent, and empower employees
15 in Arizona. In addition, SEIU Arizona works in partnership with SEIU and other groups
16 to combat discrimination and mobilize for immigration reform at the national level. SB
17 1070’s impact on already distressed county and municipal budgets will harm SEIU
18 Arizona’s members to the extent that it will result in further pay cuts, furloughs, and
19 layoffs. Furthermore, some of SEIU Arizona’s Latino members or their families have
20 already been subjected to stops by local law enforcement where they have been asked to
21 produce proof of immigration status. SEIU Arizona is concerned that its minority
22 members will be even more likely to be stopped, detained, arrested, and questioned by
23 state and local police after SB 1070 goes into effect. This will cause hardship for
24 members of SEIU Arizona. In addition, SEIU Arizona is concerned that members and
25 potential members will be fearful to attend rallies, demonstrations, and union meetings or
26 to engage in leafleting or other traditional labor activities because of the possibility of

1 being stopped by the police under SB 1070. This will significantly impact the ability of
2 SEIU Arizona to protect its existing members and to organize new members. SEIU
3 Arizona joins this lawsuit to preserve its ability to organize new members and to protect
4 the rights and interests of its members and prospective members.

5 10. Plaintiff United Food and Commercial Workers International Union
6 (“UFCW”) represents more than 1.3 million workers, primarily in the retail, meatpacking,
7 food processing, and poultry industries. Within the State of Arizona there are more than
8 21,000 UFCW-represented workers, whose employers include retail food and non-food
9 retail, hospital services, meat packing and food processing, parking services, and legal aid
10 services. The UFCW represents workers who comprise a range of races and ethnicities,
11 with varying degrees of English proficiency, including substantial numbers of Latinos.
12 The UFCW’s mission is to better the terms and conditions of employment for all workers
13 it represents and thereby better the lives of their families and communities. The UFCW
14 accomplishes its mission through organizing, collective bargaining, and representation of
15 employees. These core activities require freedom of association and communication
16 between the union and the employees and among the employees at the worksite and in the
17 community, activities protected by the United States Constitution and federal labor law.
18 If SB 1070 is allowed to go into effect it will impose direct harm to UFCW’s core mission
19 and representational obligations by subjecting UFCW members to unlawful questioning,
20 arrest and detention by state and local law enforcement officers; deterring UFCW-
21 represented workers from attending and participating in UFCW activities; and reducing
22 UFCW’s ability to effectively advocate on behalf of the employees it represents.

23 11. Plaintiff Arizona South Asians For Safe Families (“ASAFSF”) is an
24 organization based in Scottsdale, Arizona whose mission is to increase awareness of
25 domestic violence and provide support services to victims of domestic violence in the
26 South Asian community in Arizona. Established in 2004, ASAFSF’s services include

1 providing family advocacy and safety-planning support to domestic violence victims
2 through a toll-free helpline as well as direct services to victims in the form of financial
3 assistance for child care, rent, lawyers' fees, transportation, and emergent personal needs.
4 ASAFSF's family advocates often transport victims to court and to medical and legal
5 appointments. ASAFSF also engages in community education, which includes hosting
6 small group meetings with community members. The majority of ASAFSF's clients are
7 immigrant women, many of whom are eligible for federal immigration relief through the
8 Violence Against Women Act ("VAWA"), the Trafficking and Violence Protection Act
9 ("TVPA"), or asylum procedures. SB 1070 will interfere with the organization's essential
10 mission of providing support services to victims of domestic violence. First, ASAFSF
11 staff and volunteers will be at imminent risk of prosecution under SB 1070's transporting
12 provisions. Second, ASAFSF will have to re-allocate its very limited resources to ensure
13 that its clients feel safe reporting their experiences to law enforcement or while being
14 transported by ASAFSF advocates. Third, people will not come to its community
15 meetings for fear of being stopped, interrogated, and arrested under SB 1070. ASAFSF
16 believes its clients will be afraid of approaching law enforcement to report crimes or
17 interact with government officials because their appearance, limited English ability, and
18 accents could be used by the police to question their authorization to be in the United
19 States. Plaintiff ASAFSF also fears that local law enforcement will stop and detain clients
20 who have applied for immigration relief under the VAWA, the TVPA, or through the
21 asylum procedures, because they do not have any registration documents that are
22 acceptable under SB 1070, and that potential clients will be discouraged from seeking
23 these services. ASAFSF's clients and potential clients will be placed at greater risk of
24 physical and mental injury due to SB 1070.

25 12. Plaintiff Southside Presbyterian Church ("Southside") is a religious institution
26 based in Tucson, Arizona, whose mission is to serve God through worship and sacrament,

1 and by following the Bible's admonition to “do justice, love mercy, and walk humbly with
2 . . . God.” Southside’s members and leaders believe that the church has been called—in
3 fact, commanded—by God to welcome and serve all people. Southside follows the
4 admonition in Hebrews 13:2: “Be not forgetful to entertain strangers, for by this some
5 have entertained angels unawares.” Southside serves the homeless, the day laborers, its
6 low income neighbors, its own parishioners, and others without regard to race, gender,
7 national origin, religion, or immigration status. Southside’s community is largely
8 comprised of low-income Latino and Native Americans families, although it also includes
9 Caucasians and African Americans. Southside operates a homeless program, a Samaritan
10 program through which parishioners provide assistance for individuals who are in distress
11 in the desert, and an on-premises day laborer center. The day laborers who participate in
12 Southside’s program help run the center and solicit temporary employment by visibly
13 gathering at a public sidewalk outside the church and signaling their availability for work
14 to potential employers. In addition, some of Southside’s religious leaders, staff, and
15 volunteers frequently—and without knowledge of, or regard to, immigration status—
16 transport parishioners and others to religious activities and to medical facilities; they
17 would thus be at risk of being prosecuted pursuant to SB 1070’s transporting and
18 harboring provisions. SB 1070’s criminal prohibitions infringe on Southside’s ability to
19 carry out its religious mission to serve all God's people. Furthermore, Southside depends
20 on its good relationships with police, social workers, and other city and state employees to
21 safeguard church premises and its parishioners, but Southside staff and volunteers fear
22 that these relationships will change after SB 1070 goes into effect. Southside staff and
23 volunteers will be hesitant to approach law enforcement and other authorities to report
24 crimes or speak out as witnesses to crimes because the appearance, native language, and
25 limited English ability of the community members served by Southside can be used by the
26 police to question their authorization to be in the United States and to investigate

1 Southside staff and volunteers for potential violations of SB 1070. SB 1070 will frustrate
2 the mission of Southside and divert limited resources to educating and assisting
3 community members who will be affected by SB 1070.

4 13. Plaintiff Arizona Hispanic Chamber of Commerce (“AZHCC”) is an
5 association of Latino-owned businesses located throughout the state of Arizona that seek
6 to support, promote, and foster business, cultural, and educational relationships between
7 chamber members and the general public. In addition to serving as a public advocate for
8 its members, AZHCC offers seminars, workshops, marketing, and promotions, as well as
9 networking and sponsorship opportunities for its corporate and community partners.
10 AZHCC has more than 350 business members with employees, many of whom are
11 Latinos, including U.S. citizens, non-citizens, monolingual Spanish speakers, limited
12 English-proficient speakers and individuals who speak English with Mexican and other
13 Spanish-language accents. Because of their appearance, traditional cultural practices, and
14 limited English proficiency, some members of AZHCC and/or their employees fear they
15 will be subject to investigation or unwarranted arrest under Arizona SB 1070. AZHCC
16 members, like all small business owners in Arizona and nationwide, rely on local and state
17 law enforcement to keep their companies safe and some AZHCC members would be
18 deterred from approaching law enforcement to report criminal activity committed against
19 them or others out of fear that the provisions of SB 1070 would subject AZHCC members
20 to unwarranted questioning, detention or arrest. AZHCC members also include non-profit
21 organizations who serve immigrant populations, including noncitizens that do not have
22 federal authorization to be in the United States. The provisions of SB 1070 create new
23 criminal penalties for certain immigrants and non-immigrants associating with immigrants
24 and will cause considerable confusion for AZHCC’s members and other members of the
25 general business community about their potential criminal liability under SB 1070.
26 AZHCC will suffer financial hardship because it will have to divert already limited

1 resources from the association's normal activities to educate and inform these groups
2 resulting from the confusion surrounding SB 1070. Finally, since many of AZHCC's
3 members heavily rely on a U.S.-born minority consumer base that will be reluctant to
4 patronize businesses for fear that they could be harassed by local law enforcement,
5 AZHCC will have to divert resources from other activities to inform and educate this
6 group as well to counter the economic harm caused by SB 1070.

7 14. Plaintiff Asian Chamber of Commerce of Arizona ("ACC") is an Arizona
8 organization that brings together a network of Asian-owned businesses throughout the
9 state that seek to support, promote and foster business, cultural and educational
10 relationships between chamber members and the general public. ACC has over 90
11 organizational members. ACC members and their employees, many of whom are also of
12 Asian descent, include U.S. citizens and non-citizens, individuals born in the U.S. and
13 recent immigrants, monolingual non-English speakers, limited English-proficient
14 speakers, and individuals that speak English with an accent. ACC members also include
15 non-profit organizations who serve immigrant populations, including non-citizens who do
16 not have federal authorization to remain in the United States. ACC members often rely on
17 law enforcement to keep their businesses safe and would be deterred from approaching
18 law enforcement to report criminal activity committed against them or others out of fear
19 that SB 1070 would subject ACC members to detention, questioning, or arrest. The
20 provisions of SB 1070 that create new criminal penalties for certain immigrants and
21 persons associating with immigrants will cause considerable confusion for ACC's
22 members and other members of the general business community about their potential
23 criminal liability under SB 1070. ACC will have to divert its limited resources to
24 addressing this confusion and fear. Finally, since many of its member organizations rely
25 heavily on a minority consumer base that will become reluctant to patronize businesses
26 for fear that they could be harassed by local law enforcement, ACC will have to divert

1 resources from other activities to address the considerable confusion and complaints
2 surrounding SB 1070.

3 15. Plaintiff Border Action Network (“BAN”) is a statewide membership
4 organization devoted to protecting the human rights and dignity of immigrant and border
5 communities. BAN builds the political and social capacity of its constituency through
6 grassroots organizing, leadership development, policy advocacy, and educational
7 activities. BAN has over 1,000 members distributed across 6 Arizona counties. The great
8 majority of BAN’s membership is Latino. In addition, BAN has some members who are
9 day laborers who solicit work on public sidewalks and corners. Some of BAN’s
10 members, including its day laborer members, do not have permission to work or remain in
11 the United States. Other BAN members are legal residents or U.S. citizens, and some live
12 in families of mixed immigration status and nationality. BAN is concerned that its
13 members will be stopped, detained, or arrested under SB 1070 due to their appearance or
14 lack of acceptable documents. BAN’s own mission will be frustrated by SB 1070. Its
15 staff frequently buses members to events and organizational functions without regard to
16 their passengers’ immigration status, and they are concerned that this could subject them
17 to prosecution under SB 1070. In addition, BAN will have to divert significant resources
18 to a public education campaign to inform its members about their rights and
19 responsibilities under the new law and address their fears and concerns. Finally, some of
20 BAN’s members have already expressed a desire to leave the state; SB 1070 will make it
21 harder for its staff to maintain its membership base and to recruit new members.

22 16. Plaintiff Tonatierra Community Development Institute (“Tonatierra”) is a
23 nonprofit community-based organization in Phoenix, Arizona that advocates for the
24 cultural, educational, and economic development needs of the indigenous community in
25 Arizona. Some of the families it works with are members of indigenous American Indian
26 tribes who fear that they will be stopped and questioned under SB 1070 if they are not

1 carrying tribal identification cards. In addition, Tonatierra operates a day laborer center
2 called Centro Macehualli. The mission of Centro Macehualli is to empower workers and
3 protect them from exploitation. Day laborers who gather at Centro Macehualli are hired
4 by homeowners, small businesses, and construction contractors as independent contractors
5 or employees for temporary work such as gardening, cleaning, child care, moving, and
6 construction. Centro Macehualli does not condition membership and access to its services
7 on immigration status. As such, the Center is open to both citizen and non-citizen day
8 laborers. SB 1070 would frustrate Centro Macehualli's mission by criminalizing the
9 expressive activity of members who are not authorized by the federal government to work
10 in the United States and chilling the expressive activity of members who are authorized to
11 work. Due to SB 1070, members of Centro Macehualli are refraining, out of fear of
12 prosecution, from indicating their need and availability for work in public areas.

