

APPENDIX 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF ARIZONA, et al.,

Defendants.

Civil Action No.

DECLARATION OF ROBERTO VILLASEÑOR

Pursuant to 28 U.S.C. 1746, I, ROBERTO VILLASEÑOR declare and state as follows:

1. I have been employed by the Tucson Police Department for almost 30 years and have been the Chief of Police for about 1 year and one month. The operations budget for the Tucson Police Department in fiscal year 2009/2010 was approximately \$159 million.
2. As Chief of Police, I am responsible for protecting and ensuring the public safety of all people living and traveling in my jurisdiction, regardless of their immigration status. Tucson is the 2nd largest city in the state of Arizona and the 32nd largest city in the United States with a 2008 Census Bureau estimate population of 541,811. Hispanic or Latino population was estimated by the American Community Survey in 2005-7 3 Year Estimates to comprise approximately 39.5% of Tucson' population. Tucson is located some 60 miles from the US-Mexico Border. The surrounding metropolitan population exceeds 1 million persons.

3. As Chief of Police, I am also responsible for establishing policies and priorities for the department and my officers. The department is budgeted for 1113 sworn officers who engage in a broad range of law enforcement activities and actions, including but not limited to investigating and solving serious and violent crimes, responding to domestic violence calls, taking and responding to complaints from the public, and working with the community to encourage reporting of crime and cooperation with police. Deterring, investigating and solving serious and violent crimes are the department's top priorities, and it is absolutely essential to the success of our mission that we have the cooperation and support of all members of our community, whether they are here lawfully or not.

4. Arizona S.B. 1070 as amended by H.B. 2162 ("SB 1070"), which becomes law July 29, 2010, mandates that my officers determine the immigration status of any person they lawfully stop, detain or arrest in every case in which there is reasonable suspicion that the person is in the country unlawfully, regardless of the severity of the suspected or actual offense. The new law remove my ability to provide guidance and direction to officers as to what is practicable during the course of prioritizing investigations involving an immigration component. While I understand the impetus for legislation addressing illegal immigration issues, with Arizona bearing the brunt of the negative impact of illegal immigration that passes into our nation through this state, my concern is that these laws amount to an unfunded mandate that impose a Federal responsibility on local law enforcement. In an era of shrinking governmental budgets, local police authorities will be forced to assume a role not unlike that of at least two major Federal enforcement agencies, and with not an additional cent from the state to do so. The Tucson Police Department already cooperates with Federal immigration authorities when it can, and has actively worked with the Immigration and Customs Enforcement and Customs and

Border Protection when suspects are arrested and booked into jail in order that their immigration status can be verified. The impact of illegal immigration on Arizona's well-being cannot be denied. But to require local police to act as immigration agents when a lack of local resources already makes enforcing criminal laws and ordinances a challenging proposition, is not realistic. Our community will suffer as a result, with a decrease in quality of life, and an increase in local mistrust of police.

5. The new law takes away my discretion as the Chief of Police to administer police resources as I see fit for the protection and betterment of the community, which is my foremost duty. SB 1070 reprioritizes the regulation of immigration above almost every other enforcement effort that my department pursues. Tucson is currently plagued with home invasions, armed robberies, and violent gang activity, and is also subjected to some of the highest burglary and larceny rates in the country. Of the 4 states bordering Mexico, law enforcement agents and officers in Arizona seized almost 44% of all illicit drugs brought over the border from Mexico in 2009. All of these local crimes now get second priority to the state's mandated enforcement of immigration laws. This new law will take many officers from their patrol and enforcement duties while they process and/or transport what will amount to thousands of individuals, at a time when due to budgetary constraints my department is losing both resources and officer positions that I cannot fill.

6. In addition, SB 1070 implements a vague standard from which my officers are expected to enforce this immigration law. While my officers are comfortable establishing the existence or non-existence of reasonable suspicion as to criminal conduct, they are not at all familiar with reasonable suspicion as to immigration status, not being trained in Federal immigration law. Despite the executive order of Arizona Governor Jan Brewer to the contrary, Arizona Peace

Officer Standards and Training board has not been able to clearly define for Arizona's law enforcement officers what is reasonable suspicion regarding immigration status. Each police agency in this state will therefore develop its own definition, no doubt resulting in a patchwork of policies and procedures, with obvious danger to both law enforcement agencies and their communities. The relationship between law enforcement agencies and their communities will be seriously strained. Many community leaders now believe that their constituents will be unfairly targeted in the eyes of law enforcement. The concern is not over persons illegally present, but rather with legal citizens of the United States, who may, they believe, experience unnecessary and prolonged police contact based on their appearance of national origin or ethnicity. They fear the legislation codifies racial profiling, despite its wording, and such fear could destroy the good relationships that currently exist between police and local communities that have taken years to build through our efforts in community policing.

7. The financial cost to our community will also be high when SB 1070 becomes law July 29, 2010. The law mandates that police officers shall verify the immigration status of all arrestees prior to their release. The result will be the detention and incarceration of vast numbers of arrestees that up until now have been simply cited and released for various offenses. In fiscal year 2009/2010, the Tucson Police Department cited and released 36,821 arrestees, which is more than 100 persons a day. If each arrest were followed by only approximately 1 hour of mandated verification of immigration status, that amounts to over 36,000 hours of staff time, the equivalent of approximately 18 full-time officer's yearly work schedules! This mandate will be especially taxing at a time when my department is currently down 119 officer positions from authorized strength (that cannot be filled due to the budget), and is expected to get close to 200 officer positions down by the end of the year. Most taxing, however, is if there are no Customs

and Border Protection agents or Immigration and Customs Enforcement employees available to establish immigration status, these offenders who might otherwise have been cited and released, must be booked in the Pima County Jail. The Sheriff of Pima County charges the City \$200.38 for the first day and \$82.03 for any subsequent day of jail for misdemeanor and petty offenses. The City of Tucson's budget is already set for next year, and additional monies for these costs simply do not exist. On an individual level, should a lawful resident of Arizona be cited for a misdemeanor criminal offense, they might be incarcerated for who-knows how long in jail until Federal authorities can verify their immigration status. I have a realistic expectation that Customs and Border Protection agents or Immigration and Customs Enforcement employees will not be able to respond in a timely manner, if at all, to the thousands of calls they will be receiving statewide from Arizona's law enforcement agencies after these laws go into effect July 29, 2010. This law is a very expensive law not only in terms of financial costs, but also in human costs.

8. Another extremely expensive and negative result of SB 1070 may be the potential costs due to lawsuits that can arise from another provision of the legislation. The law permits a legal resident of Arizona to sue my department if they feel that I have implemented a policy that limits or restricts the enforcement of Federal immigration law to the less than the full extent permitted by Federal law. These suits may arise even if my policy is to investigate homicides, acts of terrorism, home invasions, armed robberies, sexual assaults and other violent offenses before my officers investigate suspected violations of Federal immigration law! As part of this absurdity, the law provides for court costs and attorneys fees on top of a fine of up to \$5,000 per day from the *filing* of the lawsuit. Arizona service of process rules allow a litigant to serve a lawsuit up to 120 days after the filing of the suit. Therefore, a city could tally up \$600,000 in fines from the

day of filing if not served until the 120 day period has run, and not even know about it. I hardly need point out that a city racked by such lawsuits could easily be rendered bankrupt.

9. The Constitution of the United States is the supreme law of the land, and as a law enforcement officer and as Tucson's Chief of Police I have sworn to uphold that law.

Immigration law is an exclusively Federal jurisdiction and is inherently intertwined with Federal foreign policy concerns. Since SB 1070 states that it is intended to regulate immigration, it is therefore contrary to the United States Constitution. Additionally, there is already a process for federal immigration agencies to contract with local law enforcement to carry out immigration enforcement. This arrangement is a voluntary and cooperative one. The procedure, known as "287(g) agreements," includes extensive training of local officers by federal agencies and continued supervision of immigration enforcement by the Federal government. While S.B. 1070 recognizes the 287(g) program, this law will in fact make local police act as Federal immigration enforcement officers without the extensive training provided to 287(g) officers. The training is an important prerequisite of the 287(g) program that ensures local law enforcement have sufficient knowledge and experience in the complex area of Federal immigration law. The Arizona legislature has placed Arizona law enforcement officers in the awkward position of mandating that they enforce immigration laws that are the sole province of the Federal government without the necessary 287(g) training. This is not consistent with Federal efforts to properly counter illegal immigration. This cannot be.

10. While I agree that something must absolutely be done to tackle the problems associated with illegal immigration into this country, the means of shifting the burden of immigration enforcement and responsibility from Federal to local authorities cannot be justified nor sustained. We cannot bear the burden of the Federal government's financial and legal responsibilities. We

cannot bear the destruction of our relationships with our local community that we so vitally need in order to be successful in our mission to protect the public and make our City a better place to live with an excellent quality of life.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



ROBERTO VILLASENOR

Executed the 25th day of June, 2010 in Tucson, Arizona.

