

EXHIBIT A

No. 10-16645

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

United States of America,

Plaintiff-Appellee,

v.

State of Arizona; and Janice K. Brewer,
Governor of the State of Arizona, in her
Official Capacity,

Defendants-Appellants.

Appeal from the United States
District Court for the District of
Arizona

No. CV 10-1413-PHX-SRB

**APPELLANTS' PROPOSED BRIEF IN RESPONSE TO AMICUS CURIAE
BRIEF OF THE UNITED MEXICAN STATES**

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Attorneys for Defendants-Appellants State of Arizona and Janice K. Brewer,
Governor of the State of Arizona

Appellants State of Arizona and Arizona Governor Janice K. Brewer, (collectively, “Arizona”) lodge this proposed brief in response to the Brief of Amicus Curiae filed by the United Mexican States (“Mexico”). Mexico’s brief does not assist the Court in resolving the issues at stake in this appeal. This Court should consider Mexico’s arguments in light of its true interest in this dispute, namely its desire for lax enforcement of United States immigration laws and ultimate amnesty for all of the Mexican nationals who are unlawfully present in the United States (phrased as “comprehensive immigration reform” in Mexico’s brief).

I. Mexico’s Alleged Interests Are Not Relevant to This Appeal

Mexico alleges that it has two primary interests at stake in this appeal: (1) protecting “consistent sovereign-to-sovereign relations” with the United States and (2) ensuring that human and civil rights are accorded to its citizens who are present in the United States (which Mexico estimates to be 11 million people). Mexico Br. at 1-2, and 7.

With respect to these two issues, Mexico dedicates most of its brief to addressing the general importance of positive international diplomatic relationships and human and civil rights – general principles that Arizona does not dispute or contest. However, Mexico does not explain how either of these two issues are relevant to the issues before the Court, namely whether federal law preempts sections 2(B), 3, 5(C), and 6 of S.B. 1070 and whether a preliminary injunction of

these four sections is necessary and appropriate. These issues involve states' authority under the U.S. Constitution and "the purpose of Congress" in enacting federal laws. *See Altria Group, Inc. v. Good*, 129 S. Ct. 538, 543 (2008) (citation omitted). The opinions of foreign governments have no role in these determinations and do not assist the Court in resolving questions of preemption.¹

In an appeal where the sole issue at stake is preemption, Mexico notably does not once even mention the concept of preemption, let alone provide any legal analysis on the issue that would be of assistance to the Court or the parties. Instead, Mexico's brief focuses on other issues that have nothing to do with preemption or the preliminary injunction at issue. For example, Mexico focuses on issues such as how trade and tourism might be impacted by S.B. 1070 (Mexico Br. at 5-7); how S.B. 1070 might affect the political cause for "comprehensive immigration reform" (in a manner that Mexico believes appropriate) (*Id.* at 7-10), and how S.B. 1070 could somehow interfere with "border collaboration to combat drug issues" (*Id.* at 10-12).

¹ Mexico's brief essentially establishes that Mexico agrees with the current administration that the federal immigration laws should not be enforced to a significant extent. However, as set forth in Arizona's briefs, the key inquiry is whether S.B. 1070 is consistent with "the accomplishment and execution of the full purposes and objectives of Congress," *Wyeth v. Levine*, 129 S. Ct. 1187, 1201 (2009) (citation omitted), not whether it is consistent with the political positions of the administration and a foreign country.

Even if these issues were somehow relevant to the constitutional law issues before the Court, Mexico's brief fails even to tie these political, social, and economic issues to the specific enjoined provisions at issue. For example, regarding the importance of "border collaboration to combat drug issues," Mexico simply offers conclusory statements that S.B. 1070 "strains" and "encumbers" collaboration between the two countries – that it will "obstruct international drug-related efforts" – without any substantive explanation as to how a state statute designed to help identify criminals found in the border state of Arizona who are not lawfully present in the United States could have anything but a net positive impact on fighting crime, including drug crime, in the region.

Instead, Mexico spends much of its brief engaging in unfounded speculation about the impact of S.B. 1070. Without any basis in the record, Mexico asserts that S.B. 1070 "will inevitably lead to the harassment of Mexicans legally present in the U.S. and appearance-based arrests, giving Mexico justified cause for concern." Mexico Br. at 13. Racial profiling is not at issue in this appeal – or in this lawsuit at all. This unrestrained speculation is entirely inappropriate in this action, which raises a facial challenge to S.B. 1070. When considering a facial challenge, the Court "must be careful not to go beyond the statute's facial requirements and speculate about 'hypothetical' or 'imaginary' cases." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008).

Amici may assist the court in resolving the issues raised by the parties, but may not interject new issues into the appeal. *See Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93, 105 n.9 (2d Cir. 2010) (an amicus brief “is normally not a method for interjecting new issues into an appeal, at least in cases where the parties are competently represented by counsel” (citing *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 445 (2d Cir. 2001)); *Eldred v. Ashcroft*, 255 F.3d 849, 850-51 (D.C. Cir. 2001) (finding it “particularly inappropriate” to reach the merits of an argument raised by amicus but not the parties).

II. Mexico’s True Interest Is to Limit Enforcement of Federal Immigration Laws

Although unstated, Mexico’s primary interest at stake in this appeal is likely its desire for lax enforcement of United States immigration laws and Mexico’s political and economic motivation to criticize any effort by the United States (or any of its jurisdictions) to enforce any immigration laws, whether legitimate or not. For example, it was recently reported that “Mexican border mayors are asking U.S. officials to stem the deportation of convicts to their communities” because “the large number of criminal deportees has contributed to the violence in Juarez, which has reported more than 2,200 homicides so far this year.” *See* Sandra Dibble, *Sanders Only U.S. Mayor at Border Conference*, Sign-On San Diego, Sept. 29, 2010, <http://www.signonsandiego.com/news/2010/sep/24/sanders-only-us-mayor->

border-conference/.

Arizona also respectfully suggests that the Court review the Declaration of former Ambassador Otto Reich [ER 279-295], which addresses many of the actual interests that Mexico and other Latin American countries have in this matter.