13 17. Plaintiff Muslim American Society ("MAS") is a charitable, religious, social,
14 cultural, and educational organization with an advocacy arm called the MAS Freedom
15 Foundation ("MASF"). Part of MAS's mission is to protect the civil rights and liberties of
16 American Muslims. The mission of MASF is to integrate and empower the American
17 Muslim community through civic education, participation, community outreach, and
18 coalition building. MAS and MASF have an office and chapter in Phoenix, Arizona, with
19 over 30 members ("MAS-AZ"), who are also members of MAS. Some of MAS-AZ's
20 members are immigrants who will be subjected to profiling based on their foreign
21 appearance and clothing, such as headscarves. SB 1070 will thwart the organizational
22 mission of MAS, as MAS-AZ members have already indicated that they will be afraid to
23 attend town hall meetings and its immigration clinic after SB 1070. MAS's mission to
24 provide community education to the Muslim American community in Arizona will also be
25 thwarted because its target audience will be too afraid to attend meetings and organized
26 activities and events. In addition, MAS-AZ will have to shift scarce organizational

1 resources to create new educational materials to protect its members from SB 1070, rather
2 than spend these resources on other areas.

3 18. Plaintiff Japanese American Citizens League (“JACL”) is a membership
4 organization founded in 1929 that works to advance the civil rights of Japanese
5 Americans and others who are victimized by injustice and bigotry. JACL's Arizona
6 chapter ("JACL AZ") has over 300 members, including non-citizen immigrants as well as
7 U.S. citizens and racial minorities. To advance its mission, JACL AZ sponsors public
8 education events, holds membership meetings, conducts outreach to teachers and schools,
9 and works to preserve the history of the Gila and Poston WWII Japanese American
10 concentration camps. JACL AZ collaborates with local city and community agencies to
11 host a monthly senior center. Some JACL AZ members who seek assistance through or
12 participate in its programs lack authorization to remain in the United States; others have
13 only an H1-B visa. JACL believes that even its U.S. citizen members will be profiled
14 under SB 1070. JACL fears that SB 1070 will create fear and confusion, especially for its
15 elderly who were imprisoned in Japanese internment camps. In addition, JACL AZ will
16 need to spend its scarce organizational resources and employ its mostly volunteer staff to
17 create new educational materials to respond to SB 1070.

18 19. Plaintiff Valle del Sol, Inc. is a non-profit organization that has served the
19 Maricopa County community since 1970. Valle del Sol helps thousands of individuals
20 each year by providing extensive behavioral health and social services. The agency
21 provides counseling, substance abuse treatment, prevention services, case management,
22 adult education, advocacy, leadership development, and services for seniors. Valle del
23 Sol’s programs address the increasing social and community needs related to family,
24 substance abuse, civic engagement, cultural diversity, and behavioral health problems. As
25 one of the largest Latino behavioral health and social service organizations in Maricopa
26 County, Valle del Sol’s culturally diverse, bilingual staff provides a wide array of

1 programs and services for the entire family. Its mission and the people it serves will be
2 directly affected by SB 1070. Valle del Sol serves a diverse mixture of populations a
3 majority of whom are Latinos. SB 1070 will force Valle del Sol to divert scarce resources
4 from critical programs in order to educate and assist individuals affected by SB 1070.
5 Furthermore, SB 1070 will thwart the mission and organizational goals of Valle del Sol by
6 deterring its clients from seeking the organization's services because the clients fear
7 interrogation, detention, and arrest under the provisions of SB 1070. Because the
8 agency's name is in Spanish, there exists a fear by staff that on that basis alone, Valle del
9 Sol may be a target under the provisions of SB 1070.

10 20. Coalición de Derechos Humanos ("Derechos Humanos") is a grassroots
11 community-service organization based in Tucson, Arizona, whose mission is to promote
12 human rights in the U.S.-Mexico border region. Since 1992, Derechos Humanos has
13 furthered its mission by organizing public education campaigns on issues related to
14 immigration, conducting citizenship workshops for lawful permanent residents and
15 immigrant refugees, and hosting intake clinics through which the organization assists
16 community members—including racial minorities and non-citizen immigrants—who
17 experience law enforcement, workplace, landlord/tenant, and housing discrimination
18 problems. Derechos Humanos offers its services without regard to whether the person is
19 authorized by the federal government to be present in the United States. Derechos
20 Humanos has already been forced to suspend most of its work relating to community
21 education on border deaths and leadership development to respond to inquiries from the
22 community about SB 1070. The fear and confusion created by SB 1070 has also resulted
23 in a dramatic drop in attendance at workshops and events. Community members served
24 by Derechos Humanos are afraid to take steps to protect their rights when it means any
25 interaction with government officials, including trying to protect their rights through the
26 state courts. SB 1070 will frustrate the mission of Derechos Humanos and divert limited

1 resources to educating and assisting community members who will be affected by SB
2 1070.

3 **Individual Plaintiffs**

4 21. Plaintiff Pedro Espinoza is a resident of Tucson, Arizona and a senior in high
5 school. Pedro was brought to the United States by his father, who had a work visa, when
6 Pedro was only a few months old. He has lived in Arizona ever since. When Pedro was
7 four years old, his father, who had been petitioning for Pedro to become a legal resident,
8 passed away. His grandmother then took over the immigration petition process, but she
9 eventually passed away too before the application could be approved. In November 2010,
10 when Pedro was riding his bicycle home from his girlfriend's house, he was pulled over
11 by police officers for not having a bicycle light. The officers started to ask questions
12 about his identity and, when he could only produce a student ID, they arrested him and
13 took him to jail. At the jail, detention officers interrogated him about his immigration
14 status. He was held there for two days before being transferred to Immigration and
15 Customs Enforcement (ICE) custody and placed in deportation proceedings. Pedro is a
16 model student who hopes to go to college and study medicine one day. He is active in his
17 community, volunteers with the Salvation Army and attends church each Sunday. Many
18 community members helped raise money to pay for Pedro's bond so that he could be
19 released from detention while his deportation proceedings are underway. He is now back
20 home, but does not have any identification (other than his student ID) or registration
21 document. Because of SB 1070, Pedro fears that he could be stopped by state or local law
22 enforcement officers and would be detained all over again because he does not have an
23 identification or registration document that local law enforcement officials would
24 recognize, even though the federal government is already aware of his presence in the
25 United States and he is currently in deportation proceedings.

1 22. Plaintiff C.M., a minor,¹ is a resident of Gilbert, Arizona and a freshman in
2 high school. She is originally from Haiti and, due to the recent earthquake there, has been
3 granted Temporary Protected Status in the United States. C.M. is 15 years old but is often
4 told that she looks 18. C.M. does not carry any documents proving that she has
5 permission to be in the United States. However, she recently asked her mother to obtain
6 an Arizona non-driver's identification for her after she learned about SB 1070. She was
7 afraid that she would be stopped and questioned about her immigration status due to her
8 dark skin and the fact that she speaks a foreign language. She is nervous about speaking
9 Haitian Creole with her friends and believes that it could get her in trouble with the police
10 under SB 1070.

11 23. Plaintiff Luz Santiago is a pastor for a church in Mesa, Arizona. She is a U.S.
12 citizen, Latina, and fluent in Spanish. Approximately 80 percent of her congregation
13 lacks authorization by the federal government to remain in the United States. In her role
14 as a pastor, Ms. Santiago provides transportation and shelter to members of her
15 congregation on a daily basis, including those members who are not authorized by the
16 federal government to remain in the United States. Ms. Santiago assists members of her
17 congregation by driving them to court, doctor's appointments, urgent care, the grocery
18 store, and school. Once a month, she also transports the youth in her congregation to
19 spiritual outings. Ms. Santiago also provides shelter to persons who seek sanctuary in her
20 church and runs a food bank that does not screen for authorization by the federal
21 government to remain in the United States. Ms. Santiago fears for the well-being of
22 vulnerable congregation members who could be stopped, detained, arrested, and
23 questioned under SB 1070. In addition, she believes that people will stop seeking help
24 from the food bank because of SB 1070. Ms. Santiago is concerned that she could be

25
26 ¹ C.M. is a minor and does not waive the protection of Rule 5.2(a) of the Federal
Rules of Civil Procedure. Therefore, only her initials shall be listed in any filing made in
connection with this case. *See* Fed. R. Civ. P. 5.2(a)(3).

1 subject to prosecution under the transporting and harboring provisions of SB 1070 for
2 performing work that is central to her role as a religious leader.

3 24. Plaintiff Jim Shee is an elderly resident of Litchfield Park, Arizona. He is a
4 U.S. citizen of Spanish and Chinese descent, is fluent in Spanish, and has lived in Arizona
5 his entire life. Over the past month, Mr. Shee has been stopped twice by local police in
6 Arizona and asked to produce identification documents. On or about April 6, 2010, Mr.
7 Shee was stopped and questioned on the way to his birthday party by a City of Phoenix
8 police officer who demanded to see his "papers." He was not given a citation. On or
9 about April 16, 2010, Mr. Shee was stopped by a highway patrol officer with the Arizona
10 Department of Public Safety in Yuma, Arizona. The officer made a U-turn, activated his
11 emergency lights, stopped Mr. Shee and asked to see his "papers." If SB 1070 goes into
12 effect, Mr. Shee fears that he will be at even greater risk of being stopped and questioned
13 by Arizona law enforcement officials based on his appearance. He fears that he will be
14 detained because he will be unable to prove to an officer that he is a U.S. citizen. Mr.
15 Shee does not wish to carry his passport with him at all times because he is afraid of
16 losing it.

17 25. Plaintiff Jose Angel Vargas is a resident of Phoenix, Arizona and is a lawful
18 permanent resident of the United States. He speaks Spanish fluently but not English. Mr.
19 Vargas is a member of Tonatierra's Centro Macehualli. He has lawfully and peacefully
20 solicited work at Centro Macehualli and on public street corners. Mr. Vargas would like
21 to continue soliciting work in public places; however, he is very worried that he will be
22 detained by the police under SB 1070 due to his Latino appearance, the fact that he cannot
23 communicate with a police officer in English, and because he solicits work alongside
24 others who do not have authorization to work in the United States. He was already
25 arrested for trespassing once before in Arizona, in March 2009, while soliciting work on a
26

1 corner near 25th Street and Bell Road in North Phoenix. While the charges were dropped
2 shortly thereafter, Mr. Vargas continues to be fearful of encounters with the police.

3 26. Plaintiff Maura Castillo is a resident of Chandler, Arizona and a lawful
4 permanent resident of the United States. She speaks Spanish and can understand some
5 English; however, she speaks very little English. Ms. Castillo is originally from Mexico
6 and appears Latina. On August 10, 2010, Ms. Castillo was driving with a friend on
7 Interstate 10 when she was stopped by an officer with the Arizona Department of Public
8 Safety. Upon approaching the vehicle, the officer asked Ms. Castillo for her driver's
9 license, registration and insurance. He also asked Ms. Castillo for a "passport or visa."
10 He did not inform Ms. Castillo why she had been stopped. Because Ms. Castillo had
11 recently had her Arizona driver's license stolen, she presented a driver's license from
12 Mexico. When she failed to provide the immigration documents and instead asked the
13 officer if he was from "immigration," the officer arrested Ms. Castillo by forcefully
14 wrestling her out of her vehicle. The officer pushed Ms. Castillo to the ground, injuring
15 her shoulder. Later, when Ms. Castillo was in handcuffs in the back of the patrol vehicle,
16 the officer learned that Ms. Castillo's license had been suspended in connection with a
17 civil traffic proceeding (this was also the first time Ms. Castillo learned of the
18 suspension). Ms. Castillo was booked into the Maricopa County Jail for driving on a
19 suspended license and resisting arrest. At the Jail, however, after officials confirmed that
20 she was lawfully in the country, the arresting officer told Ms. Castillo that he would not
21 have arrested her if she had just cooperated and "shown him her documents." Shortly
22 thereafter, Ms. Castillo's case was scratched because no criminal complaint was ever
23 filed. Plaintiff Castillo experienced great trauma from this incident and fears that SB
24 1070 puts her at greater risk of being stopped and questioned about her immigration status
25 again due to her appearance and limited English ability.

