Tania Galloni
Fla. Bar. No. 619221
FLORIDA IMMIGRANT ADVOCACY CENTER
3000 Biscayne Blvd., Ste. 400
Miami, Florida 33137
Telephone: 305.573-1106
Facsimile: 305.576.6273
Email: tgalloni@fiacfla.org

Ben R. Miranda
Arizona Bar No. 9515
LAW OFFICE OF BEN R. MIRANDA
826 West 3rd Avenue
Phoenix, Arizona 85003
Telephone: 603.252.7555

William J. Sanchez
Fla. Bar No. 749060
SANCHEZ LAW, LLC
Lakeside Corporate Park
12915 Southwest 132nd Street, Suite 5
Miami, Florida 33186
Telephone: 305.232.8889
Facsimile: 305.232.8819
Email: imiglaw@aol.com

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

NATIONAL COALITION OF LATINO CLERGY AND CHRISTIAN LEADERS ("CONLAMIC"), PHOENIX, ARIZONA, ET AL., Plaintiffs, v. STATE OF ARIZONA, ET AL., Defendants.	**CASE NO. 2:10-CV-00943-SRB** **PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT GOVERNOR BREWER'S MOTION TO DISMISS AMENDED COMPLAINT**

Plaintiffs, by and through undersigned counsel, hereby file this Response in Opposition to Defendant Governor Brewer's Motion to Dismiss (DE 30), filed August 4, 2010, and joined by Defendants Goddard (DE 31) and Romley (DE 33). For the reasons stated below, Defendant's Motion should be denied in its entirety. Plaintiffs are separately requesting leave to file a Second Amended Complaint, which would address many of the concerns raised in Defendant's motion.

INTRODUCTION

Plaintiff National Coalition of Latino Clergy and Christian Leaders ("CONLAMIC"), joined by Latino parishioners, small business owners and other members of the Arizonan Latino community, brings this action to challenge the legality of Arizona's recently-enacted immigration law, commonly known as "S.B.1070." In the Amended Complaint, Plaintiffs allege that S.B. 1070 violates the Supremacy Clause, is preempted by federal law, and will lead to discrimination and civil rights violations on the basis of race, national origin and alienage. Plaintiffs allege that the imminent enforcement of S.B.1070 has already caused them economic and other harm, as countless Latino individuals and families have begun to leave the State of Arizona out of fear of the law's implementation. Plaintiffs seek injunctive and declaratory relief. On July 28, 2010, this Court preliminarily enjoined portions of S.B.1070 in the related case of United States of America v. State of Arizona, et al., CV10-1413-PHX-SRB. The Court ruled that sections of the statute are likely preempted by federal law and thus unconstitutional. (See DE 27.)

STANDARD FOR MOTION TO DISMISS

The Federal Rules of Civil Procedure require only a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2); Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 248 (9th Cir.1997). "[A] complaint need not contain detailed factual allegations; rather, it must plead 'enough facts to state a claim to relief that is plausible on its face.'" Clemens v. DaimlerChrysler Corp., 534 F.3d 1017, 1022 (9th Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). All allegations of material fact are taken as true and construed in the light most favorable to the non-moving party, Clegg v. Cult Awareness Network, 18 F.3d 752, 754 (9th Cir.1994), with reasonable inferences drawn in the non-moving party's favor, al-Kidd v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009).

SUMMARY OF ARGUMENT

Defendant Governor Brewer's motion should be denied because (1) the State of Arizona has waived sovereign immunity; (2) Plaintiffs' request for preliminary relief pending input from the federal government does not render the case moot; and (3) the motion at most articulates grounds for clarification, not dismissal, and attempts to litigate the merits prematurely.

I. DEFENDANT'S CRITICISMS OF THE AMENDED COMPLAINT AT MOST ARTICULATE A BASIS FOR CLARIFICATION, NOT DISMISSAL

In the first section of her motion, Defendant Governor Brewer asserts that certain allegations and the request for relief in the Amended Complaint are confusing and lack clarity; that Plaintiffs omitted a referenced Exhibit; and that other allegations are vague. (Deft's Mot. at 1-3.) The proper vehicle for raising concerns that a complaint is "vague or ambiguous," however, is through a motion for a more definite statement, rather than a motion to dismiss. See Fed.R.Civ.P. 12(e). Although Defendant raises these concerns as a basis for dismissal, she has not explained or shown how any inartful pleading on Plaintiffs' part means they have failed to state a claim for which relief can be granted, as would be required for dismissal under Rule 12(b)(6). Plaintiffs' proposed Second Amended Complaint addresses many of Defendant's concerns.[1]

