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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

National Coalition of Latino Clergy and Christian Leaders ("CONLAMIC"), *et al.*,

Plaintiffs,

v.

State of Arizona, *et al.*,

Defendants.

No. CV-10-0943-PHX-SRB

GOVERNOR BREWER AND THE STATE OF ARIZONA'S MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), defendants Janice K. Brewer ("Governor Brewer") and the State of Arizona (the "State") move to dismiss plaintiffs' Amended Complaint for Declaratory, Injunctive and Further Relief (the "Amended Complaint" or "AC") (doc. 13). The Amended Complaint should be dismissed because: (1) the State cannot be sued under the Eleventh Amendment; and (2) plaintiffs lack standing to bring their claims because they have not alleged that they have suffered any cognizable injury-in-fact. In addition, plaintiffs' claims are moot because plaintiffs requested a relief only until the Department of Justice has "spoken" on the "Support Our Law Enforcement and Safe Neighborhoods Act," as amended ("SB 1070" or the "Act"). As a result, plaintiffs' Amended Complaint should be dismissed.

This motion is supported by the following Memorandum of Points and Authorities.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. ALLEGATIONS IN PLAINTIFFS' AMENDED COMPLAINT

This case is one of the seven cases that challenge the validity of SB 1070. Plaintiffs filed their initial Complaint on April 29, 2010, and subsequently filed the Amended Complaint on June 9, 2010. The Amended Complaint was not served until July 14, 2010.

Even though plaintiffs took the step of amending the operative pleading, the Amended Complaint is confused on many key points. First, plaintiffs are apparently unaware that the so-called "Anti-Immigration Act," as they refer to SB 1070, was amended on April 30, 2010 by HB 2162.[1] AC ¶ 52. In addition, the lack of clarity in the Amended Complaint makes it difficult to determine the precise provisions of SB 1070 that are being challenged or even the nature of the relief requested. In one instance, plaintiffs "request injunctive and mandamus relief" (AC ¶ 1) and in another plaintiffs request declaratory and injunctive relief (AC, Prayer for Relief (c) and (d)). In any

[1] Plaintiffs reference a copy of the law allegedly attached to the Amended Complaint as "Exhibit B." AC ¶ 52. However, the Amended Complaint does not include an Exhibit B, and Exhibit B of the original Complaint is the pre-amendment version of SB 1070.

event, plaintiffs state that the relief they seek is limited in scope, and they specifically request an injunction regarding SB 1070 only "until the Department of Justice has spoken." AC ¶ 13. As this Court is well aware, the Department of Justice "spoke" by filing a Complaint and Motion for Preliminary Injunction on July 6, 2010, and this Court entered an Order on the Department of Justice's Motion on July 28, 2010. *See* Order on Plaintiff's Motion for Preliminary Injunction, *United States of America v. State of Arizona, et al*., CV10-1413-PHX-SRB (filed as doc. 27 in this docket). As such, plaintiffs' request for relief has been rendered moot. *See Nome Eskimo Cmty. v. Babbitt*, 67 F.3d 813, 815 (9th Cir. 1995) ("Mootness, like standing, limits judicial power to cases where the wrong can be redressed by the lawsuit.").

Even if plaintiffs' claims were not moot, they have failed to establish that they have suffered, or are likely to suffer, any actual or imminent injury from SB 1070. Instead, plaintiffs advance only vague allegations of "fear" and "concern" that are based on nothing more than speculation. Indeed, one plaintiff, Jane Doe 3, offers nothing more than the bald assertion that she "will be unable to live, work, or obtain goods and services in Phoenix, Arizona." AC ¶ 35. Defendants and this Court are left to guess as to whether Jane Doe 3 is a United States citizen, whether she resides in Arizona, and why she will only be unable to conduct her activities in Phoenix as opposed to Tempe, Mesa or Flagstaff – there are simply no allegations regarding who Jane Doe 3 is, let alone how she will be harmed by the Act.