26

1 27. Plaintiff Maria Morales is a resident of Casa Grande, Arizona. She is lawful
2 permanent resident of the United States. Ms. Morales lives in a neighborhood that is
3 predominantly Mexican and speaks English with a heavy accent. On November 15, 2010,
4 while returning home to meet her son after school, she was pulled over by an officer with
5 the Pinal County Sheriff's Office, apparently for rolling through a stop sign (Ms. Morales
6 denies this and remembers having made a complete stop at the intersection). However,
7 when Ms. Morales asked the officer why she had been pulled over, he refused to tell her.
8 The officer simply demanded that she produce identification. Ms. Morales reached into
9 her wallet and pulled out an Arizona Identification Card so that it was visible to the officer
10 and asked again why she had been stopped. At that point, the officer removed Ms.
11 Morales from her vehicle and placed her under arrest. He confiscated her ID and cell
12 phone, and searched her car. Even though the officer was able to verify that her ID was
13 valid, he had her vehicle towed and transported her to jail anyway. Only after the tow
14 truck had left did he allow Ms. Morales to call her husband to make alternative
15 arrangements to pick up her son. At the jail, a 287g certified officer confirmed that Ms.
16 Morales was a legal resident. He asked her why she didn't tell the arresting officer she
17 was resident and admonished her for not carrying her resident alien card. Ms. Morales
18 was not released until the next day. Her criminal case was dismissed and she was never
19 cited for any stop sign violation. Ms. Morales should not have been arrested. She fears
20 that this kind of harassment and endless investigations into her legal status will occur
21 under SB 1070 because of where she lives, her Hispanic appearance, and her limited
22 English ability.

23 28. Plaintiff John Doe #1 is a resident of Phoenix, Arizona. He is Chinese and a
24 lawful permanent resident of the United States. He received his permanent resident status
25 in 2008 after being granted asylum on the basis of political persecution by the government
26 of the People's Republic of China. John Doe #1 has spent the last three years building a

1 new life here and currently works as a waiter in a Chinese restaurant. John Doe #1 speaks
2 Chinese and his English is very limited. If SB 1070 goes into effect, he fears that he will
3 be stopped by state or local law enforcement officers and questioned about his
4 immigration status on the basis of his Asian appearance and accent. John Doe #1 is afraid
5 of interacting with government officials in his native language because it could prompt
6 them to question him about his authorization to be in the United States. John Doe #1 also
7 understands that he will be detained if he is stopped without his green card. Due to his
8 experience as a victim of official persecution, this possibility is extremely distressing to
9 John Doe #1.

10 29. Plaintiff Jane Doe #3 is a resident of Tucson, Arizona. She is of Mexican
11 descent, and speaks Spanish and very limited English. She has two children to whom she
12 provides economic and housing support; a daughter who is 21 years old, and a son that is
13 18 years old. In 2009, Jane Doe #3 started spending time with a man who mentally
14 abused her during their relationship. When she tried to end the relationship, he slashed
15 her tires, and later broke into her apartment several times and destroyed her furniture, her
16 clothes, and defaced the apartment walls. Due to his violent acts, she became afraid for
17 her life and for her two children. Jane Doe #3 has recently filed her application for a U-
18 Visa based on her status as a violent crime victim, but she does not currently have a
19 registration document that would satisfy the registration provisions of SB 1070. Because
20 she has filed her U-Visa application with the federal government, immigration authorities
21 are aware of her presence in the country, but are not moving to initiate removal
22 proceedings against her. Although Jane Doe #3 does have a copy of her U-Visa filing
23 receipt, she is fearful that state or local law enforcement would not understand the
24 importance of the document. Plaintiff Jane Doe #3 fears that, were the enjoined
25 provisions of SB 1070 to take effect, she would be stopped, detained, and arrested by a
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1 state or local law enforcement officer due to her Latino appearance and the fact that she
2 speaks limited English, and only with an accent.

3 **Defendants**

4 30. Defendant Michael B. Whiting is the County Attorney of Apache County,
5 Arizona. According to Arizona law, the “county attorney is the public prosecutor of the
6 county and shall . . . conduct, on behalf of the state, all prosecutions for public offenses.”
7 Arizona Revised Statutes (“A.R.S.”) § 11-532(A). As such, Defendant Whiting is
8 responsible for the enforcement of SB 1070 within Apache County. Defendant Whiting is
9 sued in his official capacity.

10 31. Defendant Edward G. Rheinheimer is the County Attorney of Cochise County,
11 Arizona. As such, Defendant Rheinheimer is responsible for the enforcement of SB 1070
12 within Cochise County. Defendant Rheinheimer is sued in his official capacity.

13 32. Defendant David W. Rozema is the County Attorney of Coconino County,
14 Arizona. As such, Defendant Rozema is responsible for the enforcement of SB 1070
15 within Coconino County. Defendant Rozema is sued in his official capacity.

16 33. Defendant Daisy Flores is the County Attorney of Gila County, Arizona. As
17 such, Defendant Flores is responsible for the enforcement of SB 1070 within Gila County.
18 Defendant Flores is sued in her official capacity.

19 34. Defendant Kenny Angle is the County Attorney of Graham County, Arizona.
20 As such, Defendant Angle is responsible for the enforcement of SB 1070 within Graham
21 County. Defendant Angle is sued in his official capacity.

22 35. Defendant Derek D. Rapier is the County Attorney of Greenlee County,
23 Arizona. As such, Defendant Rapier is responsible for the enforcement of SB 1070 within
24 Greenlee County. Defendant Rapier is sued in his official capacity.

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1 36. Defendant Sam Vederman is the County Attorney of La Paz County, Arizona.
2 As such, Defendant Vederman is responsible for the enforcement of SB 1070 within La
3 Paz County. Defendant Vederman is sued in his official capacity.

4 37. Defendant Richard M. Romley is the County Attorney of Maricopa County,
5 Arizona. As such, Defendant Romley is responsible for the enforcement of SB 1070
6 within Maricopa County. Defendant Romley is sued in his official capacity.

7 38. Defendant Matthew J. Smith is the County Attorney of Mohave County,
8 Arizona. As such, Defendant Matthew Smith is responsible for the enforcement of SB
9 1070 within Mohave County. Defendant Matthew Smith is sued in his official capacity.

10 39. Defendant Bradley Carlyon is the County Attorney of Navajo County,
11 Arizona. As such, Defendant Carlyon is responsible for the enforcement of SB 1070
12 within Navajo County. Defendant Carlyon is sued in his official capacity.

13 40. Defendant Barbara LaWall is the County Attorney of Pima County, Arizona.
14 As such, Defendant LaWall is responsible for the enforcement of SB 1070 within Pima
15 County. Defendant LaWall is sued in her official capacity.

16 41. Defendant James P. Walsh is the County Attorney of Pinal County, Arizona.
17 As such, Defendant Walsh is responsible for the enforcement of SB 1070 within Pinal
18 County. Defendant Walsh is sued in his official capacity.

19 42. Defendant George Silva is the County Attorney of Santa Cruz County,
20 Arizona. As such, Defendant Silva is responsible for the enforcement of SB 1070 within
21 Santa Cruz County. Defendant Silva is sued in his official capacity.

22 43. Defendant Sheila S. Polk is the County Attorney of Yavapai County, Arizona.
23 As such, Defendant Polk is responsible for the enforcement of SB 1070 within Yavapai
24 County. Defendant Polk is sued in her official capacity.

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1 44. Defendant Jon R. Smith is the County Attorney of Yuma County, Arizona. As
2 such, Defendant Smith is responsible for the enforcement of SB 1070 within Yuma
3 County. Defendant Jon Smith is sued in his official capacity.

4 45. Defendant Sheriff Joseph Dedman, Jr. is the County Sheriff of Apache County,
5 Arizona. According to Arizona law, the “sheriff shall . . . arrest and take before the nearest
6 magistrate for examination all persons who attempt to commit or who have committed a
7 public offense.” A.R.S. § 11-441. As such, Defendant Dedman is responsible for the
8 enforcement of SB 1070 within Apache County. Defendant Dedman is sued in his official
9 capacity.

10 46. Defendant Sheriff Larry A. Dever is the County Sheriff of Cochise County,
11 Arizona. As such, Defendant Dever is responsible for the enforcement of SB 1070 in
12 Cochise County. Defendant Dever is sued in his official capacity.

13 47. Defendant Sheriff Bill Pribil is the County Sheriff of Coconino County,
14 Arizona. As such, Defendant Pribil is responsible for the enforcement of SB 1070 within
15 Coconino County. Defendant Pribil is sued in his official capacity.

16 48. Defendant Sheriff John R. Armer is the County Sheriff of Gila County,
17 Arizona. As such, Defendant Armer is responsible for the enforcement of SB 1070 within
18 Gila County. Defendant Armer is sued in his official capacity.

19 49. Defendant Sheriff Preston J. Allred is the County Sheriff of Graham County,
20 Arizona. As such, Defendant Allred is responsible for the enforcement of SB 1070 within
21 Graham County. Defendant Allred is sued in his official capacity.

22 50. Defendant Sheriff Steven N. Tucker is the County Sheriff of Greenlee County,
23 Arizona. As such, Defendant Tucker is responsible for the enforcement of SB 1070 within
24 Greenlee County. Defendant Tucker is sued in his official capacity.

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1 51. Defendant Sheriff Donald Lowery is the County Sheriff of La Paz County,
2 Arizona. As such, Defendant Lowery is responsible for the enforcement of SB 1070
3 within La Paz County. Defendant Lowery is sued in his official capacity.

4 52. Defendant Sheriff Joseph Arpaio is the County Sheriff of Maricopa County,
5 Arizona. As such, Defendant Arpaio is responsible for the enforcement of SB 1070 within
6 Maricopa County. Defendant Arpaio is sued in his official capacity.

7 53. Defendant Sheriff Tom Sheahan is the County Sheriff of Mohave County,
8 Arizona. As such, Defendant Sheahan is responsible for the enforcement of SB 1070
9 within Mohave County. Defendant Sheahan is sued in his official capacity.

10 54. Defendant Sheriff Kelly Clark is the County Sheriff of Navajo County,
11 Arizona. As such, Defendant Clark is responsible for the enforcement of SB 1070 within
12 Navajo County. Defendant Clark is sued in his official capacity.

13 55. Defendant Sheriff Clarence W. Dupnik is the County Sheriff of Pima County,
14 Arizona. As such, Defendant Dupnik is responsible for the enforcement of SB 1070 in
15 Pima County. Defendant Dupnik is sued in his official capacity.

16 56. Defendant Sheriff Paul Babeu is the County Sheriff of Pinal County, Arizona.
17 As such, Defendant Babeu is responsible for the enforcement of SB 1070 within Pinal
18 County. Defendant Babeu is sued in his official capacity.

19 57. Defendant Sheriff Tony Estrada is the County Sheriff of Santa Cruz County,
20 Arizona. As such, Defendant Estrada is responsible for the enforcement of SB 1070 in
21 Santa Cruz County. Defendant Estrada is sued in his official capacity.

22 58. Defendant Sheriff Steve Waugh is the County Sheriff of Yavapai County,
23 Arizona. As such, Defendant Waugh is responsible for the enforcement of SB 1070 within
24 Yavapai County. Defendant Waugh is sued in his official capacity.

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1 59. Defendant Sheriff Ralph Ogden is the County Sheriff of Yuma County,
 2 Arizona. As such, Defendant Ogden is responsible for the enforcement of SB 1070 within
 3 Yuma County. Defendant Ogden is sued in his official capacity.