In addition to complaining of ambiguity, Defendant also argues that the case is "moot" because Plaintiffs purportedly requested "relief only until the Department of Justice [had] 'spoken,'" which occurred when the United States filed a Complaint and Motion for Preliminary Injunction on July 6, 2010. (Deft's Mot. at 2.) This argument is, at best, disingenuous. Paragraph 13 of the Amended Complaint, on which Defendant relies, asks only that the Court enjoin the law until the Department of Justice has spoken regarding its investigation into potential civil rights violations inherent in the new law. In other words, Plaintiffs suggested that the Court enjoin the law preliminarily until it had heard from the Executive Branch regarding this investigation. This is quite distinct from the ultimate relief expressly sought by Plaintiffs: injunctive and declaratory relief. (See Am. Compl. at 22, Prayer for Relief, b.-d.) Given that Plaintiffs allege the Arizona law is both unconstitutional and preempted by federal law, it is plain that the ultimate relief they seek is a permanent injunction pursuant to a declaration that the statute is unlawful, not simply preliminary relief as Defendant suggests.

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[1] Among other things, Plaintiffs' Second Amended Complaint would correct Plaintiffs' inadvertent typographical error referring to "Jane Doe 2 "as "Jane Doe 3" in part of ¶ 35, and withdraw Count III challenging the day laborer section of the statute, at ¶¶ 68-69, both concerns specifically raised by Defendant in her motion. (Deft's Mot. at 2-3.)

II. THE STATE OF ARIZONA HAS WAIVED SOVEREIGN IMMUNITY

Defendant Governor Brewer next argues that the State of Arizona enjoys immunity under the Eleventh Amendment because Arizona "has not consented to being sued in federal court by undocumented aliens, permanent residents, or even its own citizens with regard to SB 1070." (Deft's Mot. at 3.) This assertion is factually incorrect.

On May 28, 2010, the State of Arizona filed a "Motion to Intervene as a Defendant" in the related case of Friendly House, et al., v. Whiting, et al., which, like this case, is a challenge to S.B.1070 by undocumented aliens, permanent residents, and citizens. See Case No. 10-cv-1061, DE 47. In that motion, the State of Arizona asserted that "the legislation at issue in this lawsuit concerns a matter of statewide public importance" and that the state was moving to intervene "in order to defend the constitutionality of [the] state law." Id. With that filing, the State of Arizona, which had not been named as a defendant in the case, voluntarily availed itself of the federal court to request status "as a defendant-intervenor" so that it could assert its rights. On June 18, 2010, the court granted the motion, and afforded the State of Arizona "the status of a defendant in [the Friendly House] action." See id., DE 201. The state has since participated vigorously in the litigation challenging S.B. 1070,[2] apparently without ever invoking Eleventh Amendment immunity.[3]

It is well-established that a state affirmatively waives Eleventh Amendment immunity by filing a lawsuit in federal court, seeking federal administrative adjudication, Vas-Cath, Inc. v. Curators of University of Missouri, 473 F.3d 1376, 1383 (Fed.Cir.2007), removing a state case to federal court, Lapides v. Bd. of Regents, 535 U.S. 613, 620 (2002), or intervening in federal court litigation, Clark v. Barnard, 108 U.S. 436 (1883), as it has done with regard to S.B. 1070. When a state voluntarily invokes federal jurisdiction "'and submits its rights for judicial determination, it will be bound thereby and cannot escape the result of its own voluntary act by

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[2] See, e.g., Case No. 10-cv-1061, DE 245, 246, 320, 329, 402, and 437.

[3] The Motion to Dismiss filed by Governor Brewer in that case did not invoke Eleventh Amendment immunity. Id., DE 238.

invoking the prohibitions of the Eleventh Amendment.'" Lapides, 535 U.S. at 619 (quoting Gunter v. Atl. Coast Line R.R. Co., 200 U.S. 273, 284 (1906)).

The state's affirmative waiver in the Friendly House case should apply equally in this case. In City of South Pasadena v. Mineta, 284 F.3d 1154, 1157-58 (9th Cir. 2002), the Ninth Circuit considered whether a state's waiver of sovereign immunity in one case applied in another, related case. The district court below had rejected the state's invocation of immunity because the state had waived immunity in a prior lawsuit involving similar parties, facts and legal issues. On appeal, the Ninth Circuit reversed because it concluded that the waiver had no continuing legal effect given that the first lawsuit (filed 25 years earlier) had been voluntarily dismissed without prejudice, as though it had never been brought. Although the Ninth Circuit did not have occasion to consider the carry-over issue precisely as it is presented here, the Court's ruling implicitly holds that a waiver of sovereign immunity in one lawsuit can carry over to another, related lawsuit when the waiver continues to have legal effect. That principle supports a finding of waiver in this case given the circumstances presented here: (1) the State of Arizona waived immunity through voluntarily availing itself of the federal court in the related litigation challenging S.B. 1070; (2) that waiver has continuing legal effect as the State of Arizona continues to vigorously participate in the related lawsuit without invoking immunity; (3) the related litigation was filed close in time and poses a similar challenge to the legality of S.B. 1070; and (4) both matters are presently pending before the Court at the motion to dismiss stage.