Likewise, the counts alleged in the Amended Complaint have little relation to the allegations of harm raised by the plaintiffs. For example, Count III provides that Section 5 of the Act adding A.R.S. § 13-2928 is an unnecessary regulation of traffic and an unconstitutional infringement on the speech of day laborers. AC ¶¶ 68, 69. However, none of the plaintiffs alleges that he or she is a day laborer, hires day laborers, is a day labor organization, or will in any way be subject to prosecution under these provisions of the Act. In short, plaintiffs rely on pure speculation and, in some instances, the reader's imagination, to establish standing. As evidenced by the absence of credible allegations

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of harm, unsupported references to constitutional violations, and confused requests for relief, plaintiffs' Amended Complaint serves as a means of airing generalized grievances rather than a refined statement of a concrete dispute between adverse parties.

II. THE STATE OF ARIZONA IS IMMUNE FROM PROSECUTION

As an initial matter, plaintiffs' claims against the State are barred by the Eleventh Amendment. The Eleventh Amendment precludes the judicial power of the United States from extending "to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI.

It is well settled that the Eleventh Amendment bars suits in federal court against states brought by citizens. "While the Amendment by its terms does not bar suits against a State by its own citizens, [the Supreme] Court has consistently held that an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974) (citations omitted); *see also Brooks v. Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053 (9th Cir. 1991) ("The Eleventh Amendment prohibits federal courts from hearing suits brought against an unconsenting state.") (citations omitted). The State has not consented to being sued in federal court by undocumented aliens, permanent residents, or even its own citizens with regard to SB 1070. The Eleventh Amendment serves as a clear bar to such suits against the State, and the State should be dismissed as a matter of law.

III. PLAINTIFFS LACK STANDING BECAUSE THEY HAVE NOT SUFFERED ANY INJURY-IN-FACT

Plaintiffs also lack standing to pursue the claims asserted in this case because they have not established that they have suffered, or are likely to suffer, any cognizable injury relating to SB 1070. Without standing, plaintiffs are seeking an improper advisory opinion.

The Court's standing analysis "involves both constitutional limitations on federal-

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court jurisdiction and prudential limitations on its exercise." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Here, plaintiffs do not have standing under either of these components. Rather, plaintiffs' claims require the Court to "hypothesize that … event[s] will come to pass, and it is only on [that] basis that the constitutional claim[s] could be adjudicated...." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 304 (1979). None of the plaintiffs face a credible or imminent threat of harm under the Act.

A. The Individual Plaintiffs Fail Constitutional Standing Requirements

To have standing, a plaintiff must allege facts that demonstrate "an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations and citation omitted); *see Premier-Pabst Sales Co. v. Grosscup*, 298 U.S. 226, 227 (1936) (Brandeis, J.) ("One who would strike down a state statute as obnoxious to the Federal Constitution must show that the alleged unconstitutional feature injures him." (Citation omitted)).[2] When standing is based on an injury that may occur "at some indefinite future time, and the acts necessary to make the injury happen are at least partly within the plaintiff's own control," a "high degree of immediacy" is required. *Lujan*, 504 U.S. at 564 n.2.

Here, the individual plaintiffs' allegations of threatened harm fail because plaintiffs have not: (1) "articulated concrete plans to violate" the Act; (2) alleged that the government issued a "specific warning" or threat of its intent to prosecute the plaintiffs under the Act; and (3) been prosecuted under the Act in the past. *San Diego County Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126-29 (9th Cir. 1996). "Such 'some day' intentions – without any description of concrete plans, or indeed even any specification of *when* the some day will be – do not support a finding of the 'actual or imminent'

[2] A plaintiff must also demonstrate that there is "a causal connection between the injury and the conduct complained of" and that it is "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan*, 504 U.S. at 560-61; *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983).

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injury that our cases require." *Lujan*, 504 U.S. at 564 (emphasis in original); *see also Friendly House v. Napolitano*, 419 F.3d 930, 932 (9th Cir. 2005) (finding that plaintiffs lacked standing to bring a pre-enforcement challenge, because they did not allege a "concrete plan to violate [the law]," did not identify a specific threat of prosecution, and could not show a history of "past persecution.") (citation omitted).

The specific harms raised by the plaintiffs are discussed below.

1. Plaintiffs "Fear" of Racial Profiling[3]

Several plaintiffs "fear" that they "could be" or "may be" stopped because of their appearance and are "scared of being racially profiled and arrested if the new law goes into affect [sic]." AC ¶¶ 16, 17, 18, 19, 28, 30, 32, 34, 35, and 36.[4] But plaintiffs' subjective fear, standing alone, does not grant them standing. As a threshold matter, SB 1070 does not permit – indeed it expressly prohibits – the conduct these plaintiffs allegedly fear. Specifically, SB 1070 provides that law enforcement officials and agencies "may ***not*** consider race, color or national origin in implementing the requirements of this subsection except *to the extent permitted by the United States or Arizona Constitution*" A.R.S. § 11-1051(B) (emphasis added) and § 13-1509(C). SB 1070 further provides that it "shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens." SB 1070, sec. 12(C).

Further, even if SB 1070 said nothing about racial profiling, the individual plaintiffs have not alleged facts showing that they face "a *genuine* threat of *imminent* prosecution." *San Diego County*, 98 F.3d at 1126 (9th Cir. 1996) (internal quotes omitted, emphases in original). In determining whether such a threat exists, courts review the following factors: (1) whether the plaintiff "articulated concrete plans to violate" the

[3] Plaintiffs' standing claims and arguments are addressed in the following sections broken down by the nature of their alleged injuries.

[4] At least one plaintiff, John Doe 3, is a U.S. Citizen with a valid Arizona driver's license. A.R.S. § 11-1051(B) provides that a valid Arizona driver's license creates a presumption that an individual is not an "alien who is unlawfully present in the United States…."

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statute in question; (2) whether the government has issued a "specific warning" or threat of its intent to prosecute the plaintiff under the statute; and (3) whether the plaintiff has been prosecuted under the statute in the past. *Id.* at 1126-29. None of these factors are present in plaintiffs' Amended Complaint. For example, none of the individual plaintiffs has alleged a "concrete plan" to commit a predicate offense under A.R.S. § 11-1051(B), § 13-1509, or § 13-3883(A)(5), that would open the door to a potential inquiry by a law enforcement officer into a plaintiff's immigration status or result in an arrest.[5] Nor have any individual plaintiffs alleged that they have received a specific threat that they will be prosecuted under the Act.[6] Finally, the individual plaintiffs do not, and cannot, satisfy the third prong of the *San Diego County* test because plaintiffs have not been prosecuted under the Act in the past.

2. Alleged Fear of Prosecution Under A.R.S. § 13-1509

Some of the plaintiffs also allege that they may be prosecuted under A.R.S. § 13-1509 "if" they forget their permanent resident card, lost their Green Card, are lawfully present pursuant to refugee status but without a permanent resident card, or are a U.S. Citizen with only a Social Security card. AC ¶ 18, 19, 32, 33,[7] and 35. None of these plaintiffs, however, has alleged facts that would establish a credible and imminent fear of prosecution or a specific threat of enforcement under the Act. *See San Diego County*, 98 F.3d at 1127. Specifically, plaintiffs Galindo and Madera's speculative allegations require this Court to assume they will get pulled over, will be asked to show identification, and will be arrested "if" they have forgotten their permanent resident

[5] Only one plaintiff, Carmen Galindo, goes so far as to aver that she "expects to be arrested," but she offers no reason why her arrest is certain to occur – no concrete plan to break the law and no specific threat of enforcement. AC ¶ 28.

