

1 Ben R. Miranda
 2 Arizona Bar No. 9515
 3 826 West 3rd Avenue
 4 Phoenix, Arizona 85003
 5 Telephone: 603.252.7555
 6
 7 William J. Sanchez- Fla. Bar No. 749060
 8 Jennifer Ale - Fla. Bar No. 072445
 9 Sanchez Law, LLC
 10 Lakeside Corporate Park
 11 12915 Southwest 132nd Street, Suite 5
 12 Miami, Florida 33186
 13 Telephone: 305.232.8889
 14 Facsimile: 305.232.8819
 15
 16 Email: imiglaw@aol.com
 17 Jennifer@wsanchezlaw.com
 18 Michael@wsanchezlaw.com
 19 ATTORNEYS FOR PLAINTIFFS

20
 21 **UNITED STATES DISTRICT COURT**
 22 **DISTRICT OF ARIZONA**
 23
 24

25 NATIONAL COALITION OF)
 26 LATINO CLERGY AND CHRISTIAN LEADERS)
 27 (“CONLAMIC”), PHOENIX, ARIZONA)
 28 LAURA MADERA,)
 29 CARMEN GALINDO,)
 30 FERMIN LEON,)
 31 MANUEL SIGUENZA,)
 32 MOISES HERRERA,)
 33 JOE RIVERA,)
 34 JANE DOE’S 1-3,)
 35 JOHN DOE’S 1-3,)
 36 INDIVIDUALLY AND)
 37 ON BEHALF OF ALL SIMILARY SITUATED.)

38)
 39 **PLAINTIFFS**)

40)
 41 v.)

42)
 43 STATE OF ARIZONA, GOVERNOR JAN BREWER,)
 44 TERRY GODDARD, ARIZONA ATTORNEY)
 45 GENERAL, IN HIS OFFICIAL CAPACITY, JOSEPH)
 46 ARPAIO, MARICOPA COUNTY SHERIFF, IN HIS)
 47 OFFICIAL CAPACITY, RICHARD M. ROMLEY,)
 48 MARICOPA COUNTY ATTORNEY, IN HIS)

AMENDED
COMPLAINT FOR
DECLARATORY,
INJUNCTIVE AND
FURTHER RELIEF

CLASS ACTION

1 OFFICIAL CAPACITY,)
2)
3)
4 DEFENDANTS)
5 _____/

6
7 **I. PRELIMINARY STATEMENT**

8 **1.** This action is brought on behalf of U.S. citizens, a U.S. non-profit corporation, legal
9 U.S. residents and aliens seeking judicial clarification of the jurisdiction, authority, and
10 constitutional rights of the state of Arizona (“Arizona”), in adopting and enforcing a law
11 known as “SB1070 Anti-Immigration Act (“Act”)”. If the law is found to be
12 unconstitutional or in any other way illegal, we respectfully request injunctive and
13 mandamus relief ordering Arizona to cease and desist enforcement of the law. The
14 specific request is as follows:

15
16 **(A).** The plaintiffs have reason to believe that the underlying law, adopted and signed by
17 Governor Jan Brewer , raises significant preemption concerns. Initially, the law clearly
18 intends to govern many types of conduct already covered by federal immigration law.
19 Congress and the Executive branch have historically occupied the field of immigration
20 law. The new Arizona Act creates state-wide immigration regulations independent from
21 the existing federal system and clearly conflicts with federal immigration law. Thus,
22 judicial clarification is required on the jurisdiction and constitutional authority of the state
23 of Arizona to adopt and enforce such a law.

24
25 **(B).** Arizona’s law, as written, will lead to “national origin” and “race” discrimination,
26 in violation of Title VII of the Civil Rights Act and the Fair Housing Act (FHA).

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

(C). The law, as written, also gives rise to 42 USC § 1981 violations as section 1981 prohibits alienage discrimination.

(D). Due to the constitutional and statutory violations set forth above, we require injunctive and mandamus relief ordering the state of Arizona to cease and desist enforcement of the “Act” until clarification is made by this court.

2. The Supremacy Clause of the U.S. Constitution provides that federal laws and treaties are “the supreme law of the land.” While federal and state power to regulate certain matters is concomitant, the Supreme Court has long recognized that the regulation of immigration “is unquestionably exclusively a federal power,” *Delanas v. Bica*, 424 U.S. 351, 354 (1976). In *Hines v. Davidowitz*, 312 U.S. 52 (1941), the Supreme Court ruled that enforcement of a Pennsylvania statute requiring the registration of aliens was precluded by the Federal Alien Registration Act of 1940, which established a comprehensive federal scheme for the registration of aliens.