In addition, it would undermine principles of fairness and consistency to allow a state to contest the constitutionality of a state statute in one case, but then hide behind immunity in a related and simultaneously pending case before the same court. See, e.g., Lapides, 535 U.S. at 620 (an Eleventh Amendment waiver determination rests on the "judicial need to avoid inconsistency, anomaly, and unfairness, and not upon a State's actual preference or desire, which might, after all, favor selective use of 'immunity' to achieve litigation advantages.'") The state has offered no rationale for why it should be permitted to take such inconsistent litigation positions in the currently pending challenges to S.B. 1070.

III. PLAINTIFFS HAVE STANDING TO CHALLENGE S.B. 1070

Lastly, Defendant argues that this case should be dismissed for lack of standing. This argument too is without merit.

To have standing under Article III, a plaintiff must suffer an "injury in fact," defined as "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). There also must be a causal connection between the injury and the complained of conduct, and the injury must be redressable by a favorable decision. Id. at 561. At the motion to dismiss stage, however, "general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" Id. It is only at later stages of the litigation, such as summary judgment, that Plaintiffs are required to set forth the "specific facts" underlying their standing, and only at the final stage of the litigation that these specific facts must be established by evidence adduced at trial. Id.

Plaintiffs who challenge a statute on its face "do[] not have to await the consummation of threatened injury to obtain preventive relief." Babbitt v. United Farm Workers Nat. Union, 442 U.S. 289, 298 (U.S. 1979) (citation and internal quotation marks omitted). Rather, they need only "demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." Id. See also Bland v. Fessler, 88 F.3d 729, 736-37 (9th Cir. 1996). Moreover, "an alleged constitutional infringement will often alone constitute irreparable harm." Monterey Mech. Co. v. Wilson, 125 F.3d 702, 715 (9th Cir. 1997) (citation and internal quotation marks omitted); see also United States v. Arizona, Order on Plaintiffs' Motion for a Preliminary Injunction at 33-34 (discussing harm inherent in threatened enforcement of a preempted state law).

"For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." Warth v. Seldin, 422 U.S. 490, 501 (1975) (citation omitted). If a court is not satisfied that a plaintiff's allegations have adequately

established standing, "it is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing." Id. at 501. The complaint must be dismissed only "[i]f, after this opportunity, the plaintiff's standing does not adequately appear from all materials of record. . . .." Id. at 501-02.

Where there are multiple plaintiffs in an action, standing is satisfied so long as at least one named plaintiff meets the requirements. Breiner v. Nevada Dep't of Corrections, --- F.3d ----, 2010 WL 2681730, at *3 (9th Cir. 2010) (citing Bates v. UPS, Inc., 511 F.3d 974, 985 (9th Cir.2007) (en banc)).

In this case, both the organizational and individual Plaintiffs have alleged sufficient facts to establish they have standing to challenge the legality of S.B. 1070.

A. THE INDIVIDUAL PLAINTIFFS HAVE ALLEGED SUFFICIENT FACTS TO ESTABLISH STANDING

Relying on San Diego County Gun Rights Committee v. Reno, 98 F.3d 1121 (9th Cir. 1996), Defendant argues that all of the individual plaintiffs lack standing because they have not articulated plans to violate S.B. 1070, alleged that the government has issued a specific threat of its intent to prosecute the individual plaintiffs under S.B. 1070, or been prosecuted in the past. Citing Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), Defendant further argues that the individual plaintiffs lack standing because their claimed injuries are "speculative" and at least partly within the plaintiffs' own control. These cases are inapposite, and the arguments relying on them fail.

Defendant's position overlooks the fact that ***Plaintiffs need not violate S.B. 1070 to be harmed by it***. For example, A.R.S. § 11-1051 affirmatively requires all local law enforcement to inquire into the immigration status of any person stopped, and requires law enforcement to determine the immigration status of anyone arrested before that person can be released, regardless of whether the person in fact has violated S.B. 1070 or any other provision of the law. As any law-abiding member of the community can be stopped by law enforcement for a wide variety of reasons, even if they have violated no law at all, Plaintiffs are at a tangible risk of

incurring these harms—including inquiry into any Latino-looking or -sounding Plaintiff's immigration status and prolongation of a stop for the purpose of determining immigration status—without violating S.B. 1070. These harms are neither speculative nor within Plaintiffs' control.

1. Individual Plaintiffs' Fear of Racial Profiling Confers Standing

Defendant argues that Plaintiffs' fears of racial profiling are insufficient to confer standing because S.B. