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7 LEAGUE OF UNITED LATIN AMERICA CITIZENS  
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12 (Plaintiffs' Attorneys continued on page 2)

13  
 14 UNITED STATES DISTRICT COURT  
 15 DISTRICT OF ARIZONA

<p>16 LEAGUE OF UNITED LATIN AMERICA          17 CITIZENS;          18 ANNA OCHOA O'LEARY;          19 CORDELIA CHAVEZ CANDELARIA          BEVERIDGE;          20 JOHN DOES 1-5 AND JANE DOES 1-5,            21 Plaintiffs,          22 - vs -            24 JANICE BREWER, GOVERNOR OF          ARIZONA; MARICOPA COUNTY; WILLIAM          25 G. MONTGOMERY, MARICOPA COUNTY          ATTORNEY, IN HIS OFFICIAL CAPACITY;          26 JOSEPH ARPAIO, MARICOPA COUNTY          27 SHERIFF IN HIS OFFICIAL CAPACITY; PIMA</p>	<p>Case No. 2:10-cv-1453-SRB            FIRST AMENDED COMPLAINT FOR          DECLARATORY AND INJUNCTIVE          RELIEF            [CLASS ACTION]</p>
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<p>1 COUNTY; BARBARA LAWALL, PIMA  2 COUNTY ATTORNEY, IN HER OFFICIAL  3 CAPACITY; CLARENCE W. DUPNIK, PIMA  4 COUNTY SHERIFF IN HIS OFFICIAL  5 CAPACITY; ROBERT HALLIDAY,  6 EXECUTIVE DIRECTOR, ARIZONA  7 DEPARTMENT OF PUBLIC SAFETY, IN HIS  8 OFFICIAL CAPACITY.  9  10 Defendants.</p>	
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Plaintiffs allege as follows:

PRELIMINARY STATEMENT

1. In this action, the individual and organizational plaintiffs seek to declare invalid and preliminarily and permanently enjoin the enforcement of S.B. 1070, or portions thereof, as amended and enacted by the State of Arizona. Plaintiffs allege that S.B. 1070 is preempted by federal law and therefore violates the Supremacy Clause of the United States Constitution.

2. Both the United States Constitution and numerous acts of Congress grant the federal government preeminent authority to regulate immigration matters. Congress has assigned highly specific tasks relating to the enforcement of the nation’s immigration laws and regulations to various federal agencies, including the United States Department of Homeland Security, Department of Justice, and the Department of State. In the process of implementing these laws and regulations, the federal agencies assigned enforcement responsibilities consider, weigh, and balance multifaceted and sometimes competing objectives that Congress seeks to achieve through enactment of a complex system of federal laws.

3. While Arizona may exercise its police power in a manner that has an incidental effect on aliens, it may not constitutionally enact and enforce its own immigration laws in a manner that interferes with the federal immigration laws or policies.

4. Nor may Arizona enact laws to control the flow of migrants into the state or force their departure from the state. Such competing state laws will simply drive immigrants from one state to the next, leaving national policies in shambles. The drafters of the Constitution and the scheme of federal immigration laws Congress has enacted envision and rely upon a national uniform policy in the area of international migration, not a patchwork of competing state and local immigration policies throughout the country.

1           5. The State of Arizona's S.B. 1070 includes a broad set of provisions that are  
2 designed to "work together to discourage and deter the unlawful entry and presence  
3 of aliens" by making "attrition through enforcement the public policy of all state and  
4 local government agencies in Arizona." See S.B. 1070 (as amended by H.B. 2162).

5           6. S.B. 1070's provisions focus exclusively on forcing suspected  
6 undocumented immigrants to leave the state through a policy of "attrition," while  
7 ignoring numerous other objectives established by Congress for migrants who may  
8 have entered the country without inspection and have no current lawful status,  
9 including, for example, legalization opportunities for family reunification, victims of  
10 serious crimes who cooperate with law enforcement to put violent criminals behind  
11 bars, minors who have been abused, abandoned, or neglected, survivors of domestic  
12 violence, and those who reasonably fear return to their home countries on account of  
13 persecution.

14           7. S.B. 1070 also ignores the necessary priorities established by and resources  
15 of federal agencies enforcing the immigration laws. While these federal agencies  
16 logically focus their limited resources on identifying and detaining immigrants not  
17 eligible for legalization of status, those who have committed criminal offenses, or  
18 those who recently arrived, S.B. 1070 makes no such distinctions. As the Complaint  
19 in *United States v. The State of Arizona*, Case 2:10-cv-01413-SRB, filed July 6, 2010 ("  
20 U.S. v. Arizona"), states, S.B. 1070 "disrupts federal enforcement priorities and  
21 resources that focus on aliens who pose a threat to national security or public  
22 safety." *Id.* at ¶ 4. Enforcement of S.B. 1070 "will impose significant and  
23 counterproductive burdens on the federal agencies charged with enforcing the  
24 national immigration scheme, diverting resources and attention from the dangerous  
25 aliens who the federal government targets as its top enforcement priority." *Id.*

26           8. Implementation of S.B. 1070 will also interfere with the United States  
27 Government's foreign policy and national security interests by disturbing the United  
28 States' relationship with other countries.