3. INA§ 274A generally prohibits the hiring, referring, recruiting for a fee, or continued employment of illegal aliens. Violators may be subject to cease and desist orders, civil monetary penalties, and (in the case of serial offenders) criminal fines and/or imprisonment for up to 6 months. Notably, INA § 274A expressly preempts any state or local law imposing civil or criminal sanctions upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

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

4. Under INA § 274B, employers are prohibited from discriminating against any individual (other than an unauthorized alien) on account of that alien’s national origin or citizenship status. Employers throughout the state will refrain from hiring individuals who they have “reasonable suspicion” to believe are undocumented. This will lead to discrimination.

5. Arizona’s law does not provide a mechanism to determine whether an immigration violation has occurred.

6. Furthermore, the law allows for the arrest of an alien who has committed a “public offense” but such term is not found in the INA. Arizona [§13-3883 (5).

7. The INA generally vests authority to the Attorney General and Secretary of Homeland Security to administer and enforce all laws relating to immigration and naturalization, including determinations regarding the immigration status of aliens. As such, states and localities are preempted by federal law from making their own independent assessment as to whether an alien has committed an immigration violation and imposing penalties against such aliens (along with persons who have provided them with assistance) on the basis of that assessment. Such authority is conferred exclusively to designated federal authorities by the INA.

8. The actions of the state of Arizona deprive plaintiffs of their family and cause injury by prolonging family separation. Countless plaintiffs have moved from Arizona due to fear that local authorities will begin implementing this unconstitutional law. The plaintiffs are being denied their constitutional rights as the law violates the preemption clause, conflicts with Federal Housing Assistance regulations, will lead to National origin

1 and race discrimination, and on its face is vague and ambiguous. As such, we respectfully
2 request injunctive and mandamus relief ordering the state of Arizona to cease and desist
3 enforcement of the law.

4
5 (A) The Department of Justice 287 (g) is a federal program that allows certain state
6 and local law enforcement agencies to engage in federal immigration enforcement
7 activities. Several Arizona law enforcement agencies are allowed to participate in
8 the 287 (g) program, which, combined with the state's new law, creates a
9 disastrous interviewing of police with immigration enforcement in that state. The
10 287 (g) program, has led to illegal racial profiling and civil rights abuses while
11 diverting scarce resources from traditional local law enforcement functions and
12 distorting immigration enforcement priorities. A report released earlier this month
13 by the DHS Office of Inspector General (OIG) affirmed the concerns with the 287
14 (g) program. The DHS OIG report found a lack of oversight, training and other
15 failures in the 287 (g) program and made it clear that the program does not have
16 adequate safeguards against racial profiling and other civil rights abuses. Many
17 state and local agencies accepted for the program have a documented history of
18 serious allegations of constitutional violations.

19
20 **II. JURISDICTION AND VENUE**

21 9. This Court has jurisdiction under its general federal question jurisdiction 28
22 U.S.C. Section 1331, and specific jurisdiction over claims arising under the Immigration
23 and Nationality Act 8 U.S.C 1329. This court is the proper venue for the writ of
24 Mandamus pursuant to 28 U.S.C. Section 1361. Jurisdiction is also conferred pursuant to

1 Rules 57 and 65 of the Federal Rules of Civil Procedure which permit declaratory and
2 injunctive actions.

3
4 **10.** The District of Arizona is the proper venue for this action pursuant to 28 U.S.C.
5 1391 (e), as it is here where the Defendants' policies have been implemented.

6 7 III. STANDING

8 **11.** Plaintiffs have standing to commence this action as they are individuals and
9 organizations which will suffer irreparable harm as a result of the state's unconstitutional
10 actions.

11 **12.** The Defendants' policy also prolongs the separation of family members.
12 Plaintiffs have a particular interest in preserving their family units. (See *Abourzek v.*
13 *Reagan*, 785F. 2d 1043, 251 U.S App. D.C. 355 (1985); *Clark v. Securities (Indus)*
14 *Ass'n.* 479 U.S. 388, 395-96, 107 S. Ct. 750, 754, 93 L.E.d. 2^d 757 (1987)). *H.R. Rep No.*
15 *1365,82d* Cong., 2d Sess. (1952) reprinted in 1952 U.S.C. C.A.N. 1653, 1680.
16 Additionally, although there is indirect precedent, there is no controlling decision
17 regarding such a law.

