

1 Omar C. Jadwat (admitted *pro hac vice*)
2 Lucas Guttentag (admitted *pro hac vice*)
3 AMERICAN CIVIL LIBERTIES UNION
4 FOUNDATION IMMIGRANTS'
5 RIGHTS PROJECT
6 125 Broad Street, 18th Floor
7 New York, New York 10004
8 Telephone: (212) 549-2660
9 Facsimile: (212) 549-2654
10 *ojadwat@aclu.org*
11 *lguttentag@aclu.org*

12 Linton Joaquin (admitted *pro hac vice*)
13 Karen C. Tumlin (admitted *pro hac vice*)
14 Nora A. Preciado (admitted *pro hac vice*)
15 Melissa S. Keaney (admitted *pro hac vice*)
16 NATIONAL IMMIGRATION LAW
17 CENTER
18 3435 Wilshire Boulevard, Suite 2850
19 Los Angeles, California 90010
20 Telephone: (213) 639-3900
21 Facsimile: (213) 639-3911
22 *joaquin@nilc.org*
23 *tumlin@nilc.org*
24 *preciado@nilc.org*
25 *keaney@nilc.org*

Thomas A. Saenz (admitted *pro hac vice*)
Victor Viramontes (admitted *pro hac vice*)
Nicholás Espíritu (admitted *pro hac vice*)
MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND
634 S. Spring Street, 11th Floor
Los Angeles, California 90014
Telephone: (213) 629-2512
Facsimile: (213) 629-0266
tsaenz@maldef.org
vviramontes@maldef.org
nespiritu@maldef.org

Attorneys for Plaintiffs
Additional Co-Counsel on Subsequent Page

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Friendly House, *et al*,
Plaintiffs,
v.
Michael B. Whiting, *et al.*,
Defendants.

CASE NO. CV-10-01061-SRB
**PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION AND MEMORANDUM
IN SUPPORT THEREOF**
(ORAL ARGUMENT REQUESTED)

1 Daniel J. Pochoda (SBA No. 021979)
 2 ACLU FOUNDATION OF ARIZONA
 3 77 E. Columbus Street, Suite 205
 4 Phoenix, Arizona 85012
 Telephone: (602) 650-1854
 Facsimile: (602) 650-1376
dpochoda@acluaz.org

5 Nina Perales (admitted *PHV*)
 6 MEXICAN AMERICAN LEGAL DEFENSE
 7 AND EDUCATIONAL FUND
 8 110 Broadway Street, Suite 300
 San Antonio, Texas 78205
 Telephone: (210) 224-5476
 Facsimile: (210) 224-5382
nperales@maldef.org

9 Chris Newman (admitted *PHV*)
 10 Lisa Kung (admitted *PHV*)
 11 NATIONAL DAY LABOR ORGANIZING
 NETWORK
 12 675 S. Park View Street, Suite B
 Los Angeles, California 90057
 Telephone: (213) 380-2785
 Facsimile: (213) 380-2787
newman@ndlon.org
kung@ndlon.org

15 Bradley S. Phillips+ (admitted *PHV*)
 Paul J. Watford+ (admitted *PHV*)
 16 Joseph J. Ybarra+ (admitted *PHV*)
 Benjamin J. Maro+ (admitted *PHV*)
 17 Lika C. Miyake+ (admitted *PHV*)
 Margaret G. Ziegler+ (admitted *PHV*)
 18 MUNGER, TOLLES & OLSON LLP+
 355 South Grand Avenue, 35th Floor
 19 Los Angeles, CA 90071-1560
 Telephone: (213) 683-9100
 Facsimile: (213) 687-3702
Brad.Phillips@mto.com
 21 *Paul.Watford@mto.com*
Joseph.Ybarra@mto.com
 22 *Benjamin.Maro@mto.com*
Lika.Miyake@mto.com
 23 *Margaret.Ziegler@mto.com*

24 Aaron G. Leiderman+ (admitted *PHV*)
 25 MUNGER, TOLLES & OLSON LLP+
 560 Mission Street, 27th Floor
 San Francisco, CA 94105-2907
 26 Telephone: (415) 512-4000
 Facsimile: (415) 512-4077
 27 *Aaron.Leiderman@mto.com*

Cecillia D. Wang (admitted *PHV*)
 Kenneth J. Sugarman (admitted *PHV*)
 AMERICAN CIVIL LIBERTIES UNION
 FOUNDATION, IMMIGRANTS' RIGHTS
 PROJECT
 39 Drumm Street
 San Francisco, California 94111
 Telephone: (415) 343-0775
 Facsimile: (415) 395-0950
cwang@aclu.org

Yungsohn Park (admitted *PHV*)
 Connie Choi (admitted *PHV*)
 Carmina Ocampo (admitted *PHV*)
 ASIAN PACIFIC AMERICAN LEGAL
 CENTER, a member of Asian American Center
 for Advancing Justice
 1145 Wilshire Blvd., Suite 200
 Los Angeles, California 90017
 Telephone: (213) 977-7500
 Facsimile: (213) 977-7595
ypark@apalc.org
cchoi@apalc.org
cocampo@apalc.org

Daniel R. Ortega, Jr. (SBA No. 005015)
 ROUSH, MCCracken, GUERRERO,
 MILLER & ORTEGA
 1112 E. Washington Street
 Phoenix, Arizona 85034
 Telephone: (602) 253-3554
 Facsimile: (602) 340-1896
danny@ortegalaw.com

Stephen P. Berzon++ (admitted *PHV*)
 Jonathan Weissglass++ (admitted *PHV*)
 ALTSHULER BERZON LLP++
 177 Post Street, Suite 300
 San Francisco, CA 94108
 Telephone: (415) 421-7151
 Facsimile: (415) 362-8064
sberzon@altshulerberzon.com
jweissglass@altshulerberzon.com

+Attorneys for all plaintiffs except Service
 Employees International Union, Service
 Employees International Union, Local 5,
 United Food and Commercial Workers
 International Union, and Japanese American
 Citizens League
 ++Attorneys for Service Employees
 International Union, Service Employees
 International Union, Local 5, and United Food
 and Commercial Workers International Union