Ambassador Reich, for example, highlights the following observations and opinions based on his decades of experience in foreign policy affairs and issues involving the Latin American region:

- Many foreign countries, including Latin American countries, “would prefer to see the US border remain as open as possible to allow the exportation of surplus labor to the U.S.” [ER 286, at ¶ 30]
- “[T]he US is under constant pressure from countries all over the world to keep its borders as fluid and as accessible as possible.” *Id.*
- Many foreign countries fear enforcement of United States immigration laws because “sending [the foreign nationals] back would be destabilizing to [their] economies, socially and politically.” [ER 287, ¶ 31]
- “It is no surprise, and nothing novel, that countries in this region will take the opportunity to criticize US policy to the extent it seeks to enforce the

- federal immigration laws.” [ER 287, ¶ 32]
- “The Latin American region wants the US borders to remain open to undocumented workers because the number of legal aliens that the US allows is not enough to offset the problems of overpopulation and unemployment in those countries.” [ER 287, ¶ 33]
 - Countries in the Latin American region “favor amnesty so that those unlawfully present can continue to send money to their friends and families back home.” *Id.*
 - “The ultimate desire of Mexico is complete amnesty.” *Id.*
 - “[I]t is not the Arizona law that Mexico objects to, it is the limitation on the ability of its workers to cross the border at will, with or without permission of the U.S.” [ER 288, ¶ 35]
 - “[T]he countries of Latin America have a significant stake in keeping US labor markets as open to their people as possible – whether legal or undocumented. As a result, these same Latin American countries are predisposed to criticize any attempt by the US – whether justified or not – to enforce its immigration laws.” [ER 288, ¶ 36]
 - It is “not surprising” that “Mexico has been the most vocal opponent of

SB 1070.” Mexico has been pushing for complete immigration reform – “open borders” – for decades. “[T]he recent criticism of SB 1070 ... is simply another iteration of Mexican policy beyond that already exerted over the past twenty plus years.” [ER 289-90; ¶ 42].

- Some of the other Latin American countries who have joined in public criticism of S.B. 1070 “are among the most virulently anti-American governments in the region. These countries routinely criticize US for purely political purposes.” [ER 290-291; ¶ 46].

Mexico does not address any of the foregoing interests or issues, except to the extent that Mexico notes that it “has a significant interest in U.S. comprehensive immigration reform.” Mexico Br. at 7. The “comprehensive immigration reform” in which Mexico has a “significant interest” is indeed the primary interest that Mexico seeks to advance by submitting its Amicus Brief in this matter. Mexico’s brief is a political filing designed to further this political cause, not a filing to assist the Court or the parties with an analysis on the issues that are relevant and at issue in the appeal. Arizona respectfully requests that the Court consider this when reviewing Mexico’s other arguments.

III. Mexico’s Criticism of S.B. 1070 Should Be Viewed In Context With Mexico’s Immigration Laws

Mexico’s assertion that S.B. 1070 will lead to other so-called “anti-

immigration laws” stands in stark contrast to Mexico’s plainly anti-immigrant laws and policies. Among other things, Mexico’s own Reglamento de la Ley General de Poblacion includes a provision that permits federal and local authorities to request that foreigners present documents confirming their immigration status before performing particular acts or contracts.²

Likewise, the President of Mexico Felipe Calderon has described the policies of Mexico with respect to immigrants who wish to enter Mexico in the following interview with Wolf Blitzer of CNN:

BLITZER: So if people want to come from Guatemala or Honduras or El Salvador or Nicaragua, they want to just come into Mexico, they can just walk in?

CALDERON: No. They need to fulfill a form. They need to establish their right name. We analyze if they have not a criminal precedent. And they coming into Mexico. Actually...

BLITZER: Do Mexican police go around asking for papers of people they suspect are illegal immigrants?

CALDERON: Of course. Of course, in the border, we are asking the people, who are you?

[. . .]

BLITZER: So in other words, if somebody sneaks in from Nicaragua or some other country in Central America, through the southern border of Mexico, they wind up in Mexico, they can go get a job...

² See Ley General de Poblacion (General Population Act), as amended, art. 67 Diaro Oficial d la Federacion, 14 de Abril de 2009 (Mex.).

CALDERON: No, no.

BLITZER: They can work

CALDERON: If – if somebody do that without permission, we send back – we send back them.

See The Situation Room: Interview with Mexican President Felipe Calderon; Analysis of Special Election Results (May 19, 2010), <http://archives.cnn.com/TRANSCRIPTS/1005/19/sitroom.01.html>, a copy of which is attached as Exhibit 1.

IV. Conclusion

Mexico presents an Amicus Brief to this Court that advances a political position, not a “friend of the court” analysis on any of the issues in dispute.

Arizona respectfully requests that the Court consider Mexico’s arguments and positions in light of what Mexico truly seeks to accomplish and that the Court disregard the political rhetoric raised in Mexico’s brief. Mexico has other forums in which its political positions should be raised. As a neighbor to both the United States as a country and Arizona as a sovereign state, Mexico should not be interfering with a dispute between the United States and one of its states about United States constitutional issues.

Dated: October 13, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2010, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

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THE SITUATION ROOM

Interview with Mexican President Felipe Calderon; Analysis of Special Election Results

Aired May 19, 2010 - 17:00 ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.



WOLF BLITZER, HOST: Thanks very much, guys.

Happening now, the presidents of the United States and New Mexico standing together against Arizona's controversial immigration law.

But is Mexico just as tough -- or even tougher -- on illegal immigrants?

Stand by for my exclusive interview with the president of Mexico, Felipe Calderon.

Members of Congress plot their next moves now that voters have declared open season on incumbents. This hour, the nervous reaction to last night's election results and where the demand for change could strike next.

And the capital of Thailand is being compared to a war zone -- military force cracking down on anti-government protesters in an explosion of fire, fear and chaos.

I'm Wolf Blitzer.

You're in THE SITUATION ROOM.

President Obama today ratcheted up his criticism of Arizona's immigration law -- one of the darkest clouds over his relationship with the visiting president of Mexico. And it may just have been just what Felipe Calderon wanted to hear. Mr. Obama explained why his administration may, in fact, go ahead and challenge the Arizona law in court -- a law that he calls a misdirected expression of frustration.