1 immigrant residents of Arizona, LULAC's goals include providing this community  
2 with training and information regarding their legal rights, assisting such  
3 immigrants to locate legal representation when their rights have been violated,  
4 evaluating whether immigrant community members are eligible to legalize their  
5 immigration status, providing assistance to eligible immigrants in the preparation of  
6 applications and petitions to legalize their status in the United States or referring  
7 such immigrants to free or low cost legal services, providing direct assistance to  
8 immediate family members eligible for naturalization, referring immigrant  
9 community members to appropriate law enforcement agencies when they are the  
10 victims of crime, assisting immigrant community members regarding eligibility for  
11 and access to medical services, and assisting to locate appropriate resources or legal  
12 representation when immigrant community members' labor or occupational health  
13 and safety rights have been violated. The enforcement and operation of S.B. 1070 will  
14 severely impair LULAC's ability to pursue its organizational mission and goals  
described above.

15         14. LULAC provides comprehensive services to undocumented Latino  
16 immigrants residing in Arizona, including assistance to evaluate the eligibility of  
17 undocumented Arizona immigrant residents for statutory benefits to legalize status,  
18 assistance in seeking legalization benefits through the preparation of applications  
19 and petitions, home care volunteer services, assisting community members who are  
20 detained for immigration checks, referring undocumented immigrants to appropriate  
21 law enforcement agencies when they are the victims of crime, assisting such  
22 immigrants regarding eligibility for medical services when in need of emergency or  
23 non-emergent care, assisting immigrant community members to obtain Internal  
24 Revenue Service Taxpayer Identification Numbers, assisting to locate appropriate  
25 resources when immigrant community members' labor or occupational health and  
26 safety rights have been violated, assisting such immigrants with problems relating to  
27 the education of children and youth, assisting the undocumented parents of U.S.  
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1 citizen children to apply for United States passports for the U.S. citizen children,  
2 collaborating in the operation of twelve charter schools, assisting immigrant  
3 community members to obtain high school equivalency certificates, assisting low-  
4 income immigrant community members obtain low-cost housing, providing  
5 education scholarships to Arizona immigrant students, assisting immigrant  
6 community members with landlord/tenant problems or referring them to  
7 appropriate resources or legal aid programs, and assisting with transportation in all  
8 of the matters described above and others as needed. LULAC also engages in  
9 community education and training on the rights of immigrants. It also organizes  
10 public education campaigns on issues relating to the rights of immigrants, and  
11 initiates litigation on behalf of undocumented immigrants whose rights have been  
12 violated in Arizona. LULAC also works to promote human rights in the U.S.-Mexico  
border region.

13         15. SB 1070 will force LULAC to divert scarce resources from critical programs  
14 in order to educate and assist individuals affected by SB 1070. LULAC will have a  
15 far more difficult time encouraging undocumented immigrants to seek services in its  
16 various program areas to the extent that they involve interacting with government  
17 agencies and police. The undocumented immigrants who LULAC assists and seeks  
18 to assist in the future will be deterred from seeking immigration relief because local  
19 law enforcement will continue to stop and detain them, notwithstanding their  
20 application for relief, on the basis that they do not have any registration documents  
21 that are acceptable under SB 1070.

22         16. Some of LULAC's Latino members or their families and LULAC clients in  
23 the State of Arizona have already been subjected to stops by local law enforcement  
24 and have been asked to produce proof of immigration status. LULAC is concerned  
25 that its US citizen and immigrant members and those who LULAC is assisting as  
26 described above in Paragraph 14 will be even more likely to be stopped, detained,  
27 arrested, and questioned by state and local police if SB 1070 goes into effect.



1           17. LULAC is further concerned that members and potential members will be  
2 reasonably fearful to attend training sessions, community meetings, rallies, or  
3 demonstrations, or to engage in leafleting or other traditional organizational  
4 activities because of the possibility of being stopped by the police under SB 1070.  
5 This will significantly impact the ability of LULAC to protect its existing members  
6 and to organize new members.

7           18. LULAC officers, members, and volunteers helping or transporting  
8 community members as described above in Paragraph 14 are at risk of criminal  
9 prosecution under SB 1070's transporting provisions. LULAC will have to re-  
10 allocate its very limited resources to ensure that its officers, members, volunteers, and  
11 community members LULAC helps feel safe while transporting or being transported  
12 by LULAC officers, members, or volunteers. LULAC also believes that  
13 undocumented immigrants that LULAC seeks to serve will not attend its community  
14 meetings for fear of being stopped, interrogated, and arrested under SB 1070.  
15 LULAC believes its members and undocumented community members serve dby  
16 LULAC will be afraid to approach law enforcement to report crimes or interact with  
17 government officials because their appearance, limited English ability, and accents  
18 could be used by the police to question their authorization to be in the United States.

19           19. LULAC has already been forced to suspend much of its work relating to  
20 the range of services described above in Paragraph 14 in order to respond to  
21 inquiries from LULAC members and community members about SB 1070, educate  
22 community members affected by S.B. 1070, and address fear and confusion created  
23 by S.B. 1070. The fear and confusion created by SB 1070 has also deterred LULAC  
24 members and community members from participating in LULAC's programs out of  
25 fear of being stopped and arrested under S.B. 1070 and has resulted in a substantial  
26 drop in attendance by immigrants at community workshops and events, and in the  
27 willingness of undocumented community members to seek or utilize the services  
28 needed to address the problems they encounter as set forth in Paragraph 14.



1           20. LULAC is also forced to divert its limited resources because of the  
2 confusion caused by and inadequacy of Arizona’s training materials’ defining  
3 reasonable suspicion to detain or probable cause to arrest persons for allegedly  
4 having committed a public offense making them deportable from the United States or  
5 not having timely registered with the federal Government, and S.B. 1070’s and  
6 Arizona’s training materials’ failure to adequately address how to address  
7 situations in which Arizona law enforcement officials detain or arrest an individual  
8 pursuant to S.B. 1070 when federal officials do not timely take such detained or  
9 arrested persons into federal custody or verify their immigration status.

10           21. Plaintiff Anna Ochoa O’Leary is lawfully residing in the State of Arizona  
11 in the City of Tucson, Pima County, is employed, and is a local taxpayer. She joins  
12 this action to challenge the illegal expenditure of funds by Pima County through  
13 implementation of S.B. 1070. Plaintiff O’Leary alleges that Pima County has  
14 illegally expended funds in the creation of training materials related to S.B. 1070,  
15 through S.B. 1070-related trainings and briefings of its law-enforcement officials, and  
16 its implementation of S.B. 1070 to the extent implementation has been or will in the  
17 future be required.

18           22. Plaintiff Cordelia Chavez Candelaria Beveridge is lawfully residing in the  
19 State of Arizona in the City of Tempe, Maricopa County, and is a County taxpayer.  
20 She joins this action to challenge the illegal expenditure of funds by Maricopa  
21 County through implementation of S.B. 1070. Plaintiff O’Leary alleges that  
22 Maricopa County has illegally expended funds in the creation of training materials  
23 related to S.B. 1070, through S.B. 1070-related trainings and briefings of its law-  
24 enforcement officials, and its implementation of S.B. 1070 to the extent  
25 implementation has been or will in the future be required..

26           23. Defendant Janice Brewer is the Governor of the State of Arizona and an  
27 individual charged with executing the provisions of SB 1070. She is sued in her  
28 official capacity.

1           24. Defendant Maricopa County is a duly constituted municipal entity in the  
2 State of Arizona and as such it and its officers and agents are required to comply  
3 with and implement the terms of S.B. 1070 including by using county taxes collected  
4 from county tax payers to pay in whole or in part for such implementation.

5           25. Defendant Bill Montgomery is the Maricopa County Attorney and an  
6 individual charged with executing the provisions of SB 1070. He is sued in his  
7 official capacity.

8           26. Defendant Joseph Arpaio is the Maricopa County Sheriff and an  
9 individual charged with executing the provisions of SB 1070. He is sued in his  
10 official capacity.

11           27. Defendant Pima County is a duly constituted municipal entity in the State  
12 of Arizona and as such it and its officers and agents are required to comply with and  
13 implement the terms of S.B. 1070 including by using county taxes collected from  
14 county tax payers to pay in whole or in part for such implementation.

15           28. Defendant Barbara LaWall is the Pima County Attorney and an individual  
16 charged with executing the provisions of SB 1070. She is sued in her official  
17 capacity.

18           29. Defendant Clarence W. Dupnik is the Pima County Sheriff and an  
19 individual charged with executing the provisions of SB 1070. He is sued in his  
20 official capacity.

21           30. Defendant Robert Halliday is the Executive Director of the Arizona  
22 Department of Public Safety and an individual charged with executing the  
23 provisions of SB 1070. He is sued in his official capacity.