4 **FACTUAL ALLEGATIONS**

5 **History and Intent of SB 1070**

6 60. On April 19, 2010, the Arizona Legislature enacted SB 1070, a comprehensive
 7 system of state laws whose purpose is to “make attrition through enforcement the public
 8 policy of all state and local government agencies in Arizona” and to deter and punish “the
 9 unlawful entry and presence of aliens.” SB 1070 creates several new state criminal
 10 immigration offenses as well as criminal procedures relating to the investigation, seizure,
 11 and detention of persons suspected of federal immigration violations. The full text of SB
 12 1070 is attached hereto as Exhibit 1 and incorporated by reference.

13 61. In enacting SB 1070, Arizona decided to express its dissatisfaction with federal
 14 immigration policy by legislating in an area reserved for the federal government.

15 62. On April 23, 2010, Governor Janice Brewer signed SB 1070 into law. In her
 16 signing statement, the Governor said that SB 1070 “represents another tool for our state to
 17 use as we work to solve a crisis we did not create and the federal government has refused
 18 to fix.” Statement by Governor Janice K. Brewer (Apr. 23, 2010), *available at*
 19 http://azgovernor.gov/dms/upload/PR_042310_StatementByGovernorOnSB1070.pdf.
 20 Governor Brewer also criticized “decades of federal inaction and misguided policy....” *Id.*

21 63. On April 30, 2010, Governor Brewer signed into law House Bill 2162 (“HB
 22 2162”), which further amends sections of the A.R.S. created by SB 1070. The full text of
 23 HB 2162 is attached hereto as Exhibit 2 and incorporated by reference.

24 64. In her signing statement on HB 2162, the Governor again indicated that SB
 25 1070 is intended to empower the State of Arizona to take the place of the federal
 26 government in regulating immigration, stating that “[t]he federal government’s failure

1 requires us to act.” Statement by Governor Janice K. Brewer (Apr. 30, 2010), *available*
2 *at* http://azgovernor.gov/dms/upload/PR_043010_StatementGovBrewer.pdf.

3 65. The sponsors of SB 1070 intended for it to create a statewide regulation of
4 immigration. SB 1070’s author, State Senator Russell Pearce, has touted SB 1070 as a
5 means to achieve the “self-deportation” of undocumented immigrants in the state.
6 *Lawmaker Wants Special Session to Enact AZ Style Immigration Law*, KLAS-TV-CBS
7 NEWS, May 3, 2010, *available at* [http://www.8newsnow.com/Global/story.asp?](http://www.8newsnow.com/Global/story.asp?S=12419197)
8 [S=12419197](http://www.8newsnow.com/Global/story.asp?S=12419197). Another sponsor of SB 1070, State Representative David Gowan, stated
9 that SB 1070 was needed because “[t]he federal government has failed in helping this
10 state seal its borders.” Jeffrey Kaye, *U.S. Congress and Arizona Deliver One-Two Punch*
11 *to Immigrants*, THE HUFFINGTON POST, Apr. 15, 2010, *available at* [http://www.](http://www.huffingtonpost.com/jeffrey-kaye/us-congress-and-arizona-d_b_538369.html)
12 [huffingtonpost.com/jeffrey-kaye/us-congress-and-arizona-d_b_538369.html](http://www.huffingtonpost.com/jeffrey-kaye/us-congress-and-arizona-d_b_538369.html).

13 66. The enactment of SB 1070 was surrounded by a racially charged debate over
14 the wisdom of adopting such a law. In the weeks leading up to passage of the bill,
15 protestors and advocates on both sides of the issue held rallies, issued statements, debated
16 in national media, and bombarded the Governor’s office with e-mails and phone calls.
17 Alia Beard Rau and Ginger Rough, *Ariz. Lawmakers Pass Toughest Illegal Immigration*
18 *Law in U.S.*, ARIZ. REPUBLIC, Apr. 19, 2010, *available at* [http://www.azcentral.com/](http://www.azcentral.com/news/articles/2010/04/19/20100419arizona-immigration-bill-passes.html#ixzz0njXHPCzs)
19 [news/articles/2010/04/19/20100419arizona-immigration-bill-passes.html](http://www.azcentral.com/news/articles/2010/04/19/20100419arizona-immigration-bill-passes.html#ixzz0njXHPCzs)
20 [#ixzz0njXHPCzs](http://www.azcentral.com/news/articles/2010/04/19/20100419arizona-immigration-bill-passes.html#ixzz0njXHPCzs).

21 67. “We are going to look like Alabama in the ’60s,” declared State Representative
22 Bill Konopnicki, Republican of Yuma. Randal Archibold, *Immigration Bill Reflects a*
23 *Firebrand’s Impact*, N.Y. TIMES, Apr. 19, 2010, *available at* [http://www.nytimes.com/](http://www.nytimes.com/2010/04/20/us/20immig.html)
24 [2010/04/20/us/20immig.html](http://www.nytimes.com/2010/04/20/us/20immig.html).

25 68. Arizona State Senator Richard Miranda asserted, “This bill . . . leads to a
26 greater possibility of racial profiling. This is not just if you are Latino or Hispanic —

1 anyone of color may be subject to racial profiling.” Robert Miranda, *Ariz. Law Unfair to*
2 *Latinos, Hispanics*, DAILY 49ER, May 2, 2010, available at [http://www.daily49er.com/](http://www.daily49er.com/opinion/ariz-law-unfair-to-latinos-hispanics-1.2256742)
3 [opinion/ariz-law-unfair-to-latinos-hispanics-1.2256742](http://www.daily49er.com/opinion/ariz-law-unfair-to-latinos-hispanics-1.2256742).

4 69. The sponsor of SB 1070, Senator Russell Pearce, has sponsored legislation
5 across a broad range of subjects that are related to issues of race and national origin in
6 Arizona, including a recently-enacted bill intended to ban the Raza Studies program in the
7 Tucson Unified School District. Mary Jo Pitzl, *Arizona Bill Targets Ban on Ethnic*
8 *Studies*, ARIZ. REPUBLIC, May 1, 2010, available at [http://www.azcentral.com/news/](http://www.azcentral.com/news/articles/2010/05/01/20100501arizona-bill-bans-ethnic-studies.html)
9 [articles/2010/05/01/20100501arizona-bill-bans-ethnic-studies.html](http://www.azcentral.com/news/articles/2010/05/01/20100501arizona-bill-bans-ethnic-studies.html). In 2006, Senator
10 Pearce drew fire for racially insensitive remarks and distributing an article from a white
11 separatist group and a link to that group’s website. To his supporters, Mr. Pearce
12 forwarded an email that accused the media of promoting “a world in which every voice
13 proclaims the equality of the races [and] the wickedness of attempting to halt the flood of
14 nonwhite aliens pouring across the borders.” *Ariz. Lawmaker In Hot Water Over Article*,
15 CHARLESTON GAZETTE & DAILY MAIL, Oct. 12, 2006.

16 70. Senator Pearce has called for reinstatement of a program of mass deportation
17 of Mexicans and Mexican Americans, declaring: “We know what we need to do. In
18 1953, Dwight D. Eisenhower put together a task force called ‘Operation Wetback.’ He
19 removed, in less than a year, 1.3 million illegal aliens. They must be deported.” Sarah
20 Lynch, *Pearce calls on Operation Wetback for Illegals*, EAST VALLEY TRIBUNE, Sept. 29,
21 2006. Mr. Pearce has admitted feeling uncomfortable with the way society is changing in
22 Arizona, and attributed a rise in violent crime to Mexicans’ and Central Americans’ “way
23 of doing business.” He described the arrival of immigrants in Arizona as an attack by
24 foreigners: “I will not back off until we solve the problem of this illegal invasion.
25 Invaders, that’s what they are. Invaders on the American sovereignty and it can’t be
26 tolerated.” Ted Robbins, *The Man Behind Arizona’s Toughest Immigrant Laws*,

1 NATIONAL PUBLIC RADIO, May 19, 2008, *available at* [http://www.npr.org/templates/](http://www.npr.org/templates/story/story.php?storyId=88125098)
2 [story/story.php?storyId=88125098](http://www.npr.org/templates/story/story.php?storyId=88125098).

3 71. Following signing of the bill by Governor Brewer, the largest newspaper in
4 Tucson lamented that SB 1070 was “a law that portrays the state as a place hostile to any
5 kind of non-white person.” Editorial, *Law Creates Fear, Undermines Public Safety*, Ariz.
6 Daily Star, May 7, 2010, *available at* [http://azstarnet.com/news/opinion/editorial/](http://azstarnet.com/news/opinion/editorial/article_59a4769c-cc60-5618-873a-9e083c643e99.html)
7 [article_59a4769c-cc60-5618-873a-9e083c643e99.html](http://azstarnet.com/news/opinion/editorial/article_59a4769c-cc60-5618-873a-9e083c643e99.html).

8 72. SB 1070 has caused racial tensions because it is widely understood that it is
9 motivated by and will result in discrimination against Latinos and other racial minorities
10 in Arizona on the basis of their race and national origin.

11 **Key Provisions of SB 1070**

12 **Requirement to investigate, determine, and punish status**

13 73. SB 1070’s numerous provisions create a comprehensive state-law system of
14 immigration regulation and enforcement that will: (1) require police to investigate and
15 determine who may remain in the United States; (2) erect a state immigration registration
16 and punishment scheme by creating state crimes and criminal penalties relating to alien
17 registration, immigration status, and work authorization; and (3) require police to arrest
18 and detain individuals and transfer them to federal authorities based merely on a belief
19 that they have violated federal civil immigration laws, when state and local officers are
20 not competent to make such a determination or authorized to make it under federal law.

21 74. SB 1070 requires Arizona police, Arizona jails, and Arizona courts to detect,
22 adjudge, punish, and facilitate the deportation of individuals who, in Arizona’s view, are
23 not entitled to remain in the United States. SB 1070 makes Arizona a legal island within
24 the United States with separate immigration rules that do not apply in the other 49 states
25 and that are contrary to and inconsistent with the federal Immigration and Nationality Act
26

1 (“INA”), 8 U.S.C. §§ 1101 *et seq.*, and federal implementing regulations and policies, 8
2 C.F.R. §§ 100.1 *et seq.*

3 75. SB 1070’s attempt to create Arizona-specific laws and enforcement
4 mechanisms relating to immigration is an impermissible attempt to regulate immigration.

5 76. SB 1070’s immigration regime also fundamentally conflicts with federal
6 immigration law and legislates in fields occupied by such law.

7 77. SB 1070 as amended compels police officers to make immigration status
8 determinations and to detain individuals based on a “reasonable suspicion” standard that is
9 unworkable and cannot be applied by state and local officers; that requires impermissible
10 reliance on race, national origin, and language; and that impermissibly burdens and
11 interferes with the rights of lawful permanent resident immigrants and citizens in the State
12 of Arizona.

13 78. As amended by HB 2162, Section 2 of SB 1070 creates a new section of the
14 A.R.S., § 11-1051, which requires a police officer who has conducted a “lawful stop,
15 detention or arrest . . . in the enforcement of any other law or ordinance of a county, city
16 or town or [the State of Arizona]” to make a “reasonable attempt” to determine the
17 immigration status of the person who has been stopped, detained or arrested, whenever
18 “reasonable suspicion exists that the person is an alien and is unlawfully present.” A.R.S.
19 § 11-1051(B).

20 79. The new statute, as amended by HB 2162, also requires that “[a]ny person who
21 is arrested shall have the person’s immigration status determined before the person is
22 released.” A.R.S. § 11-1051(B). This section requires the continued detention of an
23 individual even if the sole reason for detention is status verification.

24 80. Section 2 of SB 1070 also authorizes officers to detain and transport a person
25 who is determined by the officer to be an unauthorized immigrant to a federal facility,
26 including a facility outside the officers’ jurisdiction, upon receiving verification from

1 federal authorities that the person is “unlawfully present.” A.R.S. § 11-1051(D). This
2 section does not require an officer to have any other justification under state law to detain
3 the individual.

4 81. Section 2 of SB 1070 imposes a standard that is unworkable and preempted by
5 federal law. The law requires state or local officers to attempt to determine immigration
6 status, which must be determined through a federal administrative system applying
7 complex federal statutes and regulations, and which is based upon historical facts about an
8 individual that are not observable by an officer in the field.