APPENDIX 2



**Judicial
Watch®**
*Because no one
is above the law!*

VIA CERTIFIED U.S. MAIL

September 3, 2010

Chief of Police Roberto A. Villasenor
TUCSON POLICE DEPARTMENT
270 S. Stone Avenue
Tucson, AZ 85701

Re: **Arizona Public Records Request**

Dear Chief Villasenor:

This is a public records request by Judicial Watch, Inc. and our client, State Senator Russell Pearce. As you no doubt are aware, Senator Pearce is the author of the recent Arizona law commonly known as "S.B. 1070." As you also are surely aware, certain provisions of S.B. 1070 have gone into effect and are now the law of the State of Arizona.

These new provisions of law include A.R.S. § 11-1051(A), which prohibits Arizona officials, agencies, and political subdivisions from limiting enforcement of federal immigration laws. In addition, Arizona law now unequivocally requires that state and local officials cooperate with federal immigration authorities with regard to aliens unlawfully in the state. A.R.S. §§ 11-1051(C)-(F). For example, no official, agency, or political subdivision may be restricted from sending, receiving, or exchanging information relating to the immigration status of an individual with federal immigration authorities, such as required under 8 U.S.C. § 1373 and 8 U.S.C. § 1644. *See* A.R.S. § 11-1051(F). To ensure compliance with these provisions, any legal resident of Arizona now has a private right of action to challenge in court the policy of any state or local entity that restricts or limits the enforcement of federal immigration law, including in particular, 8 U.S.C. § 1373 and 8 U.S.C. § 1644, and to seek court-ordered fines of up to \$5,000 per day against any non-complying state or local entity.

Senator Pearce and Judicial Watch are particularly concerned that these new provisions of law have not been fully implemented by the Tucson Police Department ("TPD"). Accordingly,

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we request copies of the following public records pursuant to the Arizona Public Records Law, A.R.S. § 38-121, *et seq.*:

1. Any and all records concerning or relating to actions taken by the TPD to comply with provisions of A.R.S. § 11-1051 now in effect.
2. Any and all records concerning or relating to current TPD policies, practices or procedures regarding communication between TPD officers and federal immigration officials.
3. Any and all records concerning or relating to current TPD policies, practices or procedures regarding restrictions on TPD officers relating to contact with known or suspected aliens unlawfully present in the United States.
4. Any and all records concerning or relating to current TPD policies, practices or procedures regarding communication between TPD officers and known or suspected aliens unlawfully present in the United States.
5. Any and all records concerning or relating to current instruction or training provided to TPD officers regarding contact between TPD officers and federal immigration officials.
6. Any and all records concerning or relating to current instruction or training provided to TPD officers relating to contact between TPD officers and known or suspected aliens unlawfully present in the United States.

For purposes of this request, the term "record" shall be given its broadest possible meaning and shall include, but not be limited to, any and all materials coming within the definition of the term "records" set forth in A.R.S. § 41-1350. It also shall include any and all electronically, magnetically, or mechanically stored material of any kind, any and all electronic mail or e-mail, meaning any electronically transmitted text or graphic communication created upon or transmitted or received by any computer or other electronic device, and any and all material stored on compact disc, computer disk, hard drive, flash drive, or other electronic storage device. The term "record" also shall mean any drafts, alterations, amendments, changes, or modifications of or to any of the foregoing.

We request that copies of the above-referenced public records be mailed promptly to Judicial Watch, pursuant to A.R.S. § 39-121.01(D)(1).

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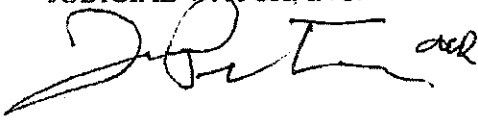
In addition, although a presumption of disclosure guides the application of Arizona's public records laws, if any responsive record or portion thereof is claimed to be exempt from production, please provide an index of the records or categories of records that are withheld and the reasons the records or categories of records have been withheld, pursuant to A.R.S. § 39-121.01(D)(2).

Senator Pearce seeks the requested records in furtherance of his official duties as a public official of Arizona. Judicial Watch, a not-for-profit, public interest organization, seeks copies of the requested records in furtherance of its public interest mission, which includes monitoring the activities of public officials and entities, and not for any commercial purpose, as that term is defined by A.R.S. § 39-121.03(D). Accordingly, we request a waiver of any copying or postage fees. Should this request for a fee waiver be denied, Judicial Watch agrees to pay reasonable fees associated with the production and mailing of the requested records. If any fee is to be charged, please notify the undersigned in advance if the expected fee is likely to exceed \$250.

If you do not understand this request or any portion thereof, or if you feel you require additional information or clarification in order to respond to this request or any portion thereof, please do not hesitate to contact me.

Sincerely

JUDICIAL WATCH, INC.



James F. Peterson
Senior Attorney

cc: State Senator Russell Pearce

Police Department Public Records
pdrecords@Tucsonaz.gov