24           31. Plaintiffs are informed and believe, and on such basis allege, that  
25 defendants, their agents, and their employees customarily and as a matter of practice  
26 or usage, engage in the acts here complained of. Plaintiffs are further informed and  
27 believe, and on such basis allege, that defendants, and each of them, are aware of  
28 and acquiesce in or encourage their agents and employees in doing the acts here

1 complained of. In doing the acts alleged herein, defendants, and each of them, have  
2 acted and will continue to act, under color of state law.

3 CLASS ACTION ALLEGATIONS

4 32. Pursuant to Rules 23(a)(1)-(4) and (b)(2) of the Federal Rules of Civil  
5 Procedure, plaintiffs bring this action as a class action on behalf of the following  
6 proposed class:

7 All persons present in the Counties of Pima and Maricopa who are county  
8 taxpayers and whose tax payments have been or will in the future be used  
9 to implement S.B. 1070.

10 The size of the class is so numerous that joinder of all members is  
11 impracticable.

12 33. The claims of plaintiffs and those of the proposed class members raise  
13 common questions of law and fact concerning, *inter alia*, whether S.B. 1070 and  
14 Arizona's training materials to implement S.B. 1070 are constitutional. These  
15 questions are common to the named parties and to the members of the proposed  
16 class because defendants have acted or will act on grounds generally applicable  
17 to both the named parties and proposed class members. Plaintiffs' claims are  
18 also typical of the class claims.

19 34. The prosecution of separate actions by individual members of the class  
20 would create a risk of inconsistent or varying adjudications establishing  
21 incompatible standards of conduct for defendants. Prosecution of separate  
22 actions would also create the risk that individual class members will secure  
23 court orders that would as a practical matter be dispositive of the claims of other  
24 class members not named parties to this litigation, thereby substantially  
25 impeding the ability of unrepresented class members to protect their interests.

26 35. Defendants, their agents, employees, and predecessors and successors in  
27 office have acted or refused to act, or will act or refuse to act, on grounds generally  
28 applicable to the class, thereby making appropriate injunctive relief or

1 corresponding declaratory relief with respect to the class as a whole. Plaintiffs will  
2 vigorously represent the interests of unnamed class members. All members of the  
3 proposed class will benefit by the action brought by plaintiffs. The interests of the  
4 named plaintiffs and those of the proposed class members are identical. Plaintiffs'  
5 counsel include attorneys experienced in federal class action litigation involving the  
6 rights of foreign nationals and refugees within the United States.

#### 7 STATEMENT OF THE PLAINTIFFS' CLAIMS

##### 8 A. Federal Authority Over the Status of Immigrants and Immigration Laws

9 36. The United States Constitution provides that "[t]his Constitution, and the  
10 Laws of the United States which shall be made in Pursuance thereof . . . shall be the  
11 supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to  
12 the Contrary notwithstanding." U.S. Const., art. VI, cl. 2.

13 37. The Constitution further extends *only* to the federal government the power  
14 to "establish an uniform Rule of Naturalization," U.S. Const., art. I § 8, cl. 4, and to  
15 "regulate Commerce with foreign Nations," U.S. Const., art. I § 8, cl. 3.

16 38. The federal courts have long held that immigration regulation, policies,  
17 and enforcement priorities have direct and indirect impacts on the nation's foreign  
18 policy and should be exercised by federal not local authorities.

19 39. The Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, et seq., and  
20 regulations duly promulgated by various federal agencies assigned responsibilities  
21 under the INA, have established a complex and exclusive scheme regarding the  
22 admission of immigrants to the United States, the circumstances under which such  
23 immigrants may remain in the United States, the terms of their presence in the  
24 United States, and the penalties on persons who violate the procedures established  
25 for entry, conditions of residence, and employment of immigrants in the United  
26 States. *See* 8 U.S.C. § 1101, et seq.

27 40. As the federal Government states in *United States v. Arizona*, "In exercising  
28 its significant enforcement discretion, the federal government prioritizes for arrest,

1 detention, prosecution, and removal those aliens who pose danger to national  
2 security or risk to public safety. Consistent with these enforcement priorities, the a  
3 federal government principally targets aliens engaged in or suspected of terrorism or  
4 espionage; aliens convicted of crimes, with particular emphasis on violent criminals,  
5 felons, and repeat offenders; certain gang members; aliens subject to outstanding  
6 criminal warrants; and fugitive aliens, especially those with criminal records." *Id.* at  
7 ¶ 18.

8 41. DHS may initiate removal (deportation) proceedings against an Immigrant  
9 by the issuance of a Notice to Appear ("NTA"), and may ultimately remove an alien  
10 who entered the United States unlawfully or violated the conditions of his or her  
11 admission to the United States. *See, e.g.*, 8 U.S.C. §§ 1182, 1225, 1227, 1228(b), 1229,  
12 1229a, 1231.

13 42. The Department of Justice through the Executive Office for Immigration  
14 Review ("EOIR") may order an immigrant removed from the United States for  
15 numerous reasons, including if the immigrant violated the terms of his or her visa,  
16 engaged in certain forms of misconduct in the United States, or remained longer than  
17 authorized. *See* 8 U.S.C. §§ 1227, 1229a. In addition, the INA authorizes DHS and  
18 DOJ to implement civil and criminal sanctions against an immigrant for immigration  
19 violations, including, for example, entry without inspection, entry by fraud, and  
20 failing to timely register with the federal government. *See, e.g.*, 8 U.S.C. §§ 1325, 1306,  
21 1324c.

22 43. However, as the federal Government makes clear in *United States v. Arizona*,  
23 in the exercise of discretion, "the administering agencies may decide not to apply a  
24 specific sanction and may, among other steps, permit the alien to depart the country  
25 voluntarily at his or her own expense and may even decide not to pursue removal of  
26 the alien if deferred federal enforcement will help pursue some other goal of the  
27 immigration system." *United States v. Arizona*, ¶ 20, *citing* 8 U.S.C. § 1229c.  
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1           44. Furthermore, the INA itself and regulations promulgated thereunder  
2 provide numerous grounds upon which an immigrant who entered the United  
3 States without inspection, or by fraud, or who overstayed his or her visa, may still  
4 qualify for legalization of status. *See, e.g.*, 8 U.S.C. § 1158 (providing asylum  
5 eligibility for aliens who have a well-founded fear of persecution on account of race,  
6 religion, nationality, membership in a particular social group, or political opinion, if  
7 removed); 8 U.S.C. § 1254a (providing temporary protected status for otherwise  
8 eligible nationals of a foreign state that the Secretary of Homeland Security has  
9 specially designated as undergoing ongoing armed conflict, a natural disaster, or  
10 another extraordinary circumstance); 8 U.S.C. § 1227(a)(1)(E)(iii) (providing  
11 discretion to waive ground of deportability “for humanitarian purposes, to assure  
12 family unity, or when it is otherwise in the public interest” for aliens who are  
13 otherwise deportable for encouraging unlawful entry of an immediate family  
14 member); 8 U.S.C. § 1229b (granting the Attorney General discretion to cancel  
15 removal for certain aliens). DHS also has the authority to permit aliens, including  
16 those who would be inadmissible, to enter the United States temporarily for “urgent  
17 humanitarian reasons” or “significant public benefit.” 8 U.S.C. § 1182(d)(5). DHS  
18 may also refrain from enforcement actions, in appropriate circumstances, against  
19 persons unlawfully present in the United States. *See* 8 C.F.R. § 274a.12(c)(14)  
(discussing deferred action).

20           45. Under the INA, unlawful presence without more does not subject an  
21 immigrant to federal criminal penalties.

22           46. Any immigrant who is 14 year of age or over, who has not been registered  
23 and fingerprinted under the INA, and who is present in the United States for 30 days  
24 or longer, must apply to be registered by DHS. *See* 8 U.S.C. § 1302(a). The INA  
25 provides that any immigrant required to register who willfully fails to do so may be  
26 fined and imprisoned not more than six months. *See* 8 U.S.C. § 1306(a); 18 U.S.C. §  
27 3571.  
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1           47. However, as the United States Government concedes, there are many  
2 circumstances in which an alien would “not be provided with evidence of  
3 registration notwithstanding the federal government’s knowledge of the alien’s  
4 presence.” *United States v. Arizona*, ¶ 26. Federal law provides a variety of  
5 humanitarian options for aliens – including unlawfully present aliens – who have  
6 been victimized or fear persecution or violence, including but not limited to asylum,  
7 special visas for victims of trafficking, visas for abused or neglected minors, visas for  
8 survivors of domestic violence, and special visas for victims of serious crimes.  
9 During the pendency of the application process, an immigrant in most cases will *not*  
10 *have any evidence of registration* even though the federal government is fully aware  
11 of the immigrant’s presence, has decided against removing the immigrant, and  
12 has no interest in prosecuting the immigrant for a crime on the basis of his or her  
13 immigration status.

14           48. Congress has enacted several statutes that set forth ways in which states  
15 may assist the federal government in the enforcement of the nation’s immigration  
16 laws. *See, e.g.*, 8 U.S.C. § 1103(a)(10) (authorizing DHS to empower state or local law  
17 enforcement with immigration enforcement authority when an “actual or imminent  
18 mass influx of aliens . . . presents urgent circumstances requiring an immediate  
19 Federal response”); 8 U.S.C. § 1357(g)(1)–(9) (authorizing DHS to enter into  
20 agreements to provide appropriately trained and supervised state and local officers  
21 with the authority to perform functions related to the investigation, apprehension,  
22 and detention of aliens); 8 U.S.C. § 1373(a)–(b) (preempting state and local laws that  
23 prohibit information-sharing between local law enforcement and federal  
24 immigration authorities and proscribing such a prohibition); 8 U.S.C. § 1252c  
25 (authorizing state and local law enforcement to arrest aliens who are unlawfully  
26 present in the United States and were previously removed after being convicted of a  
27 felony in the United States).



1           49. In *United States v. Arizona*, the federal Government describes a variety of  
2 programs that the DHS has established to work cooperatively with local  
3 governments to enforce the federal immigration laws. *United States v. Arizona* ¶ 31.  
4 Among these efforts is the Law Enforcement Agency Response program (“LEAR”),  
5 an Arizona-specific program that is operational 24 hours a day, 7 days a week, for  
6 responding to calls from state and local law enforcement officers seeking assistance  
7 from ICE regarding suspected unlawfully present immigrants. ICE also administers  
8 the Law Enforcement Support Center (“LESC”), also operational 24 hours a day, 7  
9 days a week, which serves as a national enforcement operations center and  
10 promptly provides immigration status and identity information to local, state, and  
11 federal law enforcement agencies regarding aliens suspected of, arrested for, or  
12 convicted of criminal activity ICE and CBP officers also respond to requests from  
13 local law enforcement officers on a variety of immigration matters, including  
14 assisting with translation, determining alienage, and evaluating immigration  
documentation. *Id.*

15 B. The terms of Arizona’s S.B. 1070

16           50. On April 23, 2010, defendant Governor Brewer signed into law S.B. 1070  
17 the stated purpose of which is to “discourage and deter the unlawful entry and  
18 presence of aliens” in Arizona by a process of “attrition through enforcement” of the  
19 new law. S.B. 1070 at §1, p. 1.

20           51. Shortly after S.B. 1070 became law, the Arizona Legislature passed, and  
21 defendant Governor Brewer signed, H.B. 2162, which amended S.B. 1070. H.B. 2162  
22 made minor modifications to S.B. 1070 for the purpose of responding to those who  
23 “expressed fears that the original law would somehow allow or lead to racial  
24 profiling.” Statement by Governor Jan Brewer (Apr. 30, 2010), *available at*  
25 [http://azgovernor.gov/dms/upload/PR\\_043010\\_StatementGovBrewer.pdf](http://azgovernor.gov/dms/upload/PR_043010_StatementGovBrewer.pdf).

26           52. The law provides that “[n]o official or agency of this state or a county, city  
27 town or other political subdivision of the state may adopt a policy that limits or  
28

1 restricts the enforcement of federal immigration laws to less than the full extent  
2 permitted by Federal Law.” S.B. 1070 at § 2.A, p.1; Ariz. Rev. Stat. § 11-1051A.  
3 However what is “permitted by Federal law” is now unclear given that the United  
4 States Government itself holds that the law itself is unconstitutional. *See Unites States*  
5 *v. Arizona*.

6 53. S.B. 1070 includes a provision that requires, in the context of a lawful stop,  
7 detention, or arrest, the verification of an individual’s immigration status when  
8 practicable where there is “reasonable suspicion” that the individual is unlawfully  
9 present in the United States (Section 2). The law is unclear as to how defendants’  
10 law enforcement agents are supposed to arrive at a “reasonable suspicion,” and  
11 defendants S.B. 1070 training materials permit the use of several vague and  
12 imprecise factors including a person’s dress, demeanor, lack of English-speaking  
13 skills, and ot being familiar with other people in the vicinity.

14 54. S.B. 1070 also creates or amends several state law criminal provisions,  
15 which impose criminal penalties for an immigrant’s alleged failure to federally  
16 register or carry his or her federal registration documents including minors over the  
17 age of 14 (Section 3), for the so-called smuggling, transporting, or harboring of an  
18 unlawfully present immigrant (Sections 4 and 5), for encouraging an unlawfully  
19 present immigrant to move to Arizona (Section 5), and for an unauthorized  
20 immigrant’s attempt to seek work (Section 5).

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

25 56. As the United States Government states:

26 By pursuing attrition and ignoring every other objective embodied in the  
27 federal immigration system (including the federal government’s  
28 prioritization of the removal of dangerous aliens), S.B. 1070 conflicts

1 with and otherwise stands as an obstacle to Congress's demand that  
2 federal immigration policy accommodate the competing interests of  
3 immigration control, national security and public safety, humanitarian  
4 concerns, and foreign relations – a balance implemented through the  
5 policies of the President and various executive officers with the  
6 discretion to enforce the federal immigration laws. *See* 8 U.S.C. § 1101, *et*  
7 *seq.* Enforcement of S.B. 1070 would also effectively create state crimes  
8 and sanctions for unlawful presence despite Congress's considered  
9 judgment to not criminalize such status. S.B. 1070 would thus interfere  
10 with federal policy and prerogatives in the enforcement of the U.S.  
11 immigration laws.

12 *United States v. Arizona*, ¶ 37.

13 57. S.B. 1070's mandatory immigration status inspection scheme and federal  
14 verification requirements will "impair and burden the federal resources and  
15 activities of DHS." *United States v. Arizona* ¶ 44. S.B. 1070's mandate for  
16 verification of immigrant status will clearly result in a major increase in the number  
17 of verification requests being issued to DHS by Arizona law enforcement officers,  
18 "necessitating reallocation of DHS resources away from its policy priorities." *Id.* As  
19 such, the federal government will be required to divert resources from carefully  
20 considered enforcement priorities – dangerous aliens who pose a threat to national  
21 security and public safety – to address the work that Arizona will now create for it.  
22 In the view of the Government of the United States, "[s]uch interference with federal  
23 priorities ... constitutes a violation of the Supremacy Clause." *Id.*

24 58. Section 3 of S.B. 1070, which requires the arrest and prosecution of all  
25 immigrants who do not possess certain enumerated registration documents, is  
26 preempted by the comprehensive federal immigration registration laws – 8 U.S.C. §§  
27 1201, 1301-1306, and 8 C.F.R. Part 264 – which provide a federal scheme for alien  
28 registration in a single integrated and all-embracing system. Section 3 fails to take

1 into account that several classes of immigrants who are eligible and apply for  
2 legalization of status are not provided with “registration” documents while their  
3 status is being adjudicated by the federal government, notwithstanding the federal  
4 government’s knowledge that these immigrants are present in the United States.  
5 Because S.B. 1070 and Arizona’s S.B. 1070 training materials seek to criminalize  
6 immigrants whose presence may be known to and accepted by the federal  
7 government while it adjudicates their legalization applications, the Government of  
8 the United States concludes that Section 3 thus “conflicts with and otherwise stands  
9 as an obstacle to the full purposes and objectives of Congress in providing certain  
10 forms of humanitarian relief.” *United States v. Arizona*, ¶ 48.

11 59. SB 1070’s transportation and harboring provisions require Arizona’s  
12 courts, as a prerequisite to finding a violation, to determine whether an alien “has  
13 come to, entered, or remains in the United States in violation of the law” or whether  
14 an alien’s entry “will be in violation of law” as those terms are used in 8 U.S.C. §  
15 1324(a).

16 60. Section 4 of S.B. 1070 amended Ariz. Rev. Stat. 13-2319 (“smuggling  
17 prohibition”) makes it a felony for “a person to intentionally engage in the  
18 smuggling of human beings for profit or commercial purpose.” Ariz. Rev. Stat. 13-  
19 2319. The smuggling prohibition is preempted by federal law, including 8 U.S.C. §  
20 1324. There are material differences between the federal and Arizona alien  
21 smuggling. Arizona’s smuggling law, unlike federal anti-smuggling laws, is not  
22 limited to transportation that is provided “in furtherance” of unlawful immigration,  
23 but rather prohibits the knowing provision of any commercial transportation  
24 services to an alien unlawfully present in the United States. Ariz. Rev. Stat. 13-  
25 2319(A).

26 61. Ariz. Rev. Stat. 13-2928 makes it a crime for any immigrant who is  
27 “unauthorized” and “unlawfully present” in the United States to solicit, apply for,  
28 or perform work. S.B. 1070, Section 5(C)-(E). This prohibition on unauthorized

1 immigrants seeking or performing work is preempted by the federal scheme of  
2 sanctions related to the employment of unauthorized aliens –8 U.S.C. §§ 1324a–  
3 1324c. As stated by the Government of the United States, this provision “conflicts  
4 with Congress’s decision not to criminalize such conduct for humanitarian and  
5 other reasons.” *United States v. Arizona*, ¶ 54.

6 62. S.B. 1070 Section 6 provides law enforcement officers with authority to  
7 make warrantless arrests of any person whom they have probable cause to believe  
8 has committed a “public offense,” without explaining what this term means, that  
9 would make the person “removable,” regardless of where the offense was  
10 committed. Defendants’ training materials fail to adequately explain what a “public  
11 offense” means, or what classes of immigrants are in fact “removable” under federal  
12 law, or what classes of immigrants are *not* “removable” under federal law. Section 6  
13 makes no exception for aliens whose removability has already been resolved by  
14 federal authorities, despite the fact that only the federal government can actually  
15 issue removal decisions. Section 6 will therefore necessarily result in the arrest of  
16 aliens based on out-of-state crimes, even if the criminal and immigration  
17 consequences of the out-of-state crime have already been definitively resolved. For  
18 that reason, “Section 6 of S.B. 1070 interferes with the federal government’s  
19 enforcement prerogatives and will necessarily impose burdens on lawful aliens in  
20 manner that conflicts with the purposes and practices of the federal immigration  
21 laws.” *United States v. Arizona*, ¶ 59. Additionally, Section 6 will result in the arrest  
22 of immigrants whose out-of-state crimes “would not give rise to removal proceedings  
23 at all.” *Id.*