18 **13.** President Barak Obama recently mentioned that the Department of Justice is
19 investigating potential civil rights violations in the new Arizona law. See Exhibit "A". In
20 discretion to the Executive Branch in matters involving immigration, this court should
21 enjoin the state from enacting the law until the Department of Justice has spoken.

22 23 IV. PARTIES

1 **14.** Joe Rivera (“Joe”) owns a business that caters primarily to Latinos and his
2 business will drop by at least 60% if this law goes into effect.

3 **15.** Moises Herrera (“Moises”) is a Pastor that owns 3 Spanish language radio
4 stations. His listeners are all Hispanic and he will lose the large majority of his listeners.
5 Moises is also a well know Pastor with thousands of church members that are all
6 Hispanic. He will lose a great percentage of his church members and donations to the
7 church. His church will fail if this law goes into effect.

8 **16.** Manuel Siguenza (“Manuel”) has owned a large car sales business for 16 years
9 that pays between \$200,000 and \$350,000 dollars a year in taxes to the state of Arizona.
10 His business is in a primarily Latino neighborhood and his clients are predominantly
11 Latinos. He will lose the majority of his business and he will have to close his business.
12 Manuel is an Immigrant from El Salvador who is now a U.S. Citizen. He has one son
13 who has graduated from Arizona State University and another currently attending high
14 school. Because I look Latino I could be stopped because of the color of my skin. I fear
15 that my rights may be violated.

16 **17.** Fermin Leon (“Fermin”) is undocumented and so is his wife but he has U.S. born
17 children that are in school that are 16 and 18 years of age. Fermin has a very successful
18 bakery business that would suffer if this law goes into effect. Fermin fears that if he may
19 be stopped because of his Latino appearance. If he is stopped he could be deported and he
20 would lose his business and his children would have to go to a country that they do not
21 know.

22 **18.** Carmen Galindo (“Carmen”) is a Permanent Resident and speaks English with an
23 accent. She appears to be Latina and is afraid that if she gets pulled over she will be

1 racially profiled and may be damaged by being asked if she has her permanent residence
2 card. If she forgets it she would be charged with a crime according with this law. She
3 would then not be eligible to get her U.S. Citizenship. She is also a business owner.

4 **19.** Laura Madera (“Laura”) is a permanent resident who fears being racially profiled
5 and may be damaged by being asked if she has her permanent residence card. If she
6 forgets it she would be charged with a crime according with this law. She would then not
7 be eligible to get her U.S. Citizenship. Laura is pregnant and the Father of the child lives
8 with her and is currently her domestic partner. He is undocumented and is in process of
9 legalizing. Her pregnancy would be at risk if her common law husband were to be
10 arrested and deported as well.

11 **20.** Plaintiff Manuel Siguenza (“Siguenza”) is a resident of Arizona. Plaintiff
12 Siguenza owns a car dealership. Plaintiff Siguenza already has lost much business due
13 to the now law, even though it has not been implemented until late summer. Upon
14 information and belief, Plaintiff Siguenza has lost prospective clients due to the law.
15 Plaintiff Siguenza does not know the immigration status of his present clients, nor of the
16 clients he lost.

17 **21.** Plaintiff Joe Rivera (“Rivera”) is a resident of Mesa, Arizona. Plaintiff Rivera
18 has already lost clients due to the law. Upon information and belief, Plaintiff Rivera has
19 lost prospective clients due to the law. Plaintiff Rivera does not know the immigration
20 status of his present clients, nor of the clients he has lost.

21 **22.** It is difficult if not impossible for Plaintiffs Siguenza and Rivera to determine
22 whether each of their clients is or is not an "authorized alien" as defined by the law.
23 Plaintiffs Siguenza and Rivera have received no guidance or training from Arizona or

1 others regarding how to determine whether an individual is an "authorized alien."
2 Plaintiffs Siguenza and Rivera have no expertise in applying immigration law or making
3 immigration status determinations. Plaintiffs Siguenza and Rivera have no expertise in
4 determining the authenticity of immigration-related documentation.

5 **23.** Because of the impossibility of fully complying with the law, it is likely that
6 Plaintiffs Siguenza and Rivera will sell goods to a person who is classified as an
7 "unauthorized alien" under the law.

8 **24.** Plaintiffs Siguenza and Rivera might be considered in violation of the law
9 because their clients often stay for an extended period of time in their business and they
10 often transport them to different locals. As a result they may be considered to be in
11 violation of the new law.

12 **25.** Since the law was signed, Plaintiffs has lost approximately 80% of his business.

13 **26.** Unless the law is permanently enjoined and declared invalid, Plaintiffs Siguenza
14 and Rivera are likely to incur significant monetary fines for violating the law. Even prior
15 to being fined they will have to close their businesses due to the negative impact brought
16 on by the law.

17 **27.** Plaintiff Pastor Moises Herrera ("Herrera") is a resident of Pheonix. Plaintiff
18 Herrera is a Pastor of a large church. Plaintiff Herrera is legally is the US and has
19 spent countless years building his church. He fears losing his church and there radio
20 stations if the law is implemented.

21 **28.** Plaintiff Carmen Galindo ("Galindo") is a lawful permanent resident. She speaks
22 English with an accent, she appears Latina and is scared of being racially profiled and
23 arrested if the new law goes into affect. Plaintiff Galindo does countless hours of

1 Christian community service every week. Unless the law is permanently enjoined and
2 declared invalid, Plaintiff Galindo expects to be arrested.

3 **29.** Plaintiff Jane Doe 1 is 26 years old. She resides in Phoenix, Arizona. Plaintiff
4 Jane Doe 1 is from Mexico. Plaintiff Jane Doe 1 entered the United States on a visitor's
5 visa. Her authorized period of stay was six months. Plaintiff Jane Doe did not depart from
6 the United States after six months. Since passage of the law, Plaintiff fears going outside
7 as she has already been intimidated by individuals yelling at her to “go back to your
8 country”. Plaintiff Jane Doe is aware she is undocumented but is contributing to the U.S.
9 economy by paying her taxes, and spending over 10 hours a week volunteering at her
10 church.

11 **30.** Plaintiff Laura Madera (“Madera”) is a lawful permanent resident and is currently
12 pregnant. Plaintiff Madera is very concerned about being profiled for appearing to be
13 Latina. Her husband is undocumented. If Plaintiff Madera is arrested she will likely not
14 be able to become a US citizen. Unless the law is permanently enjoined and declared
15 invalid, Plaintiff fears she and her husband will be arrested. Her family is likely to lose
16 their home, and her daughter will be unable to attend US schools, because they will be
17 forced to leave the area.

18 **31.** Plaintiff Miranda plans to become a naturalized citizen as soon as possible, but
19 anticipates that the required process will take at least several months. Once she becomes
20 a naturalized citizen, Plaintiff plans to sponsor her husband for lawful permanent
21 residency. He will be able to obtain lawful permanent residency if his wife is not arrested.

22 **32.** Plaintiff John Doe was approved refugee status last year. He was not required to
23 carry a lawful permanent resident card or work permit under federal regulations. He is

1 afraid of being arrested. He looks Latino but is not required to carry a work permit. His
2 children have the same status. Under the law is enjoined, he will not take his children to
3 school or go to work as he is afraid of being arrested.

4 **33.** Plaintiff John Doe 2 is an adult. He works in, and obtains goods and services in,
5 Phoenix, Arizona. Plaintiff John Doe 2 lost his Green Card. He has filed an application to
6 replace his Green Card. Plaintiff John Doe 2 has no other way to prove his immigration
7 status. Plaintiff John Doe 2 will be unable to prove that he is not an "unauthorized alien"
8 as that term is defined under the law until he receives his replacement Green Card. Unless
9 the law is permanently enjoined and declared invalid, Plaintiff John
10 Doe 2 will be unable to rent, work, or obtain goods and services in Phoenix because he
11 cannot prove his immigration status.

12 **34.** Plaintiff John Doe 3 is currently employed and is a US citizen. He lost his
13 passport. Plaintiff John Doe 3 was born in the United States. In accordance with the new
14 Arizona law, Plaintiff John Doe 3 is required to carry proof of his legal status in the US.
15 If he is stopped by police and asked for proof of residency, he can only show his driver's
16 license and birth certificate. He does not know whether he would have to notarize his
17 birth certificate in order to authenticate it. He is afraid of being arrested as he looks
18 Latino.

19 **35.** Plaintiff Jane Doe 2 is a citizen of the United States born in Puerto Rico. Her only
20 English-language form of identification is a Social Security card. Plaintiff Jane Doe 2
21 speaks very little English. Plaintiff Jane Doe 2 is afraid she will be arrested if she leaves
22 her home as she appears to be Latina. She requires constant visits to the doctor, but is
23 afraid of leaving her home. Unless the law is permanently enjoined and declared invalid,

1 Plaintiff. Jane Doe 3 will be unable to live, work, or obtain goods and services in
2 Phoenix, Arizona.

3 **36.** Plaintiff Fermin Leon and his wife are undocumented immigrants. They both have
4 US citizen children that are 16 and 18 years of age. Plaintiff Leon has a very
5 successful business. Although Plaintiff Leon is now eligible to apply for cancellation
6 of removal, the US department of Homeland Security has not called him in for an
7 interview. He is afraid of working, as he looks Latino and believes he will be arrested.
8 If he is arrested his children will have to leave the country also or will be forced to
9 live in Mexico.

10 **37.** Plaintiffs Siguenza, Rivera, Miranda, Herrera, Galindo, Madera, Leon and John
11 Does 1-3 and Jane Does 1-3 are collectively referred to herein as "Individual Plaintiffs."

12 **38.** All Individual Plaintiffs desire to continue to live and work in Arizona and the
13 new law will prevent them from doing so.

14 **39.** Plaintiff La Hermoza Church ("La Hermosa") is an Arizona non-profit
15 organization. La Hermoza's primary purpose is to promote Christian values and spread
16 the gospel of Jesus Christ. La Hermoza does not require its members to prove their
17 citizenship, residency or immigration status as a condition to membership. The law has
18 created great hostility towards the Latino community in Arizona and therefore adversely
19 affects the work. La Hermoza performs in Phoenix and for Phoenix residents. La
20 Hermoza's membership and constituency (herein, collectively "members") includes
21 individuals - many but not all of whom are Latino - who reside and who are employed in
22 and around Phoenix, some of whom have school-aged children. The membership

1 includes persons who have Spanish as their native tongue with a limited proficiency in
2 English. The interests La Hermoza seeks to protect through this action are germane to
3 its purpose, and neither the claims asserted nor the relief requested herein require the
4 personal participation of La Hermoza's members.

5 **40.** Plaintiff Conlamic Arizona is an Arizona non-profit organization. Plaintiff
6 Conlamic is a non-profit organization doing business in Arizona and they have over
7 30,000 affiliated churches throughout the United States.

8 **41.** Conlamic Arizona's purpose is to promote the interests of its members. Conlamic
9 does not require its individual members to prove their citizenship, residency or
10 immigration status as a condition to membership. The law has generated great hostility
11 towards the Latino community in Arizona and therefore adversely affects the work
12 Conlamic performs in Arizona and for Arizona businesses and residents.

13 **42.** Conlamic's membership and constituency (herein, collectively "members")
14 includes individuals – many, but not all, are Latino or who service Latino and other
15 customers -who reside or operate businesses in and around Arizona, some of whom have
16 school-aged children. The membership includes over 300 Arizona Pastors.

17 **43.** Conlamic's membership includes individuals who have Spanish as their native
18 tongue with a limited proficiency in English.

19 **44.** The interests Conlamic seeks to protect through this action are germane to its
20 purpose, and neither the claims asserted nor the relief requested herein require the
21 personal participation of Conlamic's members.

1 **45.** At all relevant times described herein, Arizona acted through its duly authorized
2 agent Governor Jan Brewer, and any other state employees she may designate in
3 accordance with Arizona law.

4 **46.** At all times alleged herein, Arizona's officials, employees and agents were acting
5 under color of state law.

6 **47.** Defendant Arizona is a state of the USA.

7 **48.** Defendant Jan Brewer is the governor of Arizona and is being sued in his official
8 capacity.

9 **49.** Defendant Terry Goddard is the Attorney General for the State of Arizona. As
10 such, Defendant Goddard is responsible for the enforcement of SB 1070 within the state
11 of Arizona. Defendant Goddard is sued in his official capacity.

12 **50.** Defendant Sheriff Joseph Arpaio is the County Sheriff of Maricopa County,
13 Arizona. As such, Defendant Arpaio is responsible for the enforcement of SB 1070
14 within Maricopa County. Defendant Arpaio is sued in his official capacity.

15 **51.** Defendant Richard M. Romley is the County Attorney of Maricopa County,
16 Arizona. As such, Defendant Romley is responsible for the enforcement of SB 1070
17 within Maricopa County. Defendant Romley is sued in his official capacity.

18 **V. FACTS**

19 **52.** On or about April 23, 2010, the state of Arizona passed a law, known as the
20 “Anti-Immigration Act.” Attached hereto and made a part hereof as Exhibit “B” is a copy
21 of the law.

1 **53.** As a result of the passing of the amended law, plaintiffs have suffered.
2 Specifically, many members of the class are afraid to go to work and countless others
3 have fled the area.

4 **CLASS ALLEGATIONS**

5 Plaintiffs reallege and incorporate Paragraphs 1 through 53 inclusive and file this
6 as a Class Action for Declaratory and Injunctive Relief and allege:

7
8 **54.** Plaintiffs bring this action pursuant to Rule 23 (a) and (b)(1)(2) on behalf of
9 themselves and all others similarly situated. The class consists of the following
10 ascertainable members: all persons who currently reside in Arizona and find themselves
11 to be negatively affected by the proposed unconstitutional law.

12
13 **55.** Defendants have acted, and will continue to act on grounds generally applicable
14 to each member of the class, making appropriate final declaratory, injunctive and
15 mandamus relief to the class as a whole.

16 **56.** Plaintiffs in the class are entitled to representation.

17 **57.** There exists a community of interest between Plaintiffs and members of their
18 class in that there are questions of law and fact which are common to all. The Plaintiffs
19 seek a determination of whether or not the amended ordinance is unconstitutional and as
20 such should not be enforced.

21 **58.** Individual suits by each member of the class would be impractical because:

22 **(A)** There exist common and identical issues of law and fact for all members of the class.

1 (B) The number of individual suits would impose an undue burden of the Courts as there
2 appear to be a voluminous amount of members;

3 (C) Many members of the class are unaware of their right and/or are intimidated due to
4 their status.

5 **59.** A class action is superior to other available methods for the fair and efficient
6 adjudication of this controversy.

7 **60.** Upon information and belief no independent litigation has been brought by any
8 members of the respective class against Defendants as to the issues raised in this
9 complaint.

10 **61.** Plaintiffs' counsels are experienced in class actions litigation and can
11 adequately represent the interest of class members as well as the named Plaintiffs.

12
13 **62.** As a result of the defendant's law, plaintiffs and the members of the class will
14 continue to suffer.

15 **63.** There exists no adequate remedy at law if the law is not overturned.

16
17
18 **DECLARATORY AND INJUNCTION RELIEF ALLEGATIONS**

19 Plaintiffs reallege and incorporate paragraphs 1 through 53 inclusive and file this
20 Declaratory Relief Action and allege:

21
22 **64.** There exists confusion as to Arizona's authority to pass and enforce such a law.

1 **65.** WHEREFORE, Plaintiffs seek judicial clarification of the Arizona law. An actual
2 and substantial controversy exists between Plaintiffs and Defendants as to their respective
3 legal rights and duties. Plaintiffs contend that Defendants' actions violate the
4 constitutional rights of Plaintiffs and the proposed class. In violating Plaintiffs' rights
5 under the U.S. Constitution and federal statutes, Defendants are acting under color of law.
6 The Arizona law, and Defendants' policies, practices and procedures implementing them,
7 have caused and will continue to cause irreparable injury to Plaintiffs and the proposed
8 class. Plaintiffs and the proposed class have no plain, speedy and adequate remedy at law
9 against the Arizona law and Defendants' policies, practices and procedures implementing
10 them.

11
12
13 **COUNT I. VIOLATION OF SUBSTANTICE DUE PROCESS 14TH**

14 **AMENDMENT**

15 **66.** The foregoing allegations are repeated and incorporated as though fully set forth
16 herein.

17 **67.** Plaintiffs and the proposed class have a liberty interest in being free from
18 detention absent a criminal conviction. Specifically, Plaintiffs and the proposed class
19 have a liberty interest in being eligible for release on bond pending resolution of the
20 criminal charges against them. The Arizona law and Defendants' policies, practices and
21 procedures implementing them violate substantive due process because they are not
22 narrowly tailored and do not serve a compelling governmental interest. The Arizona law
23 and Defendants' policies, practices and procedures implementing them result in an

1 impermissibly punitive regime of arrests and racial profiling in violation of substantive
2 due process.

3 **68.** A.R.S §11-1051 grants Arizona police officers authority to conduct warrantless
4 arrests of persons for whom the officer has probable cause to believe have committed any
5 public offense that makes those persons deportable. This appears to be an attempt to
6 create a completely independent state arrest authority for administrative violations of
7 federal law. In essence, it is the “criminalization” of certain portions of immigration law,
8 which, in and of itself, is civil. The issue was previously addressed in *Gonzales v. City of*
9 *Phoenix*, 722 F2d 468, (9th Cir.). The ninth circuit held that while Arizona could
10 authorize Peoria to enforce the criminal provisions of the immigration law, “the court
11 firmly emphasize that this authorization is limited to criminal violations. This portion of
12 the law attempts to enforce civil administrative violations of the law. It will lead to
13 countless arrests of individuals who are undocumented but have not violated criminal
14 provisions of the immigration law. This would allow for unlawful arrests.” The Peoria
15 Police Department obscured the difference between civil administrative violations and
16 criminal violations of immigration law. If it was not allowed in *Gonzales*, it should not be
17 allowed in the case at bar.

18
19
20 **COUNT II. VIOLATION OF SUPREMACY CLAUSE**

21 **66.** The foregoing allegations sections are repeated and incorporated as though fully
22 set herein.

1 **67.** Section A.R.S §13-1509 will establish a separate state offense for any person to
2 violate provisions of the federal immigration law regarding registration and carrying
3 registration documents . 8 U.S.C. §§ 1304 (e), 1306 (a). The offenses vary from class one
4 misdemeanors with six month jail time and \$500 fine to a class four (4) felony charge for
5 those found in the U.S. after having accepted voluntary removal or had been deported in
6 the last 5 years.

7 The Supremacy Clause of the US Constitution grants the federal government
8 exclusive power to regulate our borders, and states do not have the right to create their
9 own. For this reason alone, the law should be found unconstitutional.

10
11 **COUNT III. VIOLATION OF FIRST AMENDMENT**

12 **68.** The forgoing allegations sections are repeated and incorporated as though fully
13 set herein.

14 **69.** The Act would add a new section, A.R.S. § 13-2928, that makes it a class 1
15 misdemeanor to attempt to hire or pick up day laborers to work at a different location if
16 the driver is impeding the normal flow of traffic. It also makes it a misdemeanor for a
17 worker to get into a car if it is impeding traffic. Finally, this Section would criminalize
18 the solicitation of work (by a gesture or nod) by undocumented immigrants in any public
19 place. In order to be subject to the first or second parts of this Section, the vehicle in
20 question has to be obstructing traffic. This provision adds no value insofar as there are
21 already laws established that address traffic hazards. It is also likely to be found
22 unconstitutional by the courts because the third part singles out the speech of immigrant
23 day laborers for criminalization. The solicitation of work has been found by courts across

1 the country to be protected speech under the First Amendment. Lopez et al v. Town of
2 Cave Creek.

3
4 **COUNT IV. VIOLATIONS OF SUPREMACY CLAUSE**

5 **70.** The foregoing allegations sections are repeated and incorporated as though fully
6 set forth herein.

7 **71.** The Act would add a new section, A.R.S. § 13-2929, that makes it unlawful for
8 any person who is “in violation of a criminal offense” to transport, move, conceal, harbor,
9 shield from detection, or attempt to do any of the above, for any undocumented
10 immigrant if the person knows or recklessly disregards the fact that the immigrant has
11 entered or remained in the United States illegally. It also makes it a state crime to
12 encourage or induce any immigrant to come, enter, or reside in the country illegally.

13 **72.** A person who violates this law would be subject to a class 1 misdemeanor and a
14 fine of at least \$1,000, with additional penalties where the offense involves ten or more
15 immigrants. Any means of transportation used in connection with the crime will be
16 impounded. This provision is unnecessary because the exact same actions (transporting,
17 moving, concealing, harboring, and shielding undocumented immigrants) are already
18 prohibited under federal law where the person commits those acts with the intent to
19 further the immigrant’s violation of the law. 8 U.S.C. § 1324(a)(1)(a).

20 **73.** Furthermore, Arizona peace officers have explicit authority to arrest anyone who
21 violates the federal harboring law, 8 U.S.C. § 1324(c), and vehicles used to commit the
22 offense may be seized. 8 U.S.C. § 1324(b). Courts have not permitted prosecutions under
23 the federal statute where a person offers a ride or shelter to another person out of

1 humanitarian concern rather than with the intent to further the violation, such as for a
2 profit motive. There is also a specific provision in the federal statute exempting churches
3 who provide room and board to members of their congregation serving as ministers or
4 missionaries. To the extent that the state law will be applied differently than the federal
5 law, it should be invalidated as violating the Supremacy Clause of the U.S. Constitution.

6
7 **COUNT V.**

8 **VIOLATIONS OF SUBSTANTIVE DUE PROCESS – FOURTEENTH AMENDMENT**

9 **74.** The foregoing allegations sections are repeated and incorporated as though fully
10 set forth herein.

11 **75.** Plaintiffs and the proposed class have a liberty interest in being free from
12 detention absent a criminal conviction. Specifically, Plaintiffs and the proposed class
13 have a liberty interest in being eligible for release on bond pending resolution of the
14 criminal charges against them.

15 **76.** The Arizona law and Defendants’ policies, practices and procedures
16 implementing them violate substantive due process because they are not narrowly
17 tailored and do not serve a compelling governmental interest.

18 **77.** The Arizona law and Defendants’ policies, practices and procedures
19 implementing them result in an impermissibly punitive regime of arrests and racial
20 profiling in violation of substantive due process.

21
22 **COUNT VI.**
23 **FOURTEENTH AMENDMENT**
24 **USE OF PROBABLE CAUSE STANDARD**
25 **VIOLATION OF PROCEDURAL DUE PROCESS**
26

1 **78.** The foregoing allegations sections are repeated and incorporated as though fully
2 set forth herein.

3 **79.** Defendants’ policies, practices, and procedures in implementing the new anti-
4 immigration law, results in no-bond decisions against Plaintiffs and the proposed class
5 based solely on police officers’ finding that there is probable cause to believe that they
6 have “entered or remained in the United States illegally.” Use of the “probable cause”
7 standard in this context violates the Due Process Clause of the United States Constituion.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, in light of the foregoing facts and arguments, Plaintiffs reallege and
11 incorporate paragraphs 1 through 53 inclusive and file this and request that this court:

- 12 a. Assume jurisdiction over this matter;
- 13 b. Certify a class as described above, pursuant to Plaintiffs’ forthcoming motion
14 for class certification;
- 15 c. Declare that the Arizona law is unconstitutional under the Supremacy clause,
16 the due process clause of the Fourteenth Amendment, and the First
17 Amendment’s right to free speech;
- 18 d. Declare that the law is preempted by federal law and the plenary power of
19 Congress to regulate immigration;
- 20 e. Enjoin Defendants from enforcing the law;
- 21 f. Grant Plaintiffs’ reasonable attorneys’ fees, costs, and other expenses pursuant
22 to 42 U.S.C. Sec. 1988; and
- 23 g. Grant such other relief as the Court may deem appropriate.

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

Dated: June 9, 2010

**NATIONAL COALITION OF LATINO
CLERGY AND CHRISTIAN LEADERS
("CONLAMIC") PHOENIX, ARIZONA,**

By: _____
William J. Sanchez,
Florida Bar No. 749060
Sanchez Law, LCC
12915 SW 132 St., First Floor
Miami, Florida 33186
Telephone: 305.232.8889

Ben R. Miranda,
Arizona Bar No. 9515
826 West 3rd Avenue
Phoenix, Arizona 85003
Telephone: 603.252.7555

Attorneys for Plaintiffs

1
2
3
4
5
6

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 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 following CM/ECF registrants:

7
8
9
10
11
12
13
14
15

John J Bouma

Snell & Wilmer LLP
1 Arizona Ctr
400 E Van Buren
Phoenix, AZ 85004-0001
602-382-6000
Fax: 602-382-6070
Email: jbouma@swlaw.com

16
17
18
19
20
21
22
23
24

Joseph G Adams

Snell & Wilmer LLP
1 Arizona Ctr
400 E Van Buren
Phoenix, AZ 85004-2202
602-382-6207
Fax: 602-382-6070
Email: jgadams@swlaw.com

25
26
27
28
29
30
31
32
33

Joseph Andrew Kanefield

Office of Governor Janice K Brewer
1700 W Washington St
9th Floor
Phoenix, AZ 85007
602-542-1586
Fax: 602-542-7602
Email: jkanefield@az.gov

34
35
36
37
38
39
40
41
42

Robert Arthur Henry

Snell & Wilmer LLP
1 Arizona Ctr
400 E Van Buren
Phoenix, AZ 85004-0001
602-382-6259
Fax: 602-382-6070
Email: bhenry@swlaw.com