9 82. Section 2 imposes an impermissible restriction and burden on speech by
10 chilling the usage of words, accents, gestures, and other expressive speech.

11 83. Specifically, Section 2 restricts, suppresses, burdens, and chills speech,
12 expressive conduct, and the right to petition the government—including particularly the
13 courts and law enforcement authorities—because the law exposes speakers to scrutiny,
14 detention, and/or arrest based on the identity of the speakers and the content of their
15 speech, including the speaker's appearance, associations, and the language or accent being
16 used by the speaker, for purposes of determining whether the speaker is “unlawfully
17 present” or has committed a “public offense that makes [him or her] removable.” Both
18 citizens and non-citizens may be chilled from communicating with the courts and law
19 enforcement officials out of fear that they will be detained and/or arrested pursuant to SB
20 1070.

21 84. For example, Plaintiff John Doe #1 is a resident of Phoenix, Arizona, and a
22 legal permanent resident. His English proficiency is extremely limited and he speaks
23 English with a noticeable accent. He fears that he will be targeted pursuant to SB 1070
24 based on the language in which he expresses himself.

25 85. Section 2 impermissibly vests in police officers unbridled discretion to base
26 their “reasonable suspicion” that a “person is an alien and is unlawfully present” on the

1 content of the person’s expressive conduct. Nothing in Section 2 forbids a police officer
2 from developing a “reasonable suspicion” that a person “is an alien” and/or “is unlawfully
3 present” based solely on that person’s gestures, language, accent, clothing, English-word
4 selection, failure to communicate in English, and/or other expressive conduct—all of
5 which is pure speech protected by the First Amendment. Indeed, Section 2 invites a
6 police officer to decide that a person is “an alien” because the person “acts” foreign or
7 fails to “act” American—or to decide that a person is “unlawfully present” because the
8 person “acts” like someone from a country the officer believes to be a source of
9 “unlawfully present” immigrants.

10 86. SB 1070 functions as an impermissible prior restraint on speech because a
11 speaker wishing to avoid being stopped, questioned, detained, arrested, jailed, and/or
12 threatened with civil or criminal liability must be prepared to prove that he or she is not
13 “unlawfully present” or cease engaging in protected speech and expressive conduct.

14 87. Section 2 permits warrantless seizures of individuals without probable cause
15 that they have committed crimes.

16 88. Section 2 authorizes the warrantless search of an individual in any setting,
17 including the individual’s home.

18 89. Section 2 furthermore permits local and state law enforcement officials to seize
19 and detain individuals, pending determination of their immigration status, without
20 providing for any process to ensure the constitutionality of the detention and seizure.

21
22 **Arrest, detention, and transfer provisions**

23 90. Section 6 of SB 1070 amends Arizona’s state law on warrantless arrests,
24 A.R.S. § 13-3883, to allow for the warrantless arrest of a person when an officer has
25 probable cause to believe that the person has committed “any public offense that makes
26 the person removable from the United States.” A.R.S. § 13-3883(A)(5). This provision

1 requires local law enforcement officers to do what they are not equipped or authorized to
2 do: make determinations about which “public offenses” make immigrants “removable”
3 from the United States, determine an alleged offender’s immigration status, and make
4 warrantless arrests solely for suspected violations of civil immigration laws, without
5 regard to whether the federal government has authorized any such arrest or detention.

6 91. Section 6 of SB 1070 permits warrantless arrests by a state or local officer
7 based on a standard that is unworkable and preempted by federal law. Whether an
8 individual is “removable from the United States” is determined through a federal
9 administrative system and application of complex federal statutes and regulations, and is
10 based upon historical facts about an individual. This determination cannot be made by a
11 state or local law enforcement officer.

12 92. Section 6 provides no explanation or other sufficient guidance for individuals
13 as to the meaning of “public offense that makes the person removable from the United
14 States.” This provision will cause warrantless seizures of individuals without probable
15 cause that they have committed crimes.

16 93. The broad sweep of Section 6 which allows for warrantless arrests of any
17 person whom a law enforcement officer suspects of having committed a “public offense
18 that makes the person removable from the United States” fails to provide minimal
19 guidelines to govern law enforcement in who they can and cannot arrest.

20 94. Section 6 authorizes the warrantless arrest of an individual in any setting,
21 including the individual’s home.

22 95. Section 6 furthermore permits local and state law enforcement officials to
23 detain and transport individuals to federal facilities in the state, without providing for any
24 process to ensure the constitutionality of the detention.

25 **New state criminal provisions relating to immigration status and to work authorization**

26

1 96. Section 3 of SB 1070, as amended by HB 2162, enacts a state immigration
2 registration and penalty scheme in an area that Congress has exclusively regulated. SB
3 1070 conflicts with federal law and enforcement priorities, burdens the enforcement of
4 federal law and is an obstacle to federal immigration enforcement and prosecution
5 policies. Specifically, SB 1070 creates a new state criminal offense of “willful failure to
6 complete or carry an alien registration document.” A.R.S. § 13-1509. The primary
7 element of the offense is that the person “is in violation of 8 United States Code section
8 1304(e) or 1306(a),” federal statutes that impose certain requirements that non-citizens
9 register with the federal government and carry registration documents. Under SB 1070,
10 the first offense is deemed a Class 1 misdemeanor, punishable by a fine of up to \$100 and
11 up to 20 days of jail time. A.R.S. § 13-1509(H). Subsequent offenses are punishable by
12 up to 30 days of jail time. *Id.*

13 97. The purpose of the state registration provision is to punish immigrants with
14 incarceration or to compel the initiation of federal immigration removal proceedings
15 without regard to federal determinations and policies. State Senator Russell Pearce, chief
16 sponsor of SB 1070, has stated that this provision of SB 1070 is intended to give law
17 enforcement officers an additional means by which to “hold an illegal alien under state
18 law if need be or just call ICE and turn them over to ICE.” *See* Message From Sen.
19 Russell Pearce (Mar. 24, 2010), *available at* [http://www.maricopagop.org/2010/03/](http://www.maricopagop.org/2010/03/24/legislative-alert-hb-2632-and-sb1070/#more-1962)
20 [24/legislative-alert-hb-2632-and-sb1070/#more-1962](http://www.maricopagop.org/2010/03/24/legislative-alert-hb-2632-and-sb1070/#more-1962).

21 98. Section 5 of SB 1070 defines new state crimes based on the solicitation and
22 performance of work by individuals who lack federal work authorization. A.R.S. § 13-
23 2928. This section makes it a Class 1 misdemeanor for anyone who attempts to hire or
24 pick up day laborers to work at a different location, if the driver is impeding the normal
25 flow of traffic. A.R.S. § 13-2928(A). This section also makes it a misdemeanor offense
26 for a worker to get into a car if it is impeding traffic. A.R.S. § 13-2928(B). The statute

1 also makes it a state crime for a person who “is unlawfully present in the United States
2 and who is an unauthorized alien to knowingly apply for work, solicit work in a public
3 place or perform work as an employee or independent contractor in this state.” A.R.S. §
4 13-2928(C).

5 99. Section 5 of SB 1070 creates a content-based regulation of protected speech.

6 100. Section 5 prohibits and regulates speech soliciting “*work* in a public place”
7 (emphasis added) through verbal or nonverbal communication by a gesture or nod,
8 making it a crime for certain individuals to do so, while speech of a different content, even
9 if expressed in the same time, place, and manner, is not so proscribed.

10 101. Section 5 prohibits the expression of availability to work in any “public place,”
11 including traditional public fora such as public streets, sidewalks, and parks.

12 102. Section 5 fails to define what constitutes “work,” covering such innocuous
13 activity as artists offering to paint portraits in a public park and students conducting a car-
14 wash. Section 5 contains an impermissibly vague definition of “solicit” as it includes all
15 verbal communication without qualification and brings within its reach “nonverbal
16 communication by a gesture or nod.” Section 5 also requires that the “communication . . .
17 indicate to a reasonable person that a person is willing to be employed,” which is so vague
18 as to be unenforceable, and could criminalize conduct, such as waving to a friend, which
19 is not, in fact, soliciting work.

20 103. Arizona does not have a compelling or significant governmental interest in
21 regulating speech and expression in the content-based manner employed by SB 1070. Nor
22 is SB 1070 the least restrictive means to further any such interest.

23 104. Section 5 also makes it unlawful for a person who is “unlawfully present” in
24 the United States and who is unauthorized to work to solicit work in a public place or to
25 knowingly apply for work regardless of whether any employment or business relationship
26 is entered into.

1 105. Since the work of day laborers is by definition temporary and informal, day
2 laborers and the contractors who hire them do not find each other through conventional
3 advertising of availability. Rather, day laborers signal their availability for work by
4 visibly gathering in public areas such as sidewalks or parking lots and gesturing to
5 potential employers.

6 106. Many persons, including members of Tonatierra's Centro Macehualli, persons
7 who participate in Southside's day laborer program, members of Border Action Network,
8 and Plaintiff Jose Vargas have previously expressed their desire, need, and availability for
9 employment to persons in vehicles on the street, while peacefully standing on a public
10 way, and have obtained lawful employment performing services such as gardening,
11 moving, and light construction. These individuals and other day laborers wish to continue
12 to engage in such expressive activity on sidewalks and other public areas in Arizona to
13 indicate their need and availability to work. Indeed, for many, day labor is a critical, and
14 oftentimes the only available means to obtain work. However, individuals fear doing so
15 in the same manner as they have in the past because A.R.S. §§ 13-2928(C) and (D)
16 subject them to the danger of arrest, fines, and other penalties should they engage in such
17 expression.

18 107. Section 5 of SB 1070 also creates several new state criminal laws prohibiting
19 the transporting, moving, concealing or harboring of unauthorized immigrants. A.R.S. §§
20 13-2929(A)(1) and (2). This section also makes it a crime to "encourage or induce an
21 alien to come to or reside in [Arizona]" with knowledge or reckless disregard of the fact
22 that "such coming to, entering or residing in this state is or will be in violation of law."
23 A.R.S. § 13-2929(A)(3). A person who violates these provisions would be subject to a
24 class 1 misdemeanor and a fine of at least \$1,000 with additional penalties where the
25 offense involves ten or more immigrants. A.R.S. § 13-2929(D).

26

1 108. In addition, under section 10 of SB 1070, any means of transportation will be
2 impounded if it is deemed to have been used in connection with violations of the
3 harboring statute. A.R.S. § 13-2929(B).

4 109. The transportation, harboring, and encouragement provisions of SB 1070
5 provide no explanation or other sufficient guidance for individuals as to what actions will
6 be deemed “in furtherance of illegal presence” or “that the immigrant has entered or
7 remained in the United States illegally.”

8 **Coercion of state and local police**

9 110. Section 2 of SB 1070, as amended, creates a private right of action for any
10 person to sue a city, town, or county “that adopts or implements a policy that limits or
11 restricts the enforcement of federal immigration laws to less than the full extent permitted
12 by federal law.” This provision requires state and local law enforcement agencies to
13 prioritize immigration over many competing law enforcement activities and thus strips
14 agencies of their discretion to exercise considered judgment about how best to ensure
15 public safety.

16 **Comprehensive Federal Immigration System**

17 111. The federal government has exclusive power over immigration matters. The
18 U.S. Constitution grants the federal government the power to “establish a uniform Rule of
19 Naturalization,” U.S. Const. art. I, § 8, cl. 4, and to “regulate Commerce with foreign
20 Nations,” U.S. Const. art. I, § 8, cl. 3. In addition, the Supreme Court has held that the
21 Federal government’s power to control immigration is inherent in the nation’s
22 sovereignty.

23 112. The U.S. Congress has created a comprehensive system of federal laws
24 regulating and enforcing immigration in the INA. *See* 8 U.S.C. § 1101 *et seq.* This
25 extensive statutory scheme leaves no room for supplemental state laws.
26

1 113. The federal government has also issued numerous regulations, policies, and
2 procedures interpreting the provisions of the INA and has established a large and complex
3 administrative apparatus to carry out its mandates.