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. PROCEDURAL BACKGROUND.....	1
III. ARGUMENT.....	
A. PROPOSED CLASS DEFINITIONS	4
B. PLAINTIFFS’ PROPOSED CLASSES MEET THE LEGAL STANDARD FOR CLASS CERTIFICATION UNDER RULE 23(a).....	5
1. Joinder Of Thousands Of Arizonans Impacted By SB 1070 Is Impractical.....	6
2. The Proposed Classes Share Common Questions Of Law And Fact.....	9
3. The Claims of the Named Plaintiffs Are Typical Of The Proposed Classes	11
4. The Named Plaintiffs Fairly And Adequately Represent The Proposed Classes	13
C. THE PROPOSED CLASSES SATISFY THE REQUIREMENTS OF RULE 23(b)(2).....	14
IV. CONCLUSION	

1 **TABLE OF AUTHORITIES**

2 **Page**

3

4 **FEDERAL CASES**

5 *Amchem Prods., Inc. v. Windsor*,

6 521 U.S. 591 (1997)..... 9

7 *Ansari v. New York Univ.*,

8 179 F.R.D. 112 (S.D.N.Y. 1998) 6

9 *Arnold v. United Artists Theatre Circuit, Inc.*,

10 158 F.R.D. 439 (N.D. Cal. 1994)..... 10

11 *Barnes v. American Tobacco Co.*,

12 161 F.3d 127 (3d Cir. 1998)..... 14

13 *Blackie v. Barrack*,

14 524 F.2d 891 (9th Cir. 1975)..... 6

15 *Celano v. Marriott Int’l, Inc.*,

16 242 F.R.D. 544 (N.D. Cal. 2007)..... 7, 10

17 *Consolidated Rail Corp. v. Town of Hyde Park*,

18 47 F. 3d 473 (2d Cir. 1995)..... 6

19 *Doe v. Los Angeles Unified Sch. Dist.*,

20 48 F. Supp. 2d 1233 (C.D. Cal. 1999) 11

21 *Doe v. Prosecutor, Marion County, Ind.*,

22 566 F. Supp. 2d 862 (S.D. Ind. 2008) 14

23 *Guadiana v. State Farm Fire & Cas. Co.*,

24 No. CIV 07-326 TUC FRZ (GEE), 2010 WL 582220 (D. Ariz. Jan. 27, 2010)..... 6

25 *Haley v. Medtronic, Inc.*,

26 169 F.R.D. 643 (C.D. Cal. 1996) 7

27 *Hanlon v. Chrysler Corp.*,

28 150 F.3d 1011 (9th Cir. 1998)..... 9, 10, 11

Harris v. Palm Springs Alpine Estates, Inc.

329 F.2d 909 (9th Cir. 1964)..... 8

Ingram v. O’Bannon,

88 F.R.D. 653 (E.D. Pa. 1980)..... 8

TABLE OF AUTHORITIES

		Page
1		
2		
3	<i>Jordan v. Los Angeles County</i> ,	
4	669 F.2d 1311 (9th Cir. 1982).....	9, 10, 13
5	<i>Krzesniak v. Cendant Corp.</i> ,	
6	No. C 05-05156-MEJ, 2007 WL 1795703 (N.D. Cal. June 20, 2007)	10, 11, 12
7	<i>Lerwill v. Inflight Motion Pictures, Inc.</i> ,	
8	582 F.2d 507 (9th Cir. 1978).....	13
9	<i>Lewis ex rel. Young v. Alexander</i> ,	
10	— F.R.D. —, No. 06-3963, 2011 WL 3678721 (E.D. Pa. Aug. 22, 2011).....	15
11	<i>Linney v. Cellular Alaska P’ship</i> ,	
12	151 F.3d 1234 (9th Cir. 1998).....	13
13	<i>Lyell v. Farmers Group Inc. Employees’ Pension Plan</i> ,	
14	No. CV 07-1576-PHX-JAT, 2008 WL 5111113 (D. Ariz. Dec. 3, 2008).....	6
15	<i>Lynch v. Rank</i> ,	
16	604 F. Supp. 30 (N.D. Cal. 1984)	8
17	<i>McDonald v. Corrections Corp. of Am.</i> ,	
18	No. CV-09-00781-PHX-JAT, 2010 WL 4572758 (D. Ariz. Nov. 4, 2010)	6
19	<i>McMillon v. Hawaii</i> ,	
20	261 F.R.D. 536 (D. Haw. 2009).....	16
21	<i>Moeller v. Taco Bell Corp.</i> ,	
22	220 F.R.D. 604 (N.D. Cal. 2004).....	7
23	<i>Mullen v. Treasure Chest Casino, LLC</i> ,	
24	186 F.3d 620 (5th Cir. 1999).....	9
25	<i>Nehmer v. U.S. Veterans’ Admin.</i> ,	
26	118 F.R.D. 113 (N.D. Cal. 1987).....	11
27	<i>Ollier v. Sweetwater Union High Sch. Dist.</i> ,	
28	251 F.R.D. 564 (S.D. Cal. 2008).....	16
	<i>Perez-Funez v. District Director, I.N.S.</i> ,	
	611 F. Supp. 990 (C.D. Cal. 1984).....	13
	<i>Rosario v. Livaditis</i> ,	
	963 F.2d 1013 (7th Cir. 1992).....	11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

	Page
<i>Schwartz v. Harp</i> , 108 F.R.D. 279 (C.D. Cal. 1985)	12
<i>Smiley v. Calumet City, Ill.</i> , No. 08C3017, 2009 WL 1381034 (N.D. Ill. May 15, 2009).....	15
<i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 2003).....	9
<i>Stewart v. Abraham</i> , 275 F.3d 220 (3d Cir. 2001).....	6, 12
<i>Sullivan v. Houston Indep. Sch. Dist.</i> , 307 F. Supp. 1328 (S.D. Tex. 1969)	16
<i>Torres v. New York State Dept. of Labor</i> , 318 F. Supp. 1313 (S.D.N.Y. 1970).....	15
<i>United States v. Arizona</i> , 703 F. Supp. 2d 980 (D. Ariz. 2010).....	2
<i>Von Colln v. County of Ventura</i> , 189 F.R.D. 583 (C.D. Cal. 1999)	10
<i>Wal-Mart Stores, Inc. v. Dukes</i> , --- U.S. ---, 131 S. Ct. 2541 (2011).....	14, 16
<i>Walters v. Reno</i> , 145 F.3d 1032 (9th Cir. 1998).....	1, 9, 11, 14
<i>Waters v. Barry</i> , 711 F. Supp. 1125 (D.D.C. 1989)	16
<i>Winkler v. DTE, Inc.</i> , 205 F.R.D. 235 (D. Ariz. 2001)	6
<i>Yamada v. Nobel Biocare Holding AG</i> , 275 F.R.D. 573 (C.D. Cal. 2011)	6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

	Page
STATUTES AND RULES	
Federal Rules of Civil Procedure	
8.....	2
12(b)(1)	2
12(b)(6)	2
23.....	6
23(a)	4, 5, 13, 14
23(a)(1).....	5, 6, 8
23(a)(2).....	9, 10
23(a)(3).....	11, 12
23(b)(2)	passim
OTHER AUTHORITIES	
Article 2, Section 8 of the Arizona Constitution.....	10
7B Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. § 1798 (3d ed. 2011)	6

I. INTRODUCTION

Plaintiffs seek certification of three classes of individuals who will be harmed by the implementation and enforcement of Arizona Senate Bill 1070 (“SB 1070”), a comprehensive state regulation of immigration expressly intended to “discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.” SB 1070, § 1.