(BEGIN VIDEO CLIP)

BARACK OBAMA, PRESIDENT OF THE UNITED STATES: I think the Arizona law has the potential of being applied in a discriminatory fashion. Now, after it was initially passed, the Arizona legislature amended it and said that this should not be carried out in a discriminatory way. But I think a fair reading of the language of the statute indicates that it gives the possibility of individuals who are being suspicious of being illegal immigrants from being harassed or arrested. And the judgments that are going to be made in applying this law are troublesome.

What I have directed my Justice Department to do is to look very carefully at the language of this law to see whether it comports both with our core values and existing legal standards, as well as the fact that the federal government is ultimately the one charged with immigration policy. And I expect to get a final report back from the Justice Department soon, at which point, we'll make some decisions in terms of how we are going to address that law.

(END VIDEO CLIP)

BLITZER: After president Calderon's visit to the White House, he came right here to THE SITUATION ROOM for an exclusive interview. This is his only television interview during his state visit to Washington.

I asked him, what's wrong with the folks in Arizona wanting to protect their border?

(BEGIN VIDEOTAPE)

PRES. FELIPE CALDERON, MEXICO: That is not exactly the problem. I fully respect the right of any nation to establish the legislation that that nation wants -- or their people -- and, of course, the right of any nation to enforce the law and protect their own borders.

But the problem is first that we need to -- to face this challenge in a comprehensive way as President Obama says. And that implies to recognize the rights and the contribution of the people to the growth of this great nation.

But, on the other hand, and in particular, in Arizona, there is some racial profiling criteria in order to enforce the law that it is against any sense of human rights and, of course, is provoking a very disappointing things -- or a very disappointing opinion in Mexico and around the world, even here, in America.

BLITZER: Because the governor of Arizona says there is no racial profiling, that they're not going to simply stop someone who looks Mexican. They're going to have to have -- the police are going to have to have a reason for stopping someone. And if that reason then asks -- results in them asking for papers, that's a different matter.

CALDERON: It could be. And I fully respect the opinion of the governor. But from the point of view of not only Mexican people, but also Mexican-American people and specialists and analyzed the new law precisely had this kind of risk.

BLITZER: Even the amendments that were made -- the changes that were made in this law in Arizona?

CALDERON: Even with that, because what is -- the reason is we need to clarify -- and, in particular, it would be fine if the judicial authorities are able to clarify how dangerous or how bad is the law. If the authorities say it is good, we will respect.

But, anyway, I think that we need to focus in a different way the solution of my -- of immigration here in the States. BLITZER: You heard the president of the United States say that he doesn't have the votes in the Senate, maybe not in the House of Representatives, to pass comprehensive immigration reform that would include a pathway to citizenship -- U.S. citizenship for illegal immigrants.

So what -- in the meantime, is there anything wrong with states trying to tighten up their security?

CALDERON: The point is to introduce these kinds of elements, especially racial profiling aspects that are attempting against what we consider human rights. It's the principle of discrimination, which is against the values of this great nation.

BLITZER: Has your foreign ministry issued a travel advisory to Mexicans not to visit Arizona?

CALDERON: Yes, because according with this law, it's -- there is some risk for Mexican people, especially because...

BLITZER: And so if a tourist goes to Mex -- to Arizona and has the proper visas, the proper papers, what's the risk?

CALDERON: The risk is that it -- well, they look like Mexicans. And, exactly, they are Mexican, even they are visiting and buying things in Arizona.

Let me tell you what the Mexican -- Mexican consumption in Arizona implied like \$3 billion a year. So the tourism and other activities of Mexican people in Arizona works a lot for Arizona's economy.

BLITZER: So you think Arizona will pay a price for this -- this new law?

CALDERON: I don't want that. I only want an -- a mutual understanding. And, in particular, I don't want to move these controversial feelings. I don't want to exacerbate bad feelings between Mexicans and Americans. We need to find out a solution.

What is clear for me is that that law is not a solution at all.

BLITZER: All right. Let's talk a little bit about Mexico's laws. I read an article in "The Washington Times" the other day. I'm going to read a paragraph to you and you tell me if this is true or not true. This is from "The Washington Times": "Under the Mexican law, illegal immigration is a felony punishable by up to two years in prison. Immigrants who are deported and attempt to reenter can be imprisoned for 10 years. Visa violators can be sentenced to six year terms. Mexicans who help illegal immigrants are considered criminals."

Is that true?

CALDERON: It was true, but it is not anymore. We derogate or we erased that part of the law. Actually, the legal immigration is not a -- is not a crime in Mexico. Not anymore, since one year ago. And that is the reason why we are trying to establish our own comprehensive public policy talking about, for instance, immigrants coming from Central America...

BLITZER: So if...

CALDERON: -- (INAUDIBLE).

BLITZER: So if people want to come from Guatemala or Honduras or El Salvador or Nicaragua, they want to just come into Mexico, they can just walk in?

CALDERON: No. They need to fulfill a form. They need to establish their right name. We analyze if they have not a criminal precedent. And they coming into Mexico. Actually...

BLITZER: Do Mexican police go around asking for papers of people they suspect are illegal immigrants?

CALDERON: Of course. Of course, in the border, we are asking the people, who are you?

And if they explain...

BLITZER: At the border, I understand, when they come in.

CALDERON: Yes.

BLITZER: But once they're in...

CALDERON: But not -- but not in -- if -- once they are inside the -- inside the country, what the Mexican police do is, of course, enforce the law. But by any means, immigration is a crime anymore in Mexico.

BLITZER: Immigration is not a crime, you're saying?

CALDERON: It's not a crime.

BLITZER: So in other words, if somebody sneaks in from Nicaragua or some other country in Central America, through the southern border of Mexico, they wind up in Mexico, they can go get a job...

CALDERON: No, no.

BLITZER: They can work.

CALDERON: If -- if somebody do that without permission, we send back -- we send back them.

BLITZER: You find them and you send them back?