4 114. The INA carefully calibrates the nature (criminal or civil) and degree of
5 penalties applicable to each possible violation of its terms.

6 115. The INA contains complex and exclusive procedures for determining
7 immigration and citizenship status, deciding whether the civil provisions of the
8 immigration laws have been violated, and determining whether an individual may
9 lawfully be removed from the United States.

10 116. Under federal law, there is no single, readily ascertained category or
11 characteristic that establishes whether a particular person may or may not remain in the
12 United States. The answer to that question is a legal conclusion that can only be reached
13 through the processes set forth in the INA and may depend on the discretionary
14 determinations of federal officials.

15 117. There are many non-citizens who are present in the United States without
16 formal permission who lack the “registration document” mandated by SB 1070, yet would
17 not be removed if placed in federal removal proceedings. For example, an individual may
18 be eligible for some form of immigration relief, such as asylum, adjustment of status, or
19 withholding of removal. Some of these individuals are known to the federal government;
20 others will not be identified until they are actually placed in proceedings by the federal
21 government and their cases are adjudicated.

22 118. Federal immigration agencies such as ICE or U.S. Customs and Border
23 Protection do not and cannot determine whether a particular person may remain in the
24 United States, or whether a particular person has committed a “public offense” that would
25 make the person “removable,” without going through the procedures set forth in the INA.
26 Federal agencies similarly do not and cannot determine definitively, in response to a

1 demand from a state or local official, whether an individual is “unlawfully present” or has
2 “authorization to remain in the United States” as those phrases are used in SB 1070. The
3 databases searched in response to these queries are not set up to make final determinations
4 of whether an individual has federally authorized immigration status. These agencies can
5 only determine whether they believe a non-citizen may be *charged* with deportability.
6 Such a prosecutorial decision is not a determination of the individual’s “immigration
7 status,” which entails a complex administrative process. The phrase “immigration status”
8 is usually used to refer to a number of categories defined by the INA for classifying
9 individuals, not the ultimate question of whether an individual may remain in the United
10 States.

11 119. Furthermore, determining whether or not a person is a citizen of the United
12 States can be a complex and counterintuitive process. U.S. citizens are not required to
13 carry documentary proof of their citizenship. There is no national database that contains
14 information on every U.S. citizen. Some people are actually unaware of their U.S.
15 citizenship because they may have acquired U.S. citizenship at birth by operation of law
16 due to their parents’ citizenship, despite not being born in the United States. *See, e.g.,*
17 INA § 322, 8 U.S.C. § 1433. Others automatically obtained citizenship when their parents
18 became naturalized U.S. citizens. *See, e.g.,* INA § 320, 8 U.S.C. § 1431.

19 120. SB 1070’s creation of a state immigration system fundamentally conflicts with
20 the INA’s statutory scheme, impermissibly encroaches on the federal government’s
21 exclusive power to regulate immigration, and will lead to erroneous determinations by
22 state and local officials.

23 121. Moreover, SB 1070 conflicts with and is preempted by provisions of the INA
24 that set forth comprehensive federal schemes addressing: (1) alien registration; (2)
25 transportation and harboring; (3) work authorization and sanctions for unauthorized work;
26 and (4) arrest authority for immigration violations.

1 **Federal registration system**

2 122. The INA includes a national alien registration system that displaces and
3 preempts state alien registration laws.

4 123. The federal alien registration scheme requires certain non-citizens to register
5 with the federal government and to carry proof of this registration with them. 8 U.S.C. §§
6 1302, 1306(a), and 1304(d)-(e). Specifically, the INA requires every non-citizen in the
7 United States over the age of 14 who has been in the United States for over 30 days to
8 apply for registration with the federal government. 8 U.S.C. § 1302(a). Once registered,
9 non-citizens are given a “certificate of alien registration or an alien registration receipt
10 card,” the form and issuance of which are to be prescribed in “regulations issued by the
11 Attorney General.” 8 U.S.C. § 1304(d). Non-citizens over the age of 18 who willfully
12 fail to carry these documents face fines or prison time of up to 30 days. 8 U.S.C. §
13 1304(e). Non-citizens who willfully fail to register face fines or prison time of up to six
14 months. 8 U.S.C. § 1304(a).

15 124. The federal registration scheme has been in place since 1940 and was designed
16 to create a single, uniform, national scheme.

17 125. The preemptive effect of the federal alien registration scheme was expressly
18 recognized by the President of the United States when the scheme was created and has
19 been expressly upheld by the Supreme Court.

20 126. The federal regulation implementing 8 U.S.C. §§ 1302, 1304, and 1306
21 prescribes as “evidence of registration” specific forms for compliance. *See* 8 C.F.R. §
22 264.1. The list, however, has not been kept up to date with current federal forms and
23 procedures. As a result, there are categories of noncitizens who have applied for
24 immigration benefits or whose presence in the United States is otherwise known to federal
25 immigration agencies but who do not have registration documents that are valid under the
26 regulation.

1 127. Many of the changes that have been made to the INA since the enactment of
2 the registration provisions reflect Congress's decision to focus on and prioritize
3 immigration enforcement against those immigrants who commit serious criminal offenses.
4 Targeting immigrants convicted of serious crimes, rather than those who may be in
5 violation of the registration provisions, is the principal priority of federal immigration
6 officers.

7 **Federal transportation provision**

8 128. The INA also establishes criminal penalties for the transporting and harboring
9 of certain non-citizens. *See* 8 U.S.C. §§ 1324(a)(1)-(2). Violations of these provisions
10 carry fines and prison terms ranging from five years to life. *Id.*

11 129. The federal courts are engaged in an ongoing process of interpreting the
12 statutory language in 8 U.S.C. § 1324(a) and determining the reach of the federal
13 prohibitions therein. Arizona law enforcement officers are neither trained nor equipped to
14 have a detailed and current understanding of these interpretations.

15 130. Arizona courts are not required to interpret the language in SB 1070 regarding
16 transportation and harboring consistently with the federal courts' interpretation of similar
17 language in federal law.

18 131. SB 1070's transportation and harboring provisions require Arizona's courts, as
19 a prerequisite to finding a violation, to determine whether an alien "has come to, entered,
20 or remains in the United States in violation of the law" or whether an alien's entry "will
21 be in violation of law" as those terms are used in 8 U.S.C. § 1324(a).

22 //

23 **Federal employment authorization and sanctions system**

24 132. The INA contains a comprehensive scheme to regulate the employment of
25 aliens that reflects a careful balance between multiple objectives, including the desire to
26 reduce unauthorized employment, to protect workers against discrimination, and to

1 impose manageable standards on employers and workers. The comprehensiveness of that
2 federal scheme has been recognized by the Supreme Court.

3 133. Congress chose to regulate alien employment in the INA by focusing on
4 employers. Employers are required to verify the employment authorization of applicants
5 on Form I-9, and employers who knowingly employ unauthorized workers are subject to
6 civil penalties or criminal penalties if the violation is sufficiently severe. Federal law does
7 not impose fines or criminal penalties on unauthorized workers simply for working
8 without authorization.

9 134. Arizona's decision to criminalize unauthorized employment despite
10 Congress's choice of other means to address such conduct directly conflicts with federal
11 law.

12 **Federal restrictions on arrest authority**

13 135. State and local police have no general authority to enforce federal immigration
14 law. Federal law specifically authorizes state officers to assist in immigration
15 enforcement only in narrowly defined circumstances and otherwise reserves immigration
16 enforcement authority to the federal government.

17 136. Section 1357(g) of Title 8 of the U.S. Code allows the federal government to
18 "enter into a written agreement with a State, or any political subdivision" to carry out
19 "function[s] of an immigration officer in relation to the investigation, apprehension, or
20 detention of aliens in the United States." 8 U.S.C. § 1357(g). These agreements are
21 commonly referred to as "287(g) agreements" after the section of the INA in which they
22 are codified. However, such agreements may be entered into only if the federal
23 government determines the state officers are "qualified to perform a function of an
24 immigration officer," *id.*, and the federal government must train and supervise officers
25 who are authorized under such an agreement. Nine agencies in Arizona have current
26 agreements pursuant to this statutory provision.

1 137. SB 1070 explicitly grants state and local law enforcement officers authority to
2 make immigration determinations, arrests, and investigations without and outside of the
3 authority provided by a 287(g) agreement, even with respect to those agencies in Arizona
4 that have a 287(g) agreement.

5 138. The other provisions in federal law authorizing state or local immigration
6 enforcement are also carefully constrained. State and local police are authorized to make
7 arrests for certain immigration crimes—smuggling, transporting, or harboring *criminal*
8 aliens, and illegal entry by a previously deported felon. 8 U.S.C. §§ 1103(a)(10), 1252c.
9 Another provision, 8 U.S.C. § 1103(a)(10), allows the Attorney General to authorize “any
10 State or local law enforcement officer” to enforce immigration laws upon certification of
11 “an actual or imminent mass influx of aliens,” but no such certification has occurred.

12 139. Congress’s intent that state and local officers are generally prohibited from
13 enforcing immigration laws is clear both from the statutory scheme and from the
14 statements of its members.

15 140. Even as to federal immigration officers, the INA and associated regulations
16 contain significant restrictions on the circumstances in which warrantless arrests may be
17 made and the procedures that are required following such arrests. 8 U.S.C. §§ 1357(a),
18 (d); 8 C.F.R. §§ 287.1-287.3, 287.5, 287.8, 287.10.

19 **SB 1070 Interferes with Federal Interests**

20 141. Federal officials at the very highest levels oppose SB 1070 as interfering with
21 federal governmental interests.

22 142. Janet Napolitano, the immediate past governor of Arizona and current U.S.
23 Secretary of Homeland Security, said, “The Arizona immigration law will likely hinder
24 federal law enforcement from carrying out its priorities of detaining and removing
25 dangerous criminal aliens.” *Divisive Ariz. Immigration Bill Signed Into Law*, CBS/AP,
26

1 Apr. 23, 2010, available at <http://www.cbsnews.com/stories/2010/04/23/politics/main6426125.shtml>.

3 143. SB 1070 also has created serious foreign relations issues for the U.S.
4 government. U.S. Secretary of State Hillary Clinton noted that the government of Mexico
5 issued a travel advisory for its citizens traveling in Arizona and that SB 1070 had the
6 potential to upset U.S.-Mexico diplomatic efforts on drug enforcement in the border
7 region. Alicia Mundy, *Hillary Clinton Migrates into Arizona Law Controversy*, WALL
8 STREET J. (online edition), May 2, 2010, available at [http://blogs.wsj.com/washwire/2010/](http://blogs.wsj.com/washwire/2010/05/02/hillary-clinton-migrates-into-arizona-law-controversy/)
9 [05/02/hillary-clinton-migrates-into-arizona-law-controversy/](http://blogs.wsj.com/washwire/2010/05/02/hillary-clinton-migrates-into-arizona-law-controversy/). Mexican President Felipe
10 Calderón stated that SB 1070 will “seriously affect[]” trade and political ties with
11 Arizona. *FCH Condemns Anti-Immigrant Law*, THE NEWS, Apr. 27, 2010, available at
12 <http://thenews.com.mx/articulo/fch-condemns-anti-immigrant-law-10427>. The Foreign
13 Secretary of Mexico, Patricia Espinosa, also said that SB 1070 will affect U.S.-Mexico
14 relations and “obligates the Mexican government to reconsider the viability and
15 usefulness of cooperation agreements that have been developed with Arizona.” Erin
16 Kelly, *Arizona Immigration Law Revives Calls for Federal Action on Reform*, ARIZ.
17 REPUBLIC, Apr. 24, 2010, available at [http://www.azcentral.com/arizonarepublic/news/](http://www.azcentral.com/arizonarepublic/news/articles/2010/04/24/20100424arizona-immigration-bill-federal-action.html)
18 [articles/2010/04/24/20100424arizona-immigration-bill-federal-action.html](http://www.azcentral.com/arizonarepublic/news/articles/2010/04/24/20100424arizona-immigration-bill-federal-action.html).