[6] *See also O'Shea v. Littleton*, 414 U.S. 488, 497 (1974) (courts "assume that [plaintiffs] will conduct their activities within the law and so avoid prosecution and conviction….").

[7] John Doe 2 further alleges that he "will be unable to rent, work, or obtain goods and services in Phoenix because he cannot prove his immigration status." AC ¶ 33; *see also* AC ¶ 35 (Jane Doe 3 alleging same). Contrary to John Doe 2's claims, SB 1070 in no way restricts the ability of a lawfully present permanent resident to rent, work, or obtain goods and services in Phoenix or any other part of the State.

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cards. AC ¶ 18, 19. Even if all of those events occurred, plaintiffs Galindo and Madera are not subject to prosecution because A.R.S. § 13-1509 "does not apply to [individuals] who maintain[] authorization from the federal government to remain in the United States." A.R.S. § 13-1509(F). John Doe and John Doe 2 are similarly exempt from prosecution because they are authorized to remain in the United States.[8] These unfounded and speculative fears reflect a fundamental misunderstanding of the Act and are insufficient to confer standing.

3. Alleged Fear of Prosecution Under A.R.S. § 13-2929

Plaintiffs Rivera and Siguenza also express concern that they "***might be*** considered in violation of the law because their clients often stay for extended period [sic] of time in their business and they often transport them to different locals." AC ¶ 24. But plaintiffs' alleged fears of prosecution for allowing individuals to "stay" at their businesses or for transporting them to different places reflects a fundamental misunderstanding of the Act. Neither plaintiff Rivera nor plaintiff Siguenza alleges that they will undertake to engage in a violation of a criminal offense as a predicate to prosecution under A.R.S. § 13-2929's transporting or harboring provisions. *See* A.R.S. § 13-2929(A)(1) and (2). Nor do plaintiffs Rivera and Siguenza allege that they transport unlawfully present aliens "***in furtherance of*** the illegal presence of the alien" or "to conceal, harbor or shield … alien[s] from detection…." A.R.S. § 13-2929(A)(1) and (2) (emphasis added). There are also no allegations that plaintiffs face a specific threat of prosecution under the Act. Instead, both plaintiffs ask this Court to assume that some day someone will find that plaintiffs are violating the Act. Such hypothetical injuries which may or may not occur at some indefinite future date cannot confer standing.

4. Alleged Economic Harm and Loss of Patronage

Several plaintiffs claim that they will lose or already have lost a significant portion of their patrons as a result of SB 1070. AC ¶¶ 14, 15, 16, 17, 20, 21, 25, 26, 27,

[8] A.R.S. § 13-1509 has no application to Jane Doe 2 since it only applies to those required to complete and carry alien registration documents under federal law. As a U.S. Citizen, Jane Doe 2 is clearly outside the purview of A.R.S. § 13-1509.

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36. But plaintiffs do not present specific facts that would establish an injury that can be traced to SB 1070, as opposed to other potential causes. Indeed, plaintiffs Rivera and Siguenza allege only that "[u]pon ***information and belief***" they have "lost ***prospective*** clients due to the law." AC ¶¶ 20 and 21 (emphasis added). These generalized allegations do not demonstrate that they will suffer some injury because of the law, as opposed to "the independent action of some third party not before the court." *San Diego County*, 98 F.3d at 1130 (quoting *Lujan*, 504 U.S. at 560); *see also Roe 1 v. Prince William County*, 525 F. Supp. 2d 799, 806-807 (E.D. Va. 2007). In *Roe 1*, plaintiffs alleged that their businesses suffered because clients left the area and were "no longer present to provide economic benefit…" following passage of a local immigration law. *Roe 1*, 525 F.Supp.2d at 806. The court disagreed, finding that the law in question did not "have any immediate impact on business regulation." *Id.* at 807. As a result, the claims of economic loss were "not traceable to the language of the Resolution or Orders and thus [did] not provide the causal connection required for standing." *Id*.