CALDERON: Yes. However, especially with the people of Guatemala, we are providing a new system in which any single citizen from Guatemala could be able to visit any single border (INAUDIBLE) in the south. And even with all the requirements, he can or she can visit any parts of Mexico.

BLITZER: I ask the questions because there's an argument that people in Arizona and New Mexico and -- and Texas, they say they're only trying to do in their states what Mexico itself does in the southern part of Mexico.

CALDERON: I know. And that is a very powerful argument. But that is one of the reasons why we are trying to change our policy.

And let me be frank, Wolf. In the past, Mexican authorities were in a -- in a -- in an unfortunate way in the treatment for immigrants. But now we are changing the policy. We changed already the law. And that is different today. We are trying to write a new story, talking about immigrants, especially coming from Central American countries.

(END VIDEO TAPE)

BLITZER: We're going to have a lot more of my exclusive interview with the president of Mexico, Felipe Calderon. I'll ask him about the almost 23,000 Mexicans who've died in the Mexican drug war on his watch and whether the illegal cartels are winning. That's coming up later this hour here in THE SITUATION ROOM.

Here's a snapshot of where Americans stand on immigration. Our most recent CNN/Opinion Research Corporation Poll asked if the United States should make it easier for illegal immigrants to become U.S. citizens. One third of those questioned said yes; two-thirds said no.

Republicans and Democrats are busy spinning the results of last night's elections and they're looking ahead to the climactic battle for control of the U.S. Congress this fall.

Is either party much better off or worse off today?

Also, the crackdown unfolding in Thailand right now. We're following the deadly clashes between the military forces and the anti-government protesters.

And when their boat capsized, there was one thing that kept three people alive for three days on the water.

(COMMERCIAL BREAK)

BLITZER: Jack Cafferty is here with The Cafferty File -- Jack.

CAFFERTY: Revelations that Connecticut Senatorial candidate Richard Blumenthal lied about serving in Vietnam couldn't have come at a worse time for the Democrats. It's not like they don't have enough problems with their candidates getting knocked off right and left and with the Republicans' renewed efforts to retake control of the Senate, if they can, in November.

That's why Blumenthal, who is Connecticut's attorney general, was carefully pre-selected and packaged to replace Senator Chris Dodd -- the closest to a sure thing the Democrats could find. Except it turns out he's a liar and overnight has become a huge liability and embarrassment to the Democrats.

Republicans are all over this, calling Blumenthal's lies a serious blow to his candidacy. They say it's appalling that he would lie about such a significant issue.

And a lot of veterans aren't happy, either, and rightfully so. True to form, Blumenthal surrounded himself with veterans during his non-apology yesterday at a VFW in West Hartford.

But Blumenthal isn't a member of the VFW. That's the Veterans of Foreign Wars. And he's not eligible to be because, well, you know, he didn't go to Vietnam. And he's not a veteran of the foreign war in Vietnam. In fact, Blumenthal received five military deferments before finally joining the Marine Reserves.

The Democrats may be shooting themselves in the foot by continuing to support Blumenthal. They're trying to contain the damage by circulating other videos that show Blumenthal accurately describing his military service. So sometimes he was honest and then other times he lied and apparently that's OK with the Democrats.

His primary opponent, Merrick Alpert, calls Blumenthal a coward and a liar.

Connecticut Democrats decide this weekend on their Senate candidate. And if they're smart, well, we'll see.

Here's the question -- could supporting Connecticut's Richard Blumenthal cost Democrats the Senate?

Go to CNN.com/caffertyfile and post a comment on my blog -- Wolf.

BLITZER: Jack, thank you.

Jack Cafferty with The Cafferty File.

On Capitol Hill right now, members of Congress are digesting the latest votes against the political establishment. By now, you've probably heard plenty of interpretations of last night's results and the anti-incumbent mood across America. But there's still a lot of uncertainty about how all of this will play out in the battle for control of Congress in the fall.

Let's bring in our Congressional correspondent, Brianna Keilar -- Brianna, let's talk specifically about that one actual election in Pennsylvania yesterday -- one Congressional district, a special election involving a Democrat and a Republican.

BRIANNA KEILAR, CNN CONGRESSIONAL CORRESPONDENT: And, Wolf as, you know, to change the balance of power in the House of Representatives, Republicans would need to win 39 seats. And election prognosticators say that is possible. That's why we're paying so much attention and quite frankly, why lawmakers are paying so much attention to this special election in Pennsylvania's 12th District last night, where the Democrat won. People are looking to see what does it tell them about the November elections in the House. And we spoke to Chris Van Hollen, who is a member of the Democratic leadership but he is also tasked with getting more Democrats elected to Congress. And we also spoke with Eric Cantor, the number two Republican in the House.

Here's what they told us.

(BEGIN VIDEO CLIP)

KEILAR: What was the takeaway lesson?

REP. ERIC CANTOR (R), VIRGINIA: For me, the takeaway was we can't get ahead of ourselves right now. You know, there's a lot of talk in this town about predicting what the tally will be in November and, you know, we haven't won the seats yet.

REP. CHRIS VAN HOLLEN (D), MARYLAND: Pennsylvania 12 was the only race in the country yesterday where you had a head-to-head between a Republican and a Democrat. And the Republicans test drove their November strategy in that election and it obviously crashed, because the Democrat won very convincingly.

KEILAR: This idea of making Speaker Pelosi the bogeyman here, did it really work?

It seems like maybe it didn't work so well.

CANTOR: I would say, in general, it is the policies that have been pursued by Speaker Pelosi that are very unpopular.

VAN HOLLEN: They tried running against Speaker Pelosi and demonizing her. They tried running against Barack Obama. And what the people said was, let's talk about the issues that matter in our lives. And when it comes to the issues, we really don't want to go back to the same economic policies that got us into the mess to begin with.

KEILAR: Democrats are going to be painting Republicans as in step with failed economic policies of the past.

Is -- is that your plan?

VAN HOLLEN: We have evidence of what their economic policies did. And the question we have for voters is, why would you hand the keys to the car back over to the same guys who drove the economy into the ditch?

CANTOR: We are not the Republican Party that got fired in '06 and was trampled again in '08. We understand we need to be true to our principles of fiscal discipline. And we understand that what the public is expecting is for us to listen to them and to pursue policies that will, once again, promote growth and get people back to work.

(END VIDEO CLIP)

KEILAR: So, Wolf, as you can see, the spin cycle in full effect here on Capitol Hill, as Republicans are really minimizing what we should read into the Pennsylvania 12 election in terms of what's going to happen in November and Democrats saying that this is good news for them, although there will be bumps along the road.

BLITZER: We'll have to wait until November to find out who's right and who's wrong.

Thanks, Brianna.

Thanks very much.

Stand by, by the way, for more of the election results in our Strategy Session. I'll ask Donna Brazile and Alex Castellanos if voters are anti-incumbent or simply antiphonies.

Insurgents launch a brazen attack on a giant U.S. base in Afghanistan, leaving one American dead. We're going to the Afghan capital for the latest on what happened.

And France moves one step closer to banning women from wearing burkas -- the details of a controversial new controversial measure. That's coming up.

(COMMERCIAL BREAK)

BLITZER: Lisa Sylvester is monitoring some of the top stories in THE SITUATION ROOM right now.

What else is going on -- Lisa?

SYLVESTER: Hi, Wolf.

Well, the government of Thailand is working to ensure that it can restore order to a city in flames. Anti-government protest leaders have been forced to surrender after an army assault on Bangkok. Now, many angry followers are shooting grenades and setting buildings on fire. At least five people are confirmed dead and about 60 wounded in the violence.

And France is now joining Belgium in a controversial quest to ban burkas. The French Council of Ministers has approved a measure to ban women from wearing full-faced veils. The parliament won't likely vote on the measure until July. Belgium's lower house of parliament passed a similar ban last month. That bill is awaiting approval by the upper house.

And just a short while ago, the Senate failed to end debate and move forward on a massive banking regulation and financial reform bill. Democrats fell short of the 60 bills votes needed to stop Republicans from blocking the bill. The two parties are at odds over a number of unresolved amendments.

And the Federal Reserve officials -- they are envisioning a brighter economic outlook for the rest of the year. In its new forecast, the Fed is predicting a growth rate between 3.2 and 3.7 percent. And it expects unemployment to dip from its current rate of 9.9 percent to around 9.1 percent. It calls these changes, though, modest. So everything in perspective -- Wolf.

BLITZER: Relatively speaking.

All right, thanks, Lisa.

Don't go far away.

The presidents of the United States and Mexico confronting drug violence at the border.

Are the cartels, though, winning?

Stand by for more of my exclusive interview with the president of Mexico, Felipe Calderon.

And when their boat capsized, it was the only thing standing between them and death.

Also this, the actor, Sean Penn, painting a very disturbing picture for U.S. senators about the situation in Haiti.

(COMMERCIAL BREAK)

BLITZER: You're in THE SITUATION ROOM.

Happening now, new signs that the massive oil spill in the Gulf of Mexico is getting even worse. Our David Mattingly joined the Louisiana governor, Bobby Jindal, on a boat tour for a firsthand look at what's described as the thickest oil yet to hit land.

And could a brazen it's got attack on a giant U.S. air base in Afghanistan mean security in the country right now falling apart?

I'll ask the Afghan opposition leader, Dr. Abdullah Abdullah. He's here with me.

I'm Wolf Blitzer.

You're in THE SITUATION ROOM.

The Mexican president, Felipe Calderon, is set to arrive at the White House just about a half hour or so from now for this evening's state dinner.

But first, more of my exclusive conversation earlier today with Felipe Calderon.

(BEGIN VIDEOTAPE)

BLITZER: This drug war is -- is getting out of control. I know you've tried, since becoming president, to do something. But in "The Wall Street Journal," they just did a story the other day and -- and CNN has similar information. Nearly 23,000 people have been killed in Mexico since you launched your war on these drug cartels -- these drug gangs.

Is that right?

CALDERON: There are several things that I need to clarify. First, it is not exactly a war on drugs, in the sense that my object is not only and not mainly drugs, or narco-trafficking itself. It's not a war on drugs in the old sense of Mr. Nixon established here in the States.

My focus is to guarantee the safety for Mexican families, which are under threat of the organized crime in Mexico.

BLITZER: Because the murders and -- and the kidnappings, it seems to me, from afar, as if it's almost out of control.

CALDERON: It is not out of control. It is part of the process that we are stopping. Fortunately, we started to take action on time. Before, previous to me, the authority was not enough strong, was not -- was not applying the law in the right sense. That that is the reason why the organized crime started to grow in Mexico. Part link with narco-trafficking in the old sense and part linked with the new markets in order to develop the distribution of drugs in Mexico...

BLITZER: All right...

CALDERON: But after that...

BLITZER: Because I -- I'm wondering, are the drug gangs, the cartels, are they winning this war right now?

When I hear a number like 23,000 people killed since you launched your initiative...

CALDERON: No. They -- they are not winning.

Let me clarify that the other part of my answer. Most of that -- 90 percent of those casualties are of -- are casualties of criminals themselves that are fighting each other. It's very clear for us according -- with our records, that it's possible to understand, for instance, in one particular homicide, what could be the probable reasons for that, and 90 percent of that are criminals linked in one way or another to the gangs. Now, the Mexican gangs are passing through a very unstable process, splitting themselves and fighting each other. That explains most of those casualties. They are not --

BLITZER: These are not innocent civilians among the 23,000?

CALDERON: Some of them.

BLITZER: You're saying that many of them are gang members themselves?

CALDERON: 90 percent.

BLITZER: 90 percent?

CALDERON: 90 percent, yes. 90 percent out of all of the homicides that we are able to understand or explain the causes of that. 2 percent of that, less than 2 percent are innocent civilians, yes, more or less killed by the criminals. That's the worst part of that.

BLITZER: I'd like you to turn around and look at that picture of Diego Fernandez. You know him?

CALDERON: Very well. He's my friend.

BLITZER: He's your friend. He was once a presidential candidate.

CALDERON: Yes.

BLITZER: What has happened to him?

CALDERON: We don't know, not yet. There's no evidence until now that this kidnap is related with organized crime. That's the truth.

BLITZER: He's been kidnapped? You can confirm that?

CALDERON: It could be, this one (INAUDIBLE).

BLITZER: Because there's some suggestion he was kidnapped to send you a message.

CALDERON: No, the criminals used to send me a very clear message in another way. I think it's a very sensitive case. It's very tough for me, of course, because Diego is a very good friend of mine, a very good friend, a member of my party. But there is not evidence that this situation is related with organized crime. There's no evidence of it's clearly a kidnap case because -- well, according with the investigation and courts.

BLITZER: Have there been anything demanding anything? Ransom?

CALDERON: Not one. No one.

BLITZER: You've had nothing like that?

CALDERON: Nothing. It's a mystery now. Of course, for me, it's very important to preserve the confidence on the privacy of this investigation. We will find Diego and, of course, we are working with all the resources we have to find him.

BLITZER: How worried are you about your personal safety?

CALDERON: Well, you know, there are risks, of course, with the job I have. Let me be honest in this. Beyond the risks, beyond the dreadness (ph), to be president is the highest honor that any one Mexican could have. I am really happy with that. I learn from when I was a child that it is an honor to serve your country. I serve my country. I am the highest rank. I don't remember these risks that, of course, there are according to with the job I am doing.

BLITZER: Mr. President thanks so much. Welcome to Washington. You have a huge, huge challenge ahead of you. We wish you only the best. CALDERON: Thank you very much. Thank you, Wolf.

BLITZER: We are monitoring that massive oil spread in the Gulf of Mexico. Guess what? It's getting worse. Authorities and our crews report seeing the thickest oil on land since the rig explosion.

And a deadly attack on a U.S.-run air base in Afghanistan. Wait until you hear how the Taliban let CNN know about it.

(COMMERCIAL BREAK)

BLITZER: We are going to get a check of the headlines with Lisa Sylvester in two and a half minutes.

But first, New Mexico may not be the biggest state in the country or the most economically sound, but despite that, it's managing to "Build Up America." And it's relying on an unusual source in the process, the weather.

Here is CNN's Tom Foreman.

(BEGIN VIDEOTAPE)

(SINGING)

TOM FOREMAN, CNN CORRESPONDENT (voice-over): With easily more than 300 days of sunshine each year, New Mexico is one of the sunniest states in the country. And there's a wave of solar energy companies coming to set up shop. One of the biggest? Schott Solar.

(on camera): Ever since this German-owned company opened this massive complex on the south side of Albuquerque, they have been energizing the local jobs market.

(voice-over): Amid the whirl of robots in this 175,000-square-foot plant, workers are turning out solar cells and related technology as fast as they can. The products are going out the door just as quickly.

UNIDENTIFIED MALE: It's a growing technology. There's a demand for it.

UNIDENTIFIED MALE: We basically sell everything that we produce.

FOREMAN (on camera): You feel good about it?

UNIDENTIFIED FEMALE: I do.

UNIDENTIFIED MALE: Personally, I see a future here.

FOREMAN (voice-over): It's no accident. Up in the capital, Sante Fe, another fellow believes he can see the future, too.

BILL RICHARDSON, (D), GOVERNOR OF NEW MEXICO: Am I always right or what? CHILDREN: Yes.

FOREMAN: Governor Bill Richardson is pushing his state hard to recruit more and more solar companies.

RICHARDSON: I've just concentrated like a laser on saying any solar entity, please come to New Mexico. We will do everything we can to recruit you. And it's working.

FOREMAN: The governor's philosophy is simple. His state has long been home to some of the federal government's most advanced scientific and military lands. A great deal of technical expertise is already here. Combine that with new companies on the leading edge of a green revolution and the result, 2,500 new jobs already this year as more companies follow Schott Solar's lead.

JIM STEIN, SCHOTT SOLAR: Well, Governor Richardson and his cabinet rolled out the welcome mat. They provided incentives for us. They provided tax incentives on property, training incentives.

FOREMAN (on camera): What is your best hope for all of this? What do you hope people say 20 years from now about this idea?

RICHARDSON: That New Mexico, despite its small size, became the solar capital of America. That's my goal. And I think we are on our way.

FOREMAN (voice-over): Solar is still a tiny sliver of the U.S. energy market. This state is intent on grabbing a big share of that, convinced it will mean a lot of jobs, money and bright days ahead.

(END VIDEOTAPE)

FOREMAN: (on camera): This all fits into a broader plan to diversify New Mexico's economy. They have relied on federal spending out here for a very long time. They believe in this economy, and in this day and time, they really can't do just that. They have to spread their wings a little bit. Solar is one of those key -- Wolf?

BLITZER: Tom Foreman in Santa Fe, New Mexico for us. Thank you.

Lisa Sylvester is monitoring some of the other top stories in "THE SITUATION ROOM" now.

Lisa, what else is going on?

LISA SYLVESTER, CNN CORRESPONDENT: Hi, Wolf. Three Florida residents are shaking on their feet, but safe after their boat capsized and sank off the east coast. The thing that kept them alive, a large cooler. They clung to it for three days before they were finally rescued yesterday. Authorities say they have severe sunburn, jelly fish stings and they are very tired. Other than that, they are apparently OK.

Supreme Court nominee, Elena Kagan, is marking June 28th on her calendar. That is when her Senate confirmation hearings will begin. As Kagan made the rounds on Capitol Hill today, Senate Judiciary Chairman Patrick Leahy announced this timetable. Barring any surprised complications, Leahy expects it to be wrapped up before the Senators leave for a week-long break in July.

Actor Sean Penn, painting a disturbing picture of the situation in some Haitian camps for the homeless over four months after the hurricane. Penn testified before a Senate panel today about relief efforts.

(BEGIN VIDEO CLIP)

SEAN PENN, ACTOR & ACTIVIST: In many camps, depending upon which area of town you're looking at, you have gang infiltration. That is on the rise. Guns are coming up from out of rubble and other places. People are coming out of the state of shock. And the unified spirit is breaking it up into a little bit into a more desperate spirit and people becoming much more increasingly vulnerable.