#### IRREPARABLE INJURY

24 63. For the foregoing reasons, SB 1070 and Arizona’s S.B. 1070 training  
25 materials have caused and will continue to cause substantial and irreparable harm to  
26 the plaintiffs for which the plaintiffs have no adequate remedies at law. Plaintiffs do  
27 not, however, seek to enjoin or interfere with state proceedings that were underway  
28

1 before initiation of this case or otherwise would require abstention under *Younger v.*  
2 *Harris*, 401 U.S. 37 (1971).

3 FIRST CLAIM FOR RELIEF

4 VIOLATION OF THE SUPREMACY CLAUSE; 42 U.S.C. § 1983

5 64. Plaintiffs reallege and incorporate by reference the allegations set out in  
6 paragraphs 1 through 63, inclusive, of this Complaint as though fully set forth here.

7 65. SB 1070, Sections 1-6, as amended is an impermissible attempt by state  
8 actors to regulate immigration, conflicts with federal law and foreign policy,  
9 disregards well-established federal policies, interferes with federal enforcement  
10 priorities in areas committed to the discretion of the United States, and otherwise  
11 impedes the accomplishment and execution of the full purposes and objectives of  
12 federal law and foreign policy.

13 66. As such Sections 1-6 of SB 1070 violates the Supremacy Clause and is  
14 invalid under the United States Constitution Art. I, § 8, cl. 4 (the federal power to  
15 establish a uniform rule of naturalization), Art. I, § 8, cl. 3 (the federal power to  
16 regulate commerce with foreign nations), and 42 U.S.C. § 1983.

17 SECOND CLAIM FOR RELIEF

18 PREEMPTION UNDER FEDERAL LAW; 42 U.S.C. § 1983

19 67. Plaintiffs reallege and incorporate by reference the allegations set out in  
20 paragraphs 1 through 63, inclusive, of this complaint as though fully set forth here.

21 68. Sections 1-6 of S.B. 1070 are preempted by federal law, including 8 U.S.C. §  
22 1101, et seq., and further violates 42 U.S.C. § 1983.

23 THIRD CLAIM FOR RELIEF

24 DENIAL OF DUE PROCESS AND EQUAL PROTECTION;

25 VIOLATION OF 42 U.S.C. § 1983

26 69. Plaintiffs reallege and incorporate by reference the allegations set out in  
27 paragraphs 1 through 63, inclusive, of this complaint as though fully set forth here.







1           2. Order that plaintiffs may maintain this action as a class action pursuant to  
2 Rule 23, Federal Rules of Civil Procedure;

3           3. Only to the extent relief does not interfere with state proceedings that were  
4 underway before initiation of this case or otherwise require abstention under  
5 *Younger v. Harris*, 401 U.S. 37 (1971), issue declaratory judgment that Sections 1-6 of  
6 S.B. 1070 are invalid, null, and void;

7           4. Only to the extent relief does not interfere with state proceedings that were  
8 underway before initiation of this case or otherwise require abstention under  
9 *Younger v. Harris*, 401 U.S. 37 (1971), issue preliminary and permanent injunctions  
10 restraining defendants, their agents, employees, and successors in office from further  
11 implementing Sections 1-6 of SB 1070;

12           5. Issue a declataory judgment that LULAC members may not be detained,  
13 arrested, or prosecuted by defendants or their agents for not having or for  
14 transporting people who are not registered pursuant to 8 U.S.C. 1302, not carrying  
15 registration receipt cards pursuant to 8 U.S.C. § 1306, or for seeking or accepting  
16 employment in Arizona.

17           6. Award plaintiffs their costs of suit and attorney's fees pursuant to 42 U.S.C.  
18 § 1988(b); and  
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7. Grant such further relief as the Court deems just.

Dated: January 24, 2011

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CENTER FOR HUMAN RIGHTS  
& CONSTITUTIONAL LAW

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/s/ \_\_\_\_\_  
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CERTIFICATE OF SERVICE

I hereby certify that I am over the age of 18, not a party to this action, and on January 24, 2011, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System to be filed and a transmittal of a Notice of Electronic Filing to be sent the following CM/ECF registrants on record and also emailed them directly at their email addresses below.

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S  
Christopher Scherer

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