Specifically, Plaintiffs seek to certify the following classes of persons who will be harmed by SB 1070:

- (a) All persons who as a result of their race or national origin are or will be subject to stop, detention, arrest, or questioning about their immigration or nationality status or required to produce documentation of that status, pursuant to a provision of SB 1070 (“Class A”);
- (b) All persons who are or will be deterred from soliciting work in a public forum and/or performing work as an employee or independent contractor by § 5 of SB 1070 (“Class B”); and
- (c) All persons who are or will be deterred from living, associating, worshiping, or traveling with immigrants in Arizona because of a provision of SB 1070 (“Class C”).

There can be no reasonable dispute that the proposed classes meet the standards for certification. Plaintiffs seek only declaratory and injunctive relief to prevent the implementation and enforcement of a statute that infringes upon the civil rights of thousands of individuals across the state of Arizona—precisely the kind of case for which Rule 23(b)(2) class treatment was designed and is warranted. *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998) (“As the Advisory Committee Notes explain, 23(b)(2) was adopted in order to permit the prosecution of civil rights actions.”). Therefore, the Motion should be granted.

II. PROCEDURAL BACKGROUND

Plaintiffs filed this lawsuit on May 17, 2010. On June 4, 2010, Plaintiffs moved

1 for a preliminary injunction barring the implementation of SB 1070 in its entirety. On
2 July 6, 2010, the federal government filed its own lawsuit challenging many of SB 1070's
3 provisions and moved for a preliminary injunction to bar its implementation. On July 28,
4 2010, the day before SB 1070 was scheduled to take effect, the Court issued a preliminary
5 injunction in the case brought by the federal government, blocking the implementation of
6 four provisions of SB 1070. *United States v. Arizona*, 703 F. Supp. 2d 980 (D. Ariz.
7 2010), *aff'd*, 641 F.3d 339 (9th Cir. 2011).

8 On June 18, 2010, various Defendants filed motions pursuant to Federal Rules of
9 Civil Procedure 8, 12(b)(1), and 12(b)(6), seeking dismissal of all of Plaintiffs' causes of
10 action on standing and other grounds. The Court resolved these motions in its Order dated
11 October 8, 2010. Order Granting in Part and Denying in Part Mtn. to Dismiss and Prelim.
12 Inj., Dkt. #447. Therein, the Court granted in part and denied in part Defendants' motions
13 but allowed most of Plaintiffs' claims to proceed. The Court also denied Plaintiffs'
14 preliminary injunction motion as moot in light of the preliminary injunction issued in the
15 related case brought by the federal government.

16 In accordance with the schedule set by the Court on September 19, 2011, Plaintiffs
17 commenced discovery on issues related to class certification. Specifically, Plaintiffs
18 propounded (1) requests for admission, requests for production of documents, and
19 interrogatories to Intervenor-Defendants the State of Arizona and Governor Janice K.
20 Brewer, *see* Notice of Service, Dkt. #515; (2) a subpoena for documents on non-party
21 Arizona Peace Officer Standards & Training Board ("AZPOST"),¹ *see id.*; and (3) notices
22 of deposition to Governor Brewer and the person(s) most knowledgeable of the State of
23 Arizona, *see* Notice of Service Dkt. #548. The discovery sought information concerning,
24 *inter alia*, the intent of the State of Arizona and Governor Brewer to enforce SB 1070
25 throughout the State of Arizona; the statewide nature and potential impact of SB 1070; the
26

27 ¹ AZPOST is a state-created entity responsible for creating training and standards for all
28 law enforcement officers in Arizona. *See* AZPOST website, *available at*
<http://www.azpost.gov/>.

1 scope of SB 1070 and the number of people it would affect; and whether the State and
2 Governor would implement SB 1070 through a centralized, uniform scheme. In their
3 responses to the requests for admission, the State of Arizona and Governor Brewer
4 admitted, *inter alia*, that prior to the issuance of the preliminary injunction in this case,
5 Intervenor Defendants intended for state and local entities and officials to enforce all
6 provisions of SB 1070 and the Governor took actions to ensure that SB 1070 would be
7 faithfully executed. (Declaration of Margaret G. Ziegler, Ex. A at pp. 2-3 and Ex. B at pp.
8 2-3.) Intervenor Defendants also admitted that if the injunction is lifted, all Arizona
9 county sheriffs and attorneys would be required to enforce SB 1070. (*Id.* at Ex. A, p. 4
10 and Ex. B, pp. 4-5.)

11 Following meet and confer discussions regarding Plaintiffs' discovery, Plaintiffs
12 and Intervenor Defendants agreed to a Stipulation providing as follows: "In connection
13 with Plaintiffs' forthcoming Motion for Class Certification, Intervenor Defendants
14 stipulate that it is the intention of the State of Arizona that each provision of S.B. 1070
15 that is not enjoined will be implemented and enforced uniformly throughout the State of
16 Arizona." Dkt. #552 ¶ 4. The Court approved the Stipulation on December 7, 2011. Dkt.
17 #560.

18 **III. ARGUMENT**

19 Plaintiffs challenge SB 1070 on the grounds that it violates the Supremacy Clause
20 and core civil rights and civil liberties secured by the United States Constitution, including
21 the Fourth Amendment right to freedom from unreasonable searches and seizures, the
22 Fifth Amendment right to due process, the First Amendment right to free speech, and the
23 Fourteenth Amendment's guarantee of equal protection under the law. Plaintiffs hereby
24 seek certification of three classes of persons who, like the named Plaintiffs, will suffer
25 harm as a direct result of the implementation of SB 1070.

26 SB 1070's numerous provisions create a comprehensive state-law system of
27 immigration regulation and enforcement that will: (1) require Arizona law enforcement,
28 including the county sheriff and county attorney Defendants, to investigate and determine

1 which persons present in Arizona may remain in the United States; (2) erect a state
 2 immigration registration and punishment scheme by creating state crimes and criminal
 3 penalties relating to alien registration, immigration status, and work authorization; and (3)
 4 require police to arrest and detain individuals and transfer them to federal authorities
 5 based merely on a belief that they have violated federal civil immigration laws, when state
 6 and local officers are not competent to make such a determination or authorized to make it
 7 under federal law. SB 1070 requires Arizona police officers and sheriffs, Arizona jails,
 8 and Arizona courts to detect, adjudge, punish, and facilitate the deportation of individuals
 9 who, in Arizona's view, are not entitled to remain in the United States. SB 1070 will
 10 require persons in the state to carry immigration registration documents under state law to
 11 avoid detention, arrest, and possible prosecution. In addition, if implemented, SB 1070
 12 will cause the investigation, detention, harassment, and arrest of numerous persons of
 13 color in Arizona because of their race or national origin (or perceived race or national
 14 origin), including members of Plaintiffs United Food and Commercial Workers, Border
 15 Action Network, Tonatierra, Service Employees International Union, Service Employees
 16 International Union Local 5, Muslim American Society, and Japanese American Citizens
 17 League, as well as Individual Plaintiffs C.M., Luz Santiago, Jim Shee, Jose Vargas, Jesús
 18 Cuauhtémoc Villa, John Doe #1, Jane Does #2-3, and members of the plaintiff classes.

19 All named Defendants are responsible for the enforcement of SB 1070. Intervenor
 20 Defendants State of Arizona and Governor Brewer are also responsible for the statewide
 21 implementation and enforcement of SB 1070. The Intervenor Defendants have stipulated
 22 that, if the law is permitted to take effect, they intend to and will enforce each provision of
 23 the law uniformly statewide. Dkt. #552 ¶ 4.

24 **A. PROPOSED CLASS DEFINITIONS**

25 Plaintiffs seek to represent themselves and all other persons similarly situated
 26 pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). Plaintiffs propose the
 27 following three classes:

28 (a) All persons who as a result of their race or national origin are or will be

1 subject to stop, detention, arrest, or questioning about their immigration or
2 nationality status or required to produce documentation of that status,
3 pursuant to a provision of SB 1070;²

4 (b) All persons who are or will be deterred from soliciting work in a public
5 forum and/or performing work as an employee or independent contractor by
6 § 5 of SB 1070;³ and

7 (c) All persons who are or will be deterred from living, associating, worshiping,
8 or traveling with immigrants in Arizona because of a provision of SB 1070.⁴

9 As discussed below, each of these classes satisfies the requirements for
10 certification.

11 **B. PLAINTIFFS' PROPOSED CLASSES MEET THE LEGAL**
12 **STANDARD FOR CLASS CERTIFICATION UNDER RULE 23(a)**

13 In determining whether to certify a class, the Court must determine whether each
14 proposed class meets the four requirements of Rule 23(a), which are: (1) that the class is
15 so numerous that joinder of all members is impracticable (“numerosity”); (2) that there are
16 questions of law or fact common to the class (“commonality”); (3) that the claims or
17 defenses of the representative parties are typical of the claims or defenses of the class
18 (“typicality”); and (4) that the representative parties will fairly and adequately protect the
19 interests of the class (“adequacy of representation”). Fed. R. Civ. P. 23(a). In addition,
20 where, as here, the moving party seeks to certify a class under Rule 23(b)(2), the Court
21 must determine whether “the party opposing the class has acted or refused to act on
22 grounds that apply generally to the class, so that final injunctive relief or corresponding
23
24
25

26 ² The individual Plaintiffs who represent Class A are Pedro Espinoza, C.M., Jim Shee,
27 Jose Angel Vargas, Maura Castillo, Maria Morales, John Doe #1, and Jane Doe #3.

28 ³ The individual Plaintiff who represents Class B is Jose Angel Vargas.

⁴ The individual Plaintiff who represent Class C is Luz Santiago.

1 declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2).

2 In ruling on a motion for class certification, the court is to take the substantive
3 allegations of the First Amended Complaint (“FAC”) as true. *Blackie v. Barrack*, 524
4 F.2d 891, 901 n.17 (9th Cir. 1975); *Yamada v. Nobel Biocare Holding AG*, 275 F.R.D.
5 573, 576 (C.D. Cal. 2011) (“The court may not inquire into the merits of the class
6 representatives’ underlying claims and must accept as true the substantive allegations of
7 the complaint.”); *Guadiana v. State Farm Fire & Cas. Co.*, No. CIV 07-326 TUC FRZ
8 (GEE), 2010 WL 582220, at *2 (D. Ariz. Jan. 27, 2010) (“When a court considers a
9 motion for class certification, it takes the plaintiff’s allegations in the complaint as true. . .
10 .”); *Lyell v. Farmers Group Inc. Employees’ Pension Plan*, No. CV 07-1576-PHX-JAT,
11 2008 WL 5111113, *1 (D. Ariz. Dec. 3, 2008) (same).⁵

12 **1. Joinder Of Thousands Of Arizonans Impacted By SB 1070 Is**
13 **Impractical**

14 Rule 23(a)(1) is easily met here, as each class is so numerous that joinder of all
15 members is impracticable. While there is no numerical threshold for class certification
16 under Rule 23, “[g]enerally speaking, courts will find that the numerosity requirement has
17 been satisfied when the class comprises 40 or more members.” *Ansari v. New York Univ.*,
18 179 F.R.D. 112, 114 (S.D.N.Y. 1998); *Consolidated Rail Corp. v. Town of Hyde Park*, 47
19 F. 3d 473, 483 (2d Cir. 1995) (“numerosity is presumed at a level of 40 members”);
20 *Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001) (40 members satisfies numerosity);
21 *Winkler v. DTE, Inc.*, 205 F.R.D. 235, 240 (D. Ariz. 2001) (numerosity requirement
22 “imposes no absolute limitations”); *McDonald v. Corrections Corp. of Am.*, No. CV-09-
23 00781-PHX-JAT, 2010 WL 4572758, at *4 (D. Ariz. Nov. 4, 2010) (numerosity
24 requirement “does not impose any absolute limitation” but “fifteen members is too small
25

26 ⁵ While the court must accept the allegations in the FAC as true for purposes of class
27 certification, the court may also “request the parties to supplement the pleadings with
28 sufficient material to allow an informed judgment on the class-action rule requirements.”
7B Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. § 1798 n.15 (3d ed. 2011)
(citing *Blackie v. Barrack*, 524 F.2d 891 (9th Cir. 1975)).

1 to meet numerosity requirement”); *Celano v. Marriott Int’l, Inc.*, 242 F.R.D. 544, 549
2 (N.D. Cal. 2007); 1 Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 3:12
3 (5th ed. 2011). The court may determine that the numerosity requirement is met based on
4 general knowledge and common sense. *Moeller v. Taco Bell Corp.*, 220 F.R.D. 604, 608
5 (N.D. Cal. 2004) (citing 1 *Newberg on Class Actions* §3:6); *Haley v. Medtronic, Inc.*, 169
6 F.R.D. 643, 648 (C.D. Cal. 1996)).

7 Each of the three proposed classes has substantially more than forty members. SB
8 1070 is a law of statewide application that would affect literally thousands of Arizonans if
9 fully implemented. In fact, the individual named Plaintiffs and the members of the
10 organizational Plaintiffs alone are sufficiently numerous to meet the class action
11 requirement for Class A. For example, Plaintiff United Food and Commercial Workers
12 International alone represents more than 21,000 workers in Arizona who would be subject
13 to SB 1070. (Declaration of Joseph Hansen, Dkt. #236-1, ¶ 3.) Of those workers, many
14 have varying degrees of English-language proficiency, represent many races and
15 ethnicities, and many are Latinos, all of which make them more likely to be subject them
16 to stops, detentions, arrests or questioning about their immigration or nationality status
17 under SB 1070. (*Id.* ¶¶ 4, 6.) Similarly, Plaintiff Service Employers International Union
18 represents approximately 2,300 workers in Arizona who would be subject to SB 1070.
19 (Declaration of Eliseo Medina, Dkt. #236-5, ¶ 5.) An estimated 40 percent of those
20 workers are Latinos and/or other racial minorities, which increases their chances of being
21 subject to stops, detentions, arrest or questioning about their immigration status under SB
22 1070 as members of Class A. (*Id.* ¶¶ 5, 6.)

23 Taking into consideration Arizona’s current population and given the statewide
24 reach of SB 1070 if it were implemented, the number of individuals aside from Plaintiffs
25 who would be adversely affected by SB 1070 could reach into the hundreds of thousands.
26 According to the latest census figures, Arizona’s population is approximately 6,392,017
27 people and 14.7 percent of those individuals are foreign born. *See* U.S. Census Bureau,
28 State and County QuickFacts, Arizona, *avail. at*

1 <http://quickfacts.census.gov/qfd/states/04000.html>, last visited Dec. 6, 2011. (Pls.’
2 Request for Judicial Notice (“RJN”), Ex. A.) SB 1070 will particularly burden persons of
3 Latino and/or Asian descent, who comprise 29.6 and 2.8 percent of the Arizona
4 population respectively. (*Id.*) Plaintiffs and those similarly situated in Class A are or will
5 be subject to stop, detention, arrest or questioning about their immigration or nationality
6 status or will be required to produce documentation of that status, pursuant to a provision
7 of SB 1070, as a result of their race or national origin. (*See* FAC ¶¶ 21, 22, 24-29, 149-
8 63.) Given the large number of individuals represented by Plaintiffs as well as others
9 similarly situated in Arizona who are or appear to be foreign-born Latinos or Asians, the
10 number of individuals adversely affected by the implementation of SB 1070 far exceeds
11 forty, as does the number of persons who will be deterred from soliciting work in a public
12 forum because of SB 1070. (Declaration of Alison Harrington ¶¶ 7, 8.) The number of
13 individuals deterred from associating with immigrants also indisputably exceeds 40. (*See*
14 RJN Ex. A (14.7% of 6,392,017 Arizonans are foreign born). These showings alone are
15 more than sufficient to satisfy the numerosity requirement of Rule 23(a)(1) for each of the
16 proposed classes.

17 Plaintiffs also satisfy the numerosity requirement because joinder is impracticable
18 given the sheer number of Plaintiffs and class members. *See Harris v. Palm Springs*
19 *Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) (“‘impracticability’ does not
20 mean ‘impossibility,’ but only the difficulty or inconvenience of joining all members of
21 the class”) (citation omitted). Joinder of all potential class members is also impracticable
22 because many of their identities are unknown to Plaintiffs. *See Ingram v. O’Bannon*, 88
23 F.R.D. 653, 656 (E.D. Pa. 1980) (“The fact that a substantial number of class members are
24 unidentified favors a finding of numerosity.”). In addition, joinder is impracticable for
25 logistical reasons. Many of the class members would not have the resources to file
26 individual lawsuits to seek redress of violations of their civil and constitutional rights as a
27 result of implementation of SB 1070. *See Lynch v. Rank*, 604 F. Supp. 30, 36 (N.D. Cal.
28 1984), *aff’d*, 747 F.2d 528 (9th Cir. 1984), *amended on reh’g*, 763 F.2d 1098 (9th Cir.

1 1985) (limited economic means may hamper the ability of class members to bring
2 individual lawsuits and should be considered when assessing whether joinder is
3 impracticable). Moreover, even if they had the logistical ability to bring suit, a number of
4 the class members may not want to bring individual lawsuits to challenge the harms
5 caused by implementation of SB 1070 for fear of retaliation. *See Mullen v. Treasure*
6 *Chest Casino, LLC*, 186 F.3d 620, 624-25 (5th Cir. 1999) (noting that the unwillingness of
7 individuals to initiate or join a lawsuit for fear of retaliation supports class certification);
8 Doe Plfs’ Mot. for Leave to Proceed Under Pseudonyms, Dkt. #3, at 14-15; Decl. of John
9 Doe 1, Dkt. #3-3, ¶ 7. In light of the racially charged and divisive atmosphere in Arizona
10 surrounding SB 1070 and immigration issues, this is a significant factor for the Court to
11 consider.

12 **2. The Proposed Classes Share Common Questions Of Law And** 13 **Fact**

14 Each of the three proposed classes shares common questions of law or fact, as
15 required by Rule 23(a)(2). Fed. R. Civ. P. 23(a)(2); *Amchem Prods., Inc. v. Windsor*, 521
16 U.S. 591, 613 (1997). The commonality requirement does not impose a heavy burden.
17 *Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003) (“Rule 23(a)(2) has been
18 construed permissively.”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)
19 (same); *Jordan v. Los Angeles County*, 669 F.2d 1311, 1323 (9th Cir. 1982), *vacated on*
20 *other grounds*, 459 U.S. 810 (1983) (commonality requirement has generally been given
21 “a permissive application in a variety of substantive law areas so that the commonality
22 requirement is usually found to be satisfied”). Courts have typically construed the
23 commonality requirement liberally in cases seeking certification under Rule 23(b)(2)
24 because an injunction class generally challenges a policy or action affecting an
25 identifiable group in the same manner. The Ninth Circuit has held that, under Rule
26 23(b)(2), the commonality requirement is relaxed and “[i]t is sufficient if class members
27 complain of a pattern or practice that is generally applicable to the class as a whole” such
28 as when Rule 23(b)(2) is used as a “vehicle for challenging ‘a common policy.’” *Walters*

1 v. *Reno*, 145 F.3d 1032, 1047 (1998); *see also Von Colln v. County of Ventura*, 189
 2 F.R.D. 583, 591 (C.D. Cal. 1999) (“When addressing commonality of class members
 3 proposed under Rule 23(b)(2), a court may employ a liberal definition of commonality.”).

4 The commonality requirement “can be met by raising a single common issue that is
 5 central to the case.” *Celano*, 242 F.R.D. at 551 (citing *Staton*, 327 F.3d at 954-56);
 6 *Hanlon*, 150 F.3d at 1019 (commonality requirement is met either by common legal issues
 7 with divergent factual predicates or by common core of facts with disparate legal
 8 remedies); *Krzesniak v. Cendant Corp.*, No. C 05-05156-MEJ, 2007 WL 1795703, at *7
 9 (N.D. Cal. June 20, 2007) (“The existence of shared legal issues with divergent factual
 10 predicates is sufficient, as is a common core of salient facts coupled with disparate legal
 11 remedies within the class.”). Rule 23(a)(2) does not require that every question of law or
 12 fact be common to every member of the class. *Jordan*, 669 F.2d at 1320; *Arnold v.*
 13 *United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448-49 (N.D. Cal. 1994) (“Nor must
 14 ‘all questions of law and fact involved in the dispute be common to all members of the
 15 class.’”) (citation omitted).

16 Plaintiffs easily meet the commonality requirement, as this action raises multiple
 17 questions of law that are common to members of each of the three putative classes.
 18 including: (1) whether SB 1070 is preempted by the U.S. Constitution and federal law;
 19 (2) whether SB 1070 deprives racial and national origin minorities of the equal protection
 20 of the laws within the meaning of the Fourteenth Amendment of the U.S. Constitution; (3)
 21 whether SB 1070 violates the First Amendment of the U.S. Constitution; (4) whether SB
 22 1070 violates the Fourth Amendment of the U.S. Constitution and Article 2, Section 8 of
 23 the Arizona Constitution; and (5) whether SB 1070 is impermissibly vague and violates
 24 due process of law for members of the proposed class.⁶

25 ⁶ Although only one common issue is necessary to certify a class, members of each class
 26 proposed here shares multiple common legal questions: members of Class A share, *inter*
 27 *alia*, questions of preemption, equal protection, the Fourth Amendment, and vagueness in
 28 common; members of Class B share, *inter alia*, questions regarding preemption, equal
 protection, and the First Amendment; and claims by members of Class C all involve, *inter*
alia, questions of preemption and vagueness.

1 Moreover, any factual divergences that may exist within the classes have no
 2 bearing on the commonality determination. Thus, for example although members of Class
 3 A may differ in their citizenship or immigration statuses, these differences do not matter
 4 as the claims in this case challenge the Defendants' violation of various constitutional
 5 safeguards which apply regardless of citizenship or immigration status. *See Walters*, 145
 6 F.3d at 1046 (differences among class members regarding merits of individual cases were
 7 "simply insufficient to defeat the propriety of class certification"); *Doe v. Los Angeles*
 8 *Unified Sch. Dist.*, 48 F. Supp. 2d 1233, 1241 (C.D. Cal. 1999) ("[C]ommonality exists if
 9 plaintiffs share a common harm or violation of their rights, even if individualized facts
 10 supporting the alleged harm or violation diverge."). Similarly, because members of Class
 11 B assert claims under the same legal theories, the specific factual context in which each
 12 member may solicit and obtain employment is immaterial to the commonality analysis. If
 13 Section 5 of SB 1070 is implemented, all members of Class B would, *inter alia* suffer
 14 unconstitutional restrictions of their constitutional free speech rights. (*See, e.g., FAC*
 15 ¶¶ 99-109.)

16 3. **The Claims of the Named Plaintiffs Are Typical Of The Proposed** 17 **Classes**

18 The named Plaintiffs' claims are also typical of the proposed classes' respective
 19 claims, as required by Rule 23(a)(3). "Under the rule's permissive standards,
 20 representative claims are 'typical' if they are reasonably co-extensive with those of absent
 21 class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020; *see*
 22 *also Krzesniak*, 2007 WL 1795703, at *9. "While typicality and commonality 'tend to
 23 merge' typicality focuses on whether the named plaintiffs possess the 'same interest
 24 and suffer the same injury' as class members." *Krzesniak*, 2007 WL 1795703, at *8
 25 (citation omitted). A finding of commonality will ordinarily support a finding of
 26 typicality. *Nehmer v. U.S. Veterans' Admin.*, 118 F.R.D. 113, 117 (N.D. Cal. 1987).

27 A claim is typical if it arises from the same event or practice or course of conduct
 28 and is based on the same legal theory. *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir.

1 1992); *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985). In this case, the named
 2 Plaintiffs and all the members of the proposed classes will be harmed by the
 3 implementation of SB 1070. They have identical claims for declaratory and injunctive
 4 relief under common legal theories and identical interests in protecting their constitutional
 5 rights. These identical claims for relief also arise from the same course of conduct by
 6 Defendants—potential enforcement of SB 1070—which Defendants have acknowledged
 7 will be enforced uniformly across the State of Arizona. Dkt. #552 ¶ 4.⁷

8 Any potential differences in the reasons for the named Plaintiffs’ or class members’
 9 arrests, detentions, or interrogations under SB 1070 are irrelevant for Rule 23(a)(3)
 10 purposes. *See Krzesniak*, 2007 WL 1795703, at *8 (citing *Hanon v. Dataproducts Corp.*,
 11 976 F.2d 497, 508 (9th Cir. 1992) (typicality inquiry goes to “the nature of the claim . . .
 12 of the class representative, and not to the specific facts from which it arose”). It is not
 13 necessary that “the named plaintiffs’ injuries be identical with those of the other class
 14 members, only that the unnamed class members have injuries similar to those of the
 15 named plaintiffs and that the injuries result from the same, injurious course of conduct.”
 16 *Armstrong v. Davis*, 275 F.3d, 849, 869 (9th Cir. 2001). Here, the named Plaintiffs as
 17 well as all of the proposed class members will suffer abuses and deprivation of rights due
 18 to the enforcement of SB 1070 by the Defendants. Thus, the typicality requirement of
 19 Rule 23(a)(3) is met.

20
 21 ⁷ For example, individual Plaintiffs Pedro Espinoza and Jim Shee, amongst others, fear
 22 being stopped, detained, arrested or questioned because they appear to be of a minority
 23 racial group. (FAC ¶¶ 21, 24.) Their interests in preventing the implementation of SB
 24 1070 are the same as other members of Class A who would suffer the same abrogations of
 25 their equal protection and other rights because of such law enforcement action. Individual
 26 Plaintiff Jose Angel Vargas fears arrest and prosecution for soliciting work in public
 27 places (*id.* ¶ 25), and shares common claims with Class B members who will have their
 28 First Amendment and other rights affected in the same way if SB 1070 is implemented. If
 SB 1070 is implemented, individual Plaintiff Luz Santiago fears that she would be
 stopped and arrested under the harboring provisions of SB 1070 Section 5 for her work
 with members of her congregation, including those who are immigrants. (*Id.* ¶ 23.)
 Members of Class C would have the same interests and claims under, *inter alia*, the
 Fourth Amendment.

1 **4. The Named Plaintiffs Fairly And Adequately Represent The**
2 **Proposed Classes**

3 Plaintiffs also meet the final requirement of Rule 23(a), as they will fairly and
4 adequately represent the interests of all members of the proposed classes. To satisfy the
5 adequacy requirement, Plaintiffs must show (1) that their interests are common with, and
6 not antagonistic to, the interests of the class; and (2) that they are able to prosecute the
7 action vigorously through qualified and competent counsel. *Linney v. Cellular Alaska*
8 *P'ship*, 151 F.3d 1234, 1238-39 (9th Cir. 1998); *Lerwill v. Inflight Motion Pictures, Inc.*,
9 582 F.2d 507, 512 (9th Cir. 1978). As already set forth above, Plaintiffs seek relief on
10 behalf of each of the classes as a whole, share a common interest in ensuring the
11 protection of constitutional rights, and have no interests antagonistic to other members of
12 the classes.

13 Plaintiffs will also be able to prosecute this matter vigorously. Adequacy of
14 counsel can be shown by establishing that counsel is qualified, experienced, and able to
15 conduct litigation. *Jordan*, 669 F.3d at 1323. Courts have specifically recognized the
16 adequacy of “qualified and experienced counsel from such organizations as . . . the
17 American Civil Liberties Union.” *Perez-Funez v. District Director, I.N.S.*, 611 F. Supp.
18 990, 997 (C.D. Cal. 1984). The Plaintiffs here are represented by counsel including the
19 ACLU Foundation Immigrants’ Rights Project; the Mexican American Legal Defense and
20 Educational Fund; the National Immigration Law Center; ACLU of Arizona; the Asian
21 Pacific American Legal Center (a member of the Asian American Center for Advancing
22 Justice); the National Day Laborer Organizing Network; the National Association for the
23 Advancement of Colored People; Munger, Tolles & Olson LLP; Roush, McCracken,
24 Guerrero, Miller & Ortega; and Altshuler Berzon, LLP, who collectively have extensive
25 expertise in class action litigation, including litigation regarding the rights of immigrants
26 and constitutional questions. (*E.g.*, Declaration of Linton Joaquin at ¶¶ 4-5; Declaration
27 of Kenneth Sugarman at ¶¶ 6, 10, 15; Declaration of Victor Viramontes at ¶¶ 4-6).
28 Plaintiffs will adequately protect the interests of the absent class members.

1 **C. THE PROPOSED CLASSES SATISFY THE REQUIREMENTS OF**
2 **RULE 23(b)(2)**

3 In addition to satisfying the Rule 23(a) requirements, the proposed classes also
4 satisfy Rule 23(b)(2), which requires that “the party opposing the class has acted or
5 refused to act on grounds that apply generally to the class, so that final injunctive relief or
6 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R.
7 Civ. P. 23(b)(2). Rule 23(b)(2) certification is appropriate “when a single injunction or
8 declaratory judgment would provide relief to each member of the class.” *Wal-Mart*
9 *Stores, Inc. v. Dukes*, --- U.S. ----, 131 S. Ct. 2541, 2557 (2011).

10 As the Supreme Court recently reaffirmed, “[c]ivil rights cases against parties
11 charged with unlawful, class-based discrimination are prime examples’ of what (b)(2) is
12 meant to capture.” *Id.* at 2557-58 (quoting *Amchem Prods, Inc. v. Windsor*, 521 U.S. 591,
13 614 (1997)). “[T]he (b)(2) class ‘serves most frequently as the vehicle for civil rights
14 actions and other institutional reform cases that receive class action treatment.’” *Barnes*
15 *v. American Tobacco Co.*, 161 F.3d 127, 142 (3d Cir. 1998) (quoting *Baby Neal v. Casey*,
16 43 F.3d 48, 58-59 (3d Cir. 1994)). “Indeed, (b)(2) was ‘designed specifically for civil
17 rights cases seeking broad declaratory or injunctive relief for a numerous and often
18 unascertainable or amorphous class of persons.’” *Id.* (quoting 2 Newberg on Class
19 Actions § 4:11 (4th ed.)).

20 The proposed classes satisfy Rule 23(b)(2) for multiple reasons. First, this suit
21 seeks to vindicate civil rights through injunctive and declaratory relief—precisely the type
22 of action for which Rule 23(b)(2) was designed. *See Dukes*, 131 S. Ct. at 2557; *see also*
23 *Walters*, 145 F.3d at 1047 (“As the Advisory Committee Notes explain, 23(b)(2) was
24 adopted in order to permit the prosecution of civil rights actions.”); 2 Newberg on Class
25 Actions § 4:11 (4th ed.); *cf. Doe v. Prosecutor, Marion County, Ind.*, 566 F. Supp. 2d 862,
26 867 (S.D. Ind. 2008) (parties stipulated to Rule 23(b)(2) class of sex- and violent-
27 offenders in pre-enforcement declaratory judgment and injunctive relief action against
28 amendments to Indiana’s sex offender registration laws).

1 Second, Plaintiffs assert that they face an imminent threat of harm if SB 1070 is
2 enforced because SB 1070 violates the U.S. Constitution, federal law, and state law.
3 (First Am. Compl. §§ 166, 171). Specifically, if SB 1070 is not enjoined, it will require
4 persons in the state to carry immigration registration documents to avoid detention, arrest,
5 and possible prosecution, and will trigger the investigation, detention, harassment, and
6 arrest of numerous persons of color in Arizona. (*Id.* § 172.) As Intervenor Defendants the
7 State of Arizona and Governor Brewer have admitted, prior to the issuance of the
8 preliminary injunction Intervenor Defendants intended for state and local entities and
9 officials to enforce all provisions of S.B. 1070 and the Governor took actions to ensure
10 that the law would be faithfully executed. (Ziegler Decl. Ex. A at pp. 2-3 and Ex. B at pp.
11 2-3.) Furthermore, Intervenor Defendants stipulated that “it is the intention of the State of
12 Arizona that *each provision* of S.B. 1070 that is not enjoined will be implemented and
13 enforced *uniformly* throughout the State of Arizona.” Dkt. #552 ¶ 4 (emphases added).
14 Intervenor Defendants also admitted that if the injunction is lifted, *all* Arizona county
15 sheriffs and attorneys would enforce S.B. 1070 and the Governor would faithfully execute
16 the law. (Ziegler Decl. Ex. A at pp. 4-5 and Ex. B at pp. 4-5.) The State of Arizona and
17 Governor Brewer thus effectively admit that they will act on grounds that will apply
18 generally to each class as a whole.

19 Third, courts regularly certify 23(b)(2) classes to bring such constitutional
20 challenges against state and local laws. *See, e. g., Lewis ex rel. Young v. Alexander*, —
21 F.R.D. —, No. 06-3963, 2011 WL 3678721 (E.D. Pa. Aug. 22, 2011) (certifying (b)(2)
22 class bringing facial challenge to Pennsylvania’s Medicaid statute as conflicting with
23 federal Medicaid Act and seeking declaratory and injunctive relief barring enforcement of
24 the statute against the class); *Smiley v. Calumet City, Ill.*, No. 08C3017, 2009 WL
25 1381034 (N.D. Ill. May 15, 2009) (certifying (b)(2) class in case challenging
26 constitutionality of municipal ordinance because “the interests of each of the class
27 members are cohesive and a decision on whether [the ordinance] is facially
28 unconstitutional will affect all persons that are similarly situated”); *Torres v. New York*

1 *State Dept. of Labor*, 318 F. Supp. 1313 (S.D.N.Y. 1970) (certifying (b)(2) class in civil
2 rights action seeking declaratory judgment of unconstitutionality of New York Labor
3 Law); *Sullivan v. Houston Indep. Sch. Dist.*, 307 F. Supp. 1328 (S.D. Tex. 1969)
4 (certification of (b)(2) class in suit challenging constitutionality of school district
5 regulations); *see also* Advisory Committee’s Note, 39 F.R.D. 69, 102 (1966) (“Action or
6 inaction is directed to a class within the meaning of this subdivision *even if it has taken*
7 *effect or is threatened only as to one or a few members of the class*, provided it is based on
8 grounds which have general application to the class.”) (emphasis added).

9 Fourth, Plaintiffs are not seeking monetary damages—only declaratory and
10 injunctive relief. Therefore, “a single injunction or declaratory judgment would provide
11 relief to each member of [each] class.” *Dukes*, 131 S. Ct. at 2557.

12 Finally, Rule 23(b)(2) certification is appropriate because class treatment will
13 avoid any potential risk of mootness as the action progresses. Courts regularly consider
14 potential mootness as a factor favoring certification of Rule 23(b)(2) classes.⁸ *See Ollier*
15 *v. Sweetwater Union High Sch. Dist.*, 251 F.R.D. 564, 566 (S.D. Cal. 2008) (certifying
16 class of students and noting, because plaintiff students might graduate or move, that
17 “mootness is an important and real concern”); *McMillon*, 261 F.R.D. at 547-48 (“class
18 certification is needed because it will prevent Plaintiffs’ claims from becoming moot”);
19 *Waters v. Barry*, 711 F. Supp. 1125, 1130 n.10 (D.D.C. 1989) (in challenge to curfew law
20 court determined that Rule 23(b)(2) requirements were satisfied where plaintiff sought
21 class certification “to avoid a potential mootness problem as the matter progresses”).
22 Here, certain named Plaintiffs have immigration statuses that may or will change during
23

24 ⁸ The Rule 23(b)(2) requirements would be fully satisfied here for the other reasons
25 explained above — because this is a civil rights matter of solely declaratory and injunctive
26 relief to address a law generally applying to the entire class. Plaintiff need show nothing
27 more to meet the 23(b)(2) requirements, but raise the mootness issue because it is a factor
28 that courts have considered in certifying Rule 23(b)(2) classes. *E.g., McMillon v. Hawaii*,
261 F.R.D. 536, 547-48 (D. Haw. 2009) (noting that there is no “needs” showing required
in addition to the 23(b)(2) requirements, but finding that potential mootness made class
certification necessary).

1 the pendency of this action, potentially rendering their individual claims moot. (FAC
2 ¶¶ 21 (Plaintiff Espinoza currently in deportation proceedings), 29 (Plaintiff Jane Doe
3 #3's U-Visa application currently pending). Absent class certification, Plaintiffs could be
4 required to repeatedly amend their complaint to substitute in new representative plaintiffs,
5 leading to serial motions to amend and, subsequently, serial answers by each of the
6 Defendants. For this additional reason, class certification under Rule 23(b)(2) is
7 appropriate here.

8 **IV. CONCLUSION**

9 For all of the foregoing reasons, Plaintiffs satisfy each of the requirements of
10 Rules 23(a) and 23(b)(2). Accordingly, Plaintiffs respectfully request that the Court
11 certify this case as a class action and appoint Plaintiffs' counsel as class counsel.

12 Dated: December 12, 2011

13 /s/ Nora Preciado
NATIONAL IMMIGRATION LAW CENTER

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

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

19 /s/ Lika C. Miyake
20 MUNGER, TOLLES & OLSON LLP

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, and transmittal of a Notice of Electronic Filing to ECF registrants.

COPY will also be sent with Notice of Electronic Filing via FedEx on December 13, 2011 to:

The Honorable Susan R. Bolton
United States District Court
Sandra Day O'Connor U.S. Courthouse, Suite 522
401 West Washington Street, SPC 50
Phoenix, AZ 85003-2153

Dated: December 12, 2011

/s/ Aaron G. Leiderman
Aaron Leiderman
Munger, Tolles & Olson LLP