(END VIDEO CLIP)

SYLVESTER: Sean Penn has been involved in running one of the largest camps for Haitians left homeless by the earthquake.

And a Hollywood power couple is giving hope to would-be parents of a certain age. Yes, it's true. John Travolta and his wife, Kelly Preston, they are expecting a baby. She's 47. He's 56. They made the announcement on their web site yesterday over a year after their teenage son died of a seizure. They have a 10-year-old daughter and now they're going to have a brand-new baby on the way. So congratulations to both of them.

BLITZER: We wish them a lot of happiness with that baby on the way.

Lisa, we wish you happiness if with your baby on the way. What month are you in now?

SYLVESTER: August. Well, I'm due in August, August 25th. Mark your calendars for that.

(LAUGHTER)

BLITZER: I'm excited for that as well.

All right, Lisa, thank you.

Are voters today anti-incumbents or anti-phonies? Our Donna Brazile has the answer in our strategy session.

And which celebrities will be attending tonight's White House State Dinner? We'll have the list. That's coming up.

(COMMERCIAL BREAK)

BLITZER: Check out these pictures coming into "THE SITUATION ROOM." This is in Hennessey, Oklahoma, a tornado on the way. Chad Meyers is watching it.

What do we know, Chad?

CHAD MEYERS, CNN METEOROLOGIST: We know that this storm has been on and off the ground a number of times. There are storm chasers on this storm. The video you're seeing now actually from a helicopter. Even though it may not look like the funnel is all the way touching the ground, in fact, there is spin on the ground. It's kind of a white tornado, which means it's not picking up dirt. It's spinning a lot of water vapor here. No real damage with this. This is one mile north of Hennessey, Oklahoma. You can even see, on the very bottom of the screen, part of the town of Hennessey, Oklahoma. It's moving away from the town right now, but there are many more things to northeast, at 25 miles per hour, that this storm could affect -- Wolf?

BLITZER: All right, Chad, stay on top of this. We'll check back with you.

Those pictures very, very dramatic.

Let's get to the strategy session right now. Joining us, our CNN contributors, the Democrat strategist, Donna Brazile; and the Republican strategist, Alex Castellanos.

Guys, thanks very much.

You think, Donna, that it wasn't really a vote against incumbents last night as much as against phonies?

DONNA BRAZILE, CNN DEMOCRATIC STRATEGIST: We know that there's a stiff headwind right now that both parties are facing in terms of incumbents. I think voters are rejecting the politicians that promise things and don't deliver. They want authentic candidates, candidates who will actually get to Washington, D.C., the state capital and deliver. So I think they're rejecting phonies as well as incumbents.

BLITZER: Arlen Specter was a phony?

BRAZILE: Mr. Specter became a Democrat a year ago and I don't think -- it was an up-hill battle from day one. I don't think Democrats really knew exactly who he was. When he said he was running to save his job, well, that's a phony, in my book.

BLITZER: Will Joe Sestak, in Pennsylvania, be a stronger Democrat in the fall than Arlen Specter would have been?

ALEX CASTELLANOS, CNN REPUBLICAN STRATEGIST: Yes, he would. He's an admiral and he has a Navy background. Combine that with a fresh face that's undefined as opposed to decades in Washington that Specter would have brought to the ticket. He'll be a tougher opponent.

BLITZER: If the president of the United States, for example, can go into Pennsylvania and energize that base, the African-American community in Philadelphia, for example, you think Sestak might have a chance of beating the Republican, Pat Toomey?

CASTELLANOS: I think it's going to be a tough race. I'm not sure the president makes that difference. The president doesn't seem to have coat tails in general elections. We've had that in Massachusetts. We've seen that in Virginia and in New Jersey. Can he energize some Democrats to come out? Yes. That should help a few points. But these elections are really about swing voters in the middle. Look what happened to Democrats. They actually ran away from the president's agenda to win.

BLITZER: So should the president stay away from Pennsylvania in the next several months?

BRAZILE: I think candidates shouldn't rely on the president, nor should candidates rely on the Minority Leader McConnell. What we learned yesterday is that voters are rejecting --

BLITZER: In Kentucky.

BRAZILE: They are rejecting the establishment. They don't want to hear an endorsement from their savants. They want to know -- they want to hear from the candidates themselves.

CASTELLANOS: Let's make no mistake, the establishment in Washington is all Democrats. They control the House and the Senate. They have the White House. If there's an antiestablishment tide, it's happened because the Democrats are --

(CROSSTALK)

BLITZER: We didn't see evidence of that in the 12th district of Pennsylvania last night when an actual Democrat ran against an actual Republican and the Democrat won.

BRAZILE: And look what happened in Utah and look in Florida.

CASTELLANOS: Well, it depends on how you look at it. It depends on how you look at it, because the Democrat in that state, in that district, ran against the Obama agenda. He ran against Obama-care. He said he was pro-life. He ran against cap-and-trade. I think this is the big lesson for Democrats, if you have a special election, Democrats are ten for ten. Credit them.

(LAUGHTER)

That's impressive.

BRAZILE: Well, the Republicans --

CASTELLANOS: But that's fresh faces. It's not incumbent Democrats who can embrace the Obama agenda in Washington.

BRAZILE: The Republicans, this was a district tailor made for the Republicans with a tail win. And they could attack --

CASTELLANOS: No, no, no. BLITZER: John Murtha has held that seat for 20 or 30 years.

BRAZILE: It a cautiously conservative district. It went for John Kerry. It went for John McCain.

CASTELLANOS: His district -- a little history. This district was actually created --

(CROSSTALK)

BRAZILE: The Republicans decided that this was the race to show they could win in a fall in competitive districts.

CASTELLANOS: That's true.

BRAZILE: This candidate was not able to catch fire because he ran against President Obama and Nancy Pelosi. He didn't run for the people in the 12th congressional district.

CASTELLANOS: Donna is right. Republicans wanted to win this, thought they could, thought they should and they didn't. However, it's important to note, this was a very Democratic district. This district was packed with Democrats in redistricting to get as many Democrat votes as possible. And they're for Murtha.

(CROSSTALK)

BLITZER: But didn't McCain carry it in 2008?

CASTELLANOS: Yes, he did.

BLITZER: So why is it such a Democratic district?

CASTELLANOS: Registration-wise, it was two-thirds Democrats. And Democrats came out 65 percent to 67 percent in that district.

BLITZER: Let's look ahead, Donna. There's going to be a few more Tuesday's coming up that you are paying attention to, specifically, what, June 8th?

BRAZILE: June 8th, because that's the runoff in Arkansas. I also would like to pay attention -- and that's California because that's an

important contest for the Republicans as well. Nevada, that's an important primary for the Republicans as well as Senator Reid. August 10th is Colorado, there's another tea party candidate that's on the Republican side.

BLITZER: And Arizona is in August as well.

BRAZILE: Arizona is August 24th. And September 10th, we're going to have a slew of primaries in New York, Washington, D.C., Maryland. So this is -- we still have at least another four big Super Tuesdays to go before we get to the November 2nd.

BLITZER: So all of us have to work on those Tuesdays, if that what you're saying? (LAUGHTER)

BRAZILE: I'm telling you so Alex knows that the two of us will be spending some time together, so.

CASTELLANOS: We can start the weekend on Wednesday.

(LAUGHTER)

Once they're done.

(CROSSTALK)

BLITZER: We can work, is that what you're saying?

CASTELLANOS: I think the big week -- bigger elections to watch, you're going to watch Arizona. You know, does John McCain get hurt by the tea party --

BLITZER: Do you think J.D. Hayworth can beat John McCain in the Republican primary?

CASTELLANOS: No, the numbers I'm seeing, he falls way short. McCain is protected because he's an outsider.

BLITZER: Do you think McCain is vulnerable?

BRAZILE: Yes.

CASTELLANOS: McCain's a maverick.

BRAZILE: Absolutely. But he's also an insider. He's part of the establishment.

CASTELLANOS: He's both.

BRAZILE: And when you have 41 votes, you're part of the establishment.

BLITZER: Is he a phony?

BRAZILE: John McCain?

BLITZER: Because you say this is a vote against phonies.

BRAZILE: I don't think John McCain is authentic anymore. I mean, anytime John McCain said that he'd never claimed that he was a maverick, that's a problem.

BLITZER: So you're saying he's a phony?

BRAZILE: I'm saying that John McCain --

(CROSSTALK)

BRAZILE: -- also has a problem with proving to voters that he was authentic, so, yes, he would fit that category of being a phony.

CASTELLANOS: Politicians are allowed to play a little politics. We all understand what has to be done out there. But McCain has stood his ground on important things when he's had to. He'll be fine.

I think another big one to watch is California, Meg Whitman. That could be the emergence of a fresh, new business face on the scene. If she does well, all of a sudden, that augers well for Republicans.

BLITZER: We'll see if Carly Fiorina can win that contest on the Republican side.

CASTELLANOS: Another important race.

BRAZILE: Barbara Boxer is going to slam dunk that candidate.

BLITZER: We'll see. We'll watch.

BRAZILE: You've seen Barbara Boxer.

BLITZER: I know Barbara Boxer.

BRAZILE: She can shoot.

BLITZER: Not as well as you know her. All right, got it.

Guys, thanks very much.

Jack Cafferty is going to be right back with the "Cafferty File."

Also, my interview with the Afghan opposition leader, Dr. Abdullah Abdullah. His gloomy prediction about on how long U.S. troops need to stay in his country. Stand by. You'll hear what's going on.

And the bloody crack down on anti-government protesters in Thailand. CNN's Dan Rivers reports on the violence hitting civilians close to home.

(BEGIN VIDEO CLIP)

DAN RIVERS, CNN CORRESPONDENT (voice-over): You can see how vulnerable the local residents are here. This family are (ph) crouching with us on the roof of their building and the bullets are literally flying right beneath where we are.

(END VIDEO CLIP)

(COMMERCIAL BREAK)

BLITZER: Jack is back with "The Cafferty File" -- Jack?

JACK CAFFERTY, CNN CORRESPONDENT: The question this hour, could supporting Connecticut's Richard Blumenthal cost the Democrats the Senate?

Kathy writes, "I surely do hope so. My husband served 30 years in the military, six of those as a prisoner of war. Anyone lying about their military service will certainly lie about everything and anything else to get elected and stay elected. And we've already had too much of that. These jerks have the chance to do what they claim they have done, but didn't, because of cowardliness or whatever reason they thought they had at the time."

Dan writes, "I think the outrage over Blumenthal's lies will only grow stronger. Leaders in the Democrat Party are only making themselves and the party look sleazy by continuing to support this guy. Huge mistake."

Bud says, "Yes, and it should. It's gotten to the point where these guys lie, cheat, and steal, knowing that everybody knows it and they don't even bat an eye. But it seems not to matter."

Jim writes, "You bet your boots it would cost the Democrats the Senate seat. He stepped over the line and disrespected every single legitimate Vietnam veteran. There are over 58,000 of my would-be peers whose names are on a long black wall. They would object, too, if they could."

Debra rights, "Yes, that and other party gaffes they have made. Arlen Specter was just the first to go."

George writes, "I'm a former Democratic state chairman and a Vietnam veteran for real. And I urge the party in Connecticut to find a new candidate, and fast."

And Greg in Las Vegas writes, "It doesn't matter, Jack. The Democrats don't know what to do with the majority when they have it."

If you want to read more on this, you'll find it on my blog at CNN.com/caffertyfile.

BLITZER: Jack Cafferty, thank you.

It's the worst they've seen so far, heavy, thick oil pouring onto Louisiana's shoreline. Our David Mattingly is just back from a boat tour with the Louisiana governor, Bobby Jindal. He'll join us live.

(COMMERCIAL BREAK)

BLITZER: You're in "THE SITUATION ROOM."

Happening now, armed with guns, grenades, and suicide vests, Taliban insurgents have assaulted a giant U.S. base in Afghanistan. I'll ask Afghanistan's opposition leader if the enemy is winning right now.

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