Plaintiffs in this case, similar to *Roe 1*, speculate how SB 1070 may impact their businesses, their customers, their listeners, and donations by their parishioners. *See* AC ¶¶ 14, 15, 16, 17, 20, 21, 25, 26, 27, and 36.[9] However, as in *Roe 1*, plaintiffs' alleged harm is not fairly traceable to the Act. There are numerous other regulations, federal and state, as well as the ongoing economic downturn, that may or may not influence the level of business activity and donations. It is unknown how the specific economic situations involving their customers and listeners will affect plaintiffs, or whether an injunction will impact such persons' behavior in the manner suggested by plaintiffs. *See San Diego County*, 98 F.3d at 1130 (citing *Common Cause v. Department of Energy*, 702 F.2d 245, 251 (D.C. Cir. 1983)) ("where injury is alleged to occur within a market context, the concepts of causation and redressability become particularly nebulous and subject to

[9] The speculative nature of plaintiffs exercise in predicting the economic impact of the Act is reflected in paragraphs 14 and 25 of the Amended Complaint, where plaintiffs estimate the percentage of their business affected by the Act. *See* AC ¶¶ 14, 25. None of these percentages are supported by allegations – they represent nothing more than unsupported guesses about potential economic impacts.

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contradictory, and frequently unprovable analyses."). Put simply, the alleged economic harm is based purely upon speculation and is insufficient to establish a concrete and credible injury in fact for purposes of standing.

5. Other Alleged Civil Rights Violations

Finally, plaintiffs attempt to establish standing by making unsupported allegations of various civil rights violations. For example, plaintiffs allege that SB 1070 will harm plaintiffs by leading to the prolonged separation of family members, violations of the Fair Housing Act and the First Amendment, and by forcing "countless" plaintiffs to move "from Arizona due to fear that local authorities will begin implementing this unconstitutional law." AC ¶¶ 1(B), 8, 12, 68, and 69. But these allegations are not supported by any facts. None of the plaintiffs allege that they face an imminent and credible threat of prolonged separation from their family members. Even if plaintiffs did make such allegations, fear of prolonged separation is not sufficient to confer standing. *See Roe 1*, 525 F. Supp. 2d 799, 805 (holding that "[t]he possibility of separation by deportation or unlawful detention is … unduly speculative.").

Additionally, none of the plaintiffs allege that SB 1070 has made a dwelling unavailable in violation of the Fair Housing Act. In fact, none of the counts in the Amended Complaint even refer to the Fair Housing Act or the prolonged separation of family members. Moreover, none of the plaintiffs alleges a violation of their First Amendment rights due to the operation of SB 1070's day laborer provisions. And none of the "countless" plaintiffs claim that he or she was forced to move from Arizona as a result of the Act. Plaintiffs cannot show that they were injured merely by speculating about potential constitutional violations in a generalized manner.

B. <u>There Is No Credible and Imminent Threat of Harm to the Organizational Plaintiffs' Members</u>

Likewise, plaintiffs have not established that any of the plaintiff organizations have standing through their members. To establish associational standing as a representative of one's members, an organization "must allege that its members . . . are

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suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." *Warth*, 422 U.S. at 511 (citation omitted).[10] In *Warth*, the Supreme Court found that home building and housing associations lacked standing to sue as representatives, because the complaint "failed to show the existence of any injury to [their] members of sufficient immediacy and ripeness to warrant judicial intervention." *Id.* at 516 (citations omitted) (no allegations that specific projects were precluded or delayed by the challenged ordinance). The Court further denied standing because one of the associations merely averred that its membership included seventeen groups that develop low and moderate income housing, but failed to indicate that those members planned developments that would be affected by the challenged ordinance. *Id.* at 516-17.

The Amended Complaint in this case does not meet – indeed, falls far short – of meeting this associational standing standard. Here, the plaintiff-associations provide only a cursory assessment of their membership, fail to identify members that are impacted by the Act,[11] and conspicuously omit any allegations of harm, let alone specific instances of threatened enforcement. Even when liberally construed in favor of plaintiffs, the Amended Complaint offers no means by which this Court can identify members of the plaintiff-associations or a threatened injury that would give rise to a justiciable claim.

CONLAMIC avers that it is affiliated with 30,000 churches throughout the United States, that its membership includes some Latino individuals, individuals with limited English language proficiency, some individuals that have children, and "over 300

[10] *See also San Diego County*, 98 F.3d at 1130-31 (organizations have associational standing to sue on behalf of their members only if: "(a) their members would otherwise have standing to sue in their own right; (b) the interests [they] seek to protect are germane to their purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit") (citation omitted).

[11] The Amended Complaint is void of any allegations that the individual plaintiffs are members of either CONLAMIC or La Hermoza Church. Even if the individual plaintiffs are members, for the reasons stated above, they have failed to allege a credible and imminent threat of injury and therefore have failed to allege an injury in fact.

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Arizona Pastors." AC ¶¶ 40-43. CONLAMIC's summary of its membership, similar to the reference to seventeen development groups in *Warth*¸ offers nothing in terms of standing.[12] CONLAMIC's allegations omit any reference to planned actions that would bring its members within the purview of the Act and are void of any references to specific threats of enforcement. La Hermoza Church's[13] allegations are similarly unavailing. Its membership also includes Latinos, Spanish speakers, and individuals with school-aged children. AC ¶ 39. However, there are no allegations of harm, threatened harm, or imminent enforcement of the Act against any of CONLAMIC's or La Hermoza's members. Such general allegations regarding the composition of membership combined with rote recitations of the second and third prongs of the associational standing standard,[14] are insufficient to confer associational standing on either entity.

C. CONLAMIC and La Hermoza Church Lack Organizational Standing

Apart from the individual interests of its members, "an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy." *Warth*, 422 U.S. at 511. To properly establish standing, an organization must satisfy the injury-in-fact standing

[12] *See also Nat'l Coal. of Latino Clergy, Inc. v. Henry*, CV-07-613-JHP, 2007 WL 4390650, at *4 (N.D. Okla. Dec. 12, 2007) (finding that CONLAMIC did not have associational standing when it only asserted that 30 pastors were members of CONLAMIC without specifying whether any individual member had standing).

[13] Plaintiffs' Amended Complaint employs two different spellings for La Hermoza Church in paragraph 39: "Hermoza" and "Hermosa." Because the majority of references throughout paragraph 39 refer to "La Hermoza," defendants use that spelling.

[14] *Compare* AC ¶ 39 ("The interests La Hermoza seeks to protect through this action are germane to its purpose, and neither the claims asserted nor the relief requested herein require the personal participation of La Hermoza's members.") and AC ¶ 44 ("The interests CONLAMIC seeks to protect through this action are germane to its purpose, and neither the claims asserted nor the relief requested herein require the personal participation of CONLAMIC's members.") *with San Diego County*, 98 F.3d at 1130-31 (citation omitted) (associational standing exists where "(b) the interests that the organizations seek to protect are germane to their purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.").

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requirement,[15] and can do so by establishing that the challenged statute: (1) frustrates the organization's mission; and (2) requires the organization to divert or expend resources in a manner other than in furtherance of the organization's goals. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 607 F.3d 1178, 1183 (9th Cir. 2010). The organization must allege a "concrete and demonstrable injury to the organization's activities … [that] constitutes far more than simply a setback to the organization's abstract social interests." *Havens Realty Corp.*, 455 U.S. at 379 (citation omitted).

Unlike in *Havens* and the Ninth Circuit's recent decision in *Redondo Beach*, the plaintiff-associations in this case do not satisfy either prong of the organizational standing analysis. There are no facts alleged in the Amended Complaint showing that either CONLAMIC or La Hermoza Church has diverted resources to address SB 1070, and neither alleges that they will have to divert resources if the challenged provisions of the Act go into effect. Plaintiffs have not alleged a "concrete and demonstrable" injury. In addition, neither CONLAMIC's nor La Hermoza's purposes are frustrated by operation of the Act. Each merely offers the conclusory observation that "[t]he law has generated great hostility towards the Latino community in Arizona and therefore adversely affects [their] work…." AC ¶¶ 39, 41. Plaintiffs fail, however, to indicate in what manner, to what extent, and by what means the work of either organization is frustrated by the challenged provisions of SB 1070. Their allegations amount to nothing more than a non-actionable "abstract concern" with the Act.

CONLAMIC also avers that its "purpose is to promote the interests of its members." AC ¶ 41. With such a stated purpose, CONLAMIC can hardly argue that its mission is frustrated by responding to public policy issues on behalf of its members (*i.e.*, promoting its members' interests). Absent a direct diversion of resources to address

[15] *E. Ky. Welfare Rights Org. v. Simon*, 426 U.S. 26, 40 (1976) ("Our decisions makes clear that an organization's abstract concern with a subject that could be affected by an adjudication does not substitute for the concrete injury required by Article III.") (citations omitted).

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specific instances of racially discriminatory conduct (*Havens*) or enforcement of an ordinance against the plaintiff-associations' members (*Redondo Beach*), plaintiffs have failed to allege an injury-in-fact sufficient to confer organizational standing.

D. Plaintiffs Have Not Satisfied Prudential Standing Requirements

Prudential standing requirements also weigh strongly against the Court exercising jurisdiction in this case. These prudential principles prohibit courts from considering generalized grievances and claims on behalf of third parties. *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 474-75 (1982).[16] These considerations weigh against the exercise of jurisdiction here, where plaintiffs allege general concern about the Act rather than a specific, concrete injury. Even if plaintiffs sufficiently allege an actual injury, courts should refrain "from adjudicating 'abstract questions of wide public significance' which amount to 'generalized grievances,' pervasively shared and most appropriately addressed in the representative branches." *Valley Forge Christian Coll.*, 454 U.S. at 475 (quoting *Warth*, 422 U.S. at 499-500).

E. Plaintiffs Not Named in the Caption Should be Dismissed And Class Action Certification is Inappropriate

The Amended Complaint refers to plaintiffs Miranda and La Hermoza Church, neither of whom is named in the case caption. AC ¶¶ 31, 37, and 39. The Federal Rules of Civil Procedure require that the title of the complaint "must name all the parties." Fed. R. Civ. P. 10(a); *cf. Carrigan v. Cal. State Legislature*, 263 F.2d 560, 567 (9th Cir. 1959) (finding that failure to include plaintiff in complaint is a specific violation of Rule 10). Because Miranda and La Hermoza Church are not named in the caption, they

[16] *See also Nat'l Coal. of Latino Clergy*, 2007 WL 4390650 ("An illegal alien, in willful violation of federal immigration law, is without standing to challenge the constitutionality of a state law, when compliance with federal law would absolve the illegal alien's constitutional dilemma-particularly when the challenged state law was enacted to discourage violation of the federal immigration law."). Plaintiffs Fermin Leon and Jane Doe 1 both concede that they are unlawfully present within the United States, and therefore lack standing under the prudential limitation articulated in *Nat'l Coal. of Latino Clergy*. AC ¶¶ 17, 29.

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should be dismissed as non-parties.

In addition, though plaintiffs have not moved to certify the class referenced in paragraphs 54-63, defendants Governor Brewer and the State believe class certification is inappropriate and reserve the right to oppose such certification if moved for by plaintiffs in the future.

IV. CONCLUSION

For these reasons, defendants the State of Arizona and Governor Brewer request that the Court dismiss plaintiffs' Amended Complaint.

Respectfully submitted this 4th day of August, 2010.

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By s/John J. Bouma
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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

s/John J. Bouma

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