19 144. Like Mexico, the government of El Salvador has issued a travel advisory for its
20 nationals traveling to Arizona. See Jonathan Cooper & Paul Davenport, *Lawsuits Target*
21 *New Arizona Immigration Law*, ASSOCIATED PRESS, Apr. 29, 2010, available at
22 http://www.msnbc.msn.com/id/36853483/ns/us_news-crime_and_courts/.

23 145. Guatemala’s Foreign Relations Department decried SB 1070 in a statement
24 saying “it threatens basic notions of justice.” See *Civil Rights Groups Fight Ariz.*
25 *Immigration Law*, ASSOCIATED PRESS, Apr. 24, 2010, available at [http://www.](http://www.msnbc.msn.com/id/36735281)
26 [msnbc.msn.com/id/36735281](http://www.msnbc.msn.com/id/36735281).

1 **SB 1070 Promotes Racial Profiling and Endangers Minority Communities**

2 146. Janet Napolitano stated that SB 1070 “is a very difficult bill to enforce in a
3 racially neutral way.” Eric Zimmerman, *Justice Dept. May Challenge Arizona Law*, THE
4 HILL, Apr. 27, 2010, available at [http://thehill.com/blogs/blog-briefing-](http://thehill.com/blogs/blog-briefing-room/news/94631-justice-dept-may-challenge-to-ariz-law-in-court)
5 [room/news/94631-justice-dept-may-challenge-to-ariz-law-in-court](http://thehill.com/blogs/blog-briefing-room/news/94631-justice-dept-may-challenge-to-ariz-law-in-court). According to
6 Napolitano, “I think it does and can invite racial profiling.” Jake Tapper, *Napolitano:*
7 *Arizona Law “Bad for Law Enforcement”*, ABC NEWS: POLITICAL PUNCH, May 2, 2010,
8 available at [http://blogs.abcnews.com/politicalpunch/2010/05/napolitano-arizona-law-](http://blogs.abcnews.com/politicalpunch/2010/05/napolitano-arizona-law-bad-for-law-enforcement.html)
9 [bad-for-law-enforcement.html](http://blogs.abcnews.com/politicalpunch/2010/05/napolitano-arizona-law-bad-for-law-enforcement.html).

10 147. Attorney General Eric Holder further criticized SB 1070, saying, “I think we
11 could potentially get on a slippery slope where people will be picked on because of how
12 they look as opposed to what they have done, and that is, I think, something that we have
13 to try to avoid at all costs.” *Holder: Feds May Sue Over Arizona Immigration Law*, CNN,
14 May 9, 2010, available at [http://www.cnn.com/2010/POLITICS/05/09/holder.arizona-](http://www.cnn.com/2010/POLITICS/05/09/holder.arizona-immigration/index.html)
15 [immigration/index.html](http://www.cnn.com/2010/POLITICS/05/09/holder.arizona-immigration/index.html). Attorney General Holder also stated that implementation of SB
16 1070 will lead to “a situation where people are racially profiled, and that could lead to a
17 wedge drawn between certain communities and law enforcement, which leads to the
18 problem of people in those communities not willing to interact with people in law
19 enforcement, not willing to share information, not willing to be witnesses where law
20 enforcement needs them.” *Id.*

21 148. Many prominent law enforcement and elected officials in Arizona have
22 condemned SB 1070 on the grounds that it will lead to rampant racial profiling, divert
23 resources from law enforcement work, keep immigrants and other people of color from
24 reporting crimes to police, and ultimately diminish community safety.

25 149. Former Governor Napolitano said, “With the strong support of state and local
26 law enforcement, I vetoed several similar pieces of legislation as governor of Arizona

1 because they would have diverted critical law enforcement resources from the most
2 serious threats to public safety and undermined the vital trust between local jurisdictions
3 and the communities they serve.” *Divisive Ariz. Immigration Bill Signed Into Law*,
4 CBS/AP, Apr. 23, 2010, available at [http://www.cbsnews.com/stories/2010/04/23/
5 politics/main6426125.shtml](http://www.cbsnews.com/stories/2010/04/23/politics/main6426125.shtml).

6 150. The Arizona Association of Chiefs of Police opposed SB 1070, stating that SB
7 1070 “will negatively affect the ability of law enforcement agencies across the state to
8 fulfill their many responsibilities in a timely manner.” See Press Release, Arizona
9 Association of Chiefs of Police, AACOP Statement on Senate Bill 1070, available at
10 http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf.

11 151. Pima County Sheriff Clarence Dupnik has warned that the law will lead to
12 racial profiling. He stated, “[i]f I tell my people to go out and look for A, B, and C,
13 they're going to do it. They'll find some flimsy excuse like a tail light that's not
14 working as a basis for a stop, which is a bunch of baloney.” See *The Dupnik Rebellion:
15 Pima's Top Cop Says 'No' to SB 1070*, KGUN-ABC NEWS, Apr. 27, 2010, available at
16 <http://www.kgun9.com/Global/story.asp?S=12386648>.

17 152. Chief John Harris of the Sahuarita Police Department, who is the current
18 president of the Arizona Association of Chiefs of Police, cautioned that “victims may not
19 report crimes to his officers” as a result of SB 1070. See Dan Whitcomb, *Arizona Police
20 Chief Criticizes Immigration Law*, REUTERS, Apr. 30, 2010, available at
21 <http://www.reuters.com/article/idUSTRE63T5G220100430>; see also Nathan Thornburg,
22 *Arizona Police Split on Immigration Crackdown*, TIME.COM, Apr. 30, 2010, available at
23 <http://www.time.com/time/nation/article/0,8599,1986080,00.html>

24 153. Phil Gordon, the Mayor of Phoenix, stated that SB 1070 “unconstitutionally
25 co-opts our police force to enforce immigration laws that are the rightful jurisdiction of
26 the federal government.” Phil Gordon, *Not in My State: Anti-Immigration Law Doesn't*

1 *Reflect the Beliefs of Arizona's People*, WASH. POST, Apr. 24, 2010, available at
2 [http://www.washingtonpost.com/wp-dyn/content/article/2010/04/23/
3 AR2010042304469.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/04/23/AR2010042304469.html).

4 154. The policies and practices of the Maricopa County Sheriff's Office ("MCSO")
5 demonstrate that SB 1070 cannot be enforced without improperly singling out racial and
6 ethnic minorities, including many U.S. citizens and persons authorized by the federal
7 government to be present in the U.S., for stops, interrogations, arrests, and detentions.

8 155. Maricopa County Sheriff Arpaio has publicly stated that his own agency has
9 been doing what he believes SB 1070 mandates. MSNBC NEWS, April 26, 2010,
10 available at <http://www.youtube.com/watch?v=UHfOBUDzoPo>. Three years ago, Sheriff
11 Arpaio announced that MCSO was becoming "a full fledged anti-illegal immigration
12 agency." Judi Villa and Yvonne Wingett, *Sheriff Unveils Migrant Hotline*, ARIZ.
13 REPUBLIC, Jul. 21, 2007, available at [http://www.azcentral.com/arizonarepublic/
14 local/articles/0721hotline0721.html](http://www.azcentral.com/arizonarepublic/local/articles/0721hotline0721.html).

15 156. According to MCSO training materials, the fact that an individual has no
16 English skills or speaks English poorly is a factor indicating that an individual is not
17 "lawfully present" in the United States. Alia Beard Rau and Mary Jo Pitzl, *Momentum
18 Built Over Years Led to Immigration Law*, ARIZ. REPUBLIC, May 9, 2010, available at
19 [http://www.azcentral.com/arizonarepublic/news/articles/2010/05/09/20100509immigratio
20 n-law-momentum.html](http://www.azcentral.com/arizonarepublic/news/articles/2010/05/09/20100509immigration-law-momentum.html) (training video on right hand panel); see also J.J. Hensley, *New
21 Law Could Encourage Immigration Sweeps*, ARIZ. REPUBLIC, May 1, 2010, available at
22 [http://www.azcentral.com/arizonarepublic/local/articles/2010/05/01/20100501phoenix-
23 joe-arpaio-crime-sweep.html](http://www.azcentral.com/arizonarepublic/local/articles/2010/05/01/20100501phoenix-joe-arpaio-crime-sweep.html) (describing training video).

24 157. As part of its focus on immigration enforcement, MCSO has systematically
25 used pretextual stops to investigate immigration, targeting Latinos. Since 2007, the
26 agency has instituted a policy of identifying day laborers and persons appearing to be

1 Latino whom deputies should investigate for potential immigration violations, and then
2 developing probable cause for a traffic violation to stop them.

3 158. A comprehensive investigation by the Arizona Republic found that during
4 eight MCSO so-called “crime suppression operations” studied, MCSO deputies engaged
5 in selective enforcement of the traffic law, and that the majority of drivers and passengers
6 arrested were Latino even in predominantly White areas. Daniel Gonzalez, *Sheriff’s*
7 *Office Says Race Plays No Role in Who Gets Pulled Over*, ARIZ. REPUBLIC, Oct. 5, 2008,
8 available at [http://www.azcentral.com/news/articles/2008/10/05/20081005arpaio-](http://www.azcentral.com/news/articles/2008/10/05/20081005arpaio-profiling1005.html)
9 [profiling1005.html](http://www.azcentral.com/news/articles/2008/10/05/20081005arpaio-profiling1005.html).

10 159. As a result of evidence of a pattern and practice of civil rights violations,
11 MCSO is currently the subject of a civil rights investigation by the U.S. Department of
12 Justice.

13 160. Demonstrating that the intent of SB 1070, as amended by HB 2162, is to
14 enable pretextual stops and arrests for the purpose of immigration enforcement, State
15 Senator Russell Pearce inadvertently circulated an email on April 28, 2010 which
16 explained one provision of HB 2162 as follows: “When we drop out ‘lawful contact’ and
17 replace it with ‘a stop, detention, or rest [*sic*], in the enforcement a violation of any title or
18 section of the Arizona code’ we need to add ‘or any county or municipal ordinance.’ This
19 will allow police to use violations of property codes (i.e. cars on blocks in the yard) or
20 rental codes (too many occupants of a rental accommodation) to initiate queries as well.”
21 Gabriel Winant, *E-Mail Reveals Arizona Law Was Designed To Maximize Harassment*,
22 SALON, May 3, 2010, available at [http://www.salon.com/news/politics/war_room/](http://www.salon.com/news/politics/war_room/2010/05/03/arizona_kobach_profiling)
23 [2010/05/03/arizona_kobach_profiling](http://www.salon.com/news/politics/war_room/2010/05/03/arizona_kobach_profiling). SB 1070 was intended to create opportunities for
24 officers to determine which members of the community should be investigated as to their
25 immigration status first, and then to develop a pretextual reason to stop them for some
26 other violation of state or local law second.

1 **CLASS ACTION ALLEGATIONS**

2 161. The Individual Plaintiffs bring this action on behalf of themselves and all other
3 persons similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2).

4 The class, as proposed by Plaintiffs, consists of all persons:

- 5 (a) who as a result of their race or national origin are or will be subject to
6 stop, detention, arrest or questioning about their immigration or
7 nationality status or required to produce documentation of that status,
8 pursuant to a provision of SB 1070; or
9 (b) who are or will be deterred from soliciting employment in a public place
10 or performing work as an employee or independent contractor by § 5 of
11 SB 1070; or
12 (c) who are or will be deterred from using their customary language, accent,
13 or other expressive conduct, or from approaching government officials to
14 obtain redress because of the provisions of SB 1070; or
15 (d) who are or will be deterred from living, associating, worshiping, or
16 traveling with immigrants in Arizona because of the provisions of SB
17 1070; or
18 (e) who are or will be deterred from traveling into or through the State of
19 Arizona because of the provisions of SB 1070.

20 162. The requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(2) are
21 met in that the class is so numerous that joinder of all members is impracticable.

22 163. There are questions of law and fact common to the proposed class, including:

23 (1) whether SB 1070 is preempted by the U.S. Constitution and federal law; (2) whether
24 SB 1070 deprives racial and national origin minorities of the equal protection of the laws
25 within the meaning of the Fourteenth Amendment of the U.S. Constitution; (3) whether
26 SB 1070 violates the First Amendment of the U.S. Constitution; (4) whether SB 1070
violates the Fourth Amendment of the U.S. Constitution and Article 2, Section 8 of the

1 Arizona Constitution; and (5) whether SB 1070 is impermissibly vague and violates due
2 process of law. These questions predominate over any questions affecting only the
3 Individual Plaintiffs.

4 164. The claims of the Individual Plaintiffs are typical of the claims of the proposed
5 class.

6 165. All of the Individual Plaintiffs will fairly and adequately represent the interests
7 of all members of the proposed class because they seek relief on behalf of the class as a
8 whole and have no interests antagonistic to other members of the class. The Individual
9 Plaintiffs are also represented by *pro bono* counsel, including the ACLU of Arizona, the
10 ACLU Foundation Immigrants' Rights Project, the Mexican American Legal Defense and
11 Educational Fund, the National Immigration Law Center, the Asian Pacific American
12 Legal Center (a member of the Asian American Center for Advancing Justice), the
13 National Day Laborer Organizing Network, the National Association for the
14 Advancement of Colored People, Altshuler Berzon LLP, and Munger, Tolles & Olson
15 LLP, who have extensive expertise in class action litigation, including litigation regarding
16 the rights of immigrants. Finally, Defendants have acted and will act on grounds
17 generally applicable to the class in executing their duties to enforce SB 1070, thereby
18 making appropriate final injunctive relief with respect to the class as a whole.

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21 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

22 166. An actual and substantial controversy exists between Plaintiffs and Defendants
23 as to their respective legal rights and duties. Plaintiffs contend that they face an imminent
24 threat of harm if SB 1070 is enforced, and that SB 1070 violates the U.S. Constitution,
25 federal law, and state law. Defendants are obligated to enforce SB 1070 unless it is found
26 to be illegal.

1 167. In violating Plaintiffs' rights under the U.S. Constitution, federal law, and state
2 law, Defendants have acted and will be acting under color of law.

3 168. If allowed to go into effect, SB 1070 will cause irreparable injury to Plaintiffs.

4 169. Plaintiffs have no plain, speedy, and adequate remedy at law against SB 1070
5 other than the relief requested in this Complaint.

6 170. Article IV, part 1, § 1(3) of the Arizona Constitution provides that "no act
7 passed by the legislature shall be operative for ninety days after the close of the session of
8 the legislature enacting such measure," except certain specifically designated "emergency
9 measures." The legislative session during which SB 1070 and HB 2162 were enacted
10 ended on April 29, 2010. Accordingly, the effective date of SB 1070 is July 28, 2010.

11 171. If SB 1070 goes into effect and is not enjoined, Plaintiffs will suffer irreparable
12 harm as alleged above.

13 172. SB 1070 will require persons in the state to carry immigration registration
14 documents under state law to avoid detention, arrest, and possible prosecution. In
15 addition, SB 1070 will cause the investigation, detention, harassment, and arrest of
16 numerous persons of color in Arizona, including members of Plaintiffs UFCW, BAN,
17 Tonatierra, SEIU, SEIU Arizona, MAS, and JACL, as well as Individual Plaintiffs Pedro
18 Espinoza, C.M., Luz Santiago, Jim Shee, Jose Vargas, Maura Castillo, Maria Morales,
19 John Doe #1, Jane Doe #3, and members of the plaintiff class.

20 173. In addition, SB 1070 will thwart the mission of and subject to criminal
21 prosecution numerous service and business organizations, including Plaintiffs Friendly
22 House, ASASF, AZHCC, Valle del Sol, and Derechos Humanos.

23 174. In doing the things alleged in this Complaint, defendants will deny plaintiffs'
24 rights secured by the U.S. Constitution, federal law, and state law.

25 175. Defendants' implementation of SB 1070 will constitute an official policy of
26 their respective jurisdictions.

1 176. Plaintiffs are entitled to a declaration that SB 1070 is unconstitutional on its
2 face and to an order preliminarily and permanently enjoining its enforcement.

3 **CAUSES OF ACTION**

4 **COUNT ONE**

5 **SUPREMACY CLAUSE; 42 U.S.C. § 1983**

6 177. The foregoing allegations are repeated and incorporated as though fully set
7 forth herein.

8 178. The Supremacy Clause, Article VI, Section 2, of the U.S. Constitution
9 provides:

10 This Constitution, and the Laws of the United States which shall be made
11 in Pursuance thereof; and all Treaties made, or which shall be made, under
12 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.

13 179. The Supremacy Clause mandates that federal law preempts state law in any
14 area over which Congress expressly or impliedly has reserved exclusive authority or
15 which is constitutionally reserved to the federal government, or where state law conflicts
16 or interferes with federal law.

17 180. SB 1070 is void in its entirety because it attempts to bypass federal
18 immigration law and to supplant it with a state policy of “attrition through enforcement,”
19 in violation of the prohibition on state regulation of immigration.

20 181. SB 1070 conflicts with federal laws and policies, usurps powers
21 constitutionally vested in the federal government exclusively, attempts to legislate in
22 fields occupied by the federal government, imposes burdens and penalties on legal
23 residents not authorized by and contrary to federal law, and unilaterally imposes burdens
24 on the federal government’s resources and processes, each in violation of the Supremacy
25 Clause.
26

1 182. Plaintiffs move for declaratory and injunctive relief on this claim directly
2 under the Constitution, and as an action seeking redress of the deprivation of statutory
3 rights under the color of state law, and also under 42 U.S.C. § 1983.

4 **COUNT TWO**

5 **EQUAL PROTECTION; 42 U.S.C. § 1983**

6 183. The foregoing allegations are repeated and incorporated as though fully set
7 forth herein.

8 184. The Fourteenth Amendment to the U.S. Constitution provides that “No State
9 shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

10 185. SB 1070 was enacted with the purpose and intent to discriminate against racial
11 and national origin minorities, including Latinos, on the basis of race and national origin.

12 186. SB 1070 impermissibly and invidiously targets Plaintiffs who are racial and
13 national origin minorities, including Latinos, residing or traveling in Arizona and subjects
14 them to stops, detentions, questioning, and arrests because of their race and/or national
15 origin.

16 187. SB 1070 impermissibly deprives Plaintiffs who are racial and national origin
17 minorities, including Latinos, residing or traveling in Arizona of the equal protection of
18 the laws within the meaning of the Fourteenth Amendment to the U.S. Constitution.

19 188. Section 3 of SB 1070 impermissibly discriminates against non-citizen
20 Plaintiffs on the basis of alienage and deprives them of the equal protection of the laws
21 within the meaning of the Fourteenth Amendment to the U.S. Constitution.

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1 **COUNT THREE**

2 **FIRST AMENDMENT; 42 U.S.C. § 1983**

3 **[COUNT THREE HAS BEEN DISMISSED IN PART PURSUANT TO COURT ORDER.**
4 **PLAINTIFFS THUS DELETE THE RELEVANT ALLEGATIONS BUT PRESERVE THEIR APPEAL**
5 **RIGHTS.]**

6 189. The foregoing allegations are repeated and incorporated as though fully set
7 forth herein.

8 190. The First Amendment to the U.S. Constitution provides that “Congress shall
9 make no law . . . abridging the freedom of speech . . . or the right of the people peaceably
10 to assemble, and to petition the Government for a redress of grievances.” The First
11 Amendment’s guarantees are applied to the States through the Fourteenth Amendment.

12 191. Sections 5(A) and (B) of SB 1070 are unconstitutional restrictions of rights
13 guaranteed by the First Amendment.

14 **COUNT FOUR**

15 **FOURTH AMENDMENT; 42 U.S.C. § 1983**

16 **[COUNT FOUR HAS BEEN DISMISSED IN PART PURSUANT TO COURT ORDER. PLAINTIFFS**
17 **THUS DELETE THE RELEVANT ALLEGATIONS BUT PRESERVE THEIR APPEAL RIGHTS.]**

18 192. The foregoing allegations are repeated and incorporated as though fully set
19 forth herein.

20 193. The Fourth Amendment to the U.S. Constitution prohibits “unreasonable
21 searches and seizures.” The Fourth Amendment’s guarantees are applied to the States
22 through the Fourteenth Amendment.

23 194. Section 2 of SB 1070, as amended by Section 3 of HB 2162, requires that
24 officers conduct unreasonable seizures of individuals in violation of the Fourth
25 Amendment.

26 195. Sections 2 and 6 of SB 1070 provide for warrantless seizures of individuals in
the absence of probable cause that they have committed crimes, in violation of the Fourth
Amendment.

1 196. Section 2 of SB 1070 authorizes officers to detain individuals without lawful
2 authority, in violation of the Fourth Amendment.

3 **COUNT FIVE**

4 **VIOLATION OF ARTICLE II, § 8 OF THE ARIZONA CONSTITUTION**
5 **[COUNT FIVE HAS BEEN DISMISSED IN PART PURSUANT TO COURT ORDER. PLAINTIFFS**
6 **THUS DELETE THE RELEVANT ALLEGATIONS BUT PRESERVE THEIR APPEAL RIGHTS.]**

7 197. The foregoing allegations are repeated and incorporated as though fully set
8 forth herein.

9 198. Article 2, Section 8 of the Arizona Constitution provides: “No person shall be
10 disturbed in private affairs...without authority of law.”

11 199. In addition, SB 1070 provides for warrantless seizures of individuals in the
12 absence of probable cause that they have committed crimes.

13 200. Moreover, SB 1070 extends this broad, warrantless arrest authority to the
14 context of an individual's home.

15 **COUNT SIX**

16 **DUE PROCESS; 42 U.S.C. § 1983**

17 **[COUNT SIX HAS BEEN DISMISSED IN PART PURSUANT TO COURT ORDER. PLAINTIFFS**
18 **THUS DELETE THE RELEVANT ALLEGATIONS BUT PRESERVE THEIR APPEAL RIGHTS.]**

19 201. The foregoing allegations are repeated and incorporated as though fully set
20 forth herein.

21 202. The Fourteenth Amendment to the U.S. Constitution provides: “No State shall
22 . . . deprive any person of life, liberty, or property, without due process of law”

23 203. Section 2 of SB 1070 permits state and local law enforcement officials to seize,
24 detain, and transfer individuals without appropriate procedures, thereby depriving
25 Plaintiffs of their liberty without due process of law.

26 204. Section 6 of SB 1070 is vague and violates due process. The terms “public
offense” and “removable” do not provide meaningful standards and vest officers with
unbridled discretion to make arbitrary and discriminatory arrests.

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COUNT SEVEN

SECTION 1981; 42 U.S.C. § 1983

205. The foregoing allegations are repeated and incorporated as though fully set forth herein.

206. Section 1981 of Title 42 of the United States Code guarantees that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory . . . to the full and equal benefit of all laws and proceedings for the security of persons and property.” Section 1981 also provides that all persons “shall be subject to like punishments, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

207. Section 1981 prohibits discrimination under color of state law on the basis of alienage, national origin, and race.

208. SB 1070 impermissibly discriminates against persons within the State of Arizona on the basis of alienage and national origin and race.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing facts and arguments, Plaintiffs request that the Court:

- a. Assume jurisdiction over this matter;
- b. Declare that SB 1070 is unconstitutional in its entirety;
- c. Enjoin Defendants from enforcing SB 1070;
- d. Grant Plaintiffs’ costs of suit, and reasonable attorneys’ fees and other expenses pursuant to 28 U.S.C. § 1988; and

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e. Grant such other relief as the Court may deem appropriate.

Dated: October 31, 2011

Respectfully submitted,

/s/ Linton Joaquin
NATIONAL IMMIGRATION LAW
CENTER

/s/ Omar C. Jadwat
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION IMMIGRANTS'
RIGHTS PROJECT

/s/ Victor Viramontes
MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND

/s/ Daniel J. Pochoda
ACLU FOUNDATION OF ARIZONA

/s/ Chris Newman
NATIONAL DAY LABOR ORGANIZING
NETWORK

/s/ Yungsohn Park
ASIAN PACIFIC AMERICAN LEGAL
CENTER

/s/ Daniel R. Ortega
ORTEGA LAW FIRM

/s/ Laura D. Blackburne
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
(NAACP)

On behalf of Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2011, I electronically filed FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Linton Joaquin
Linton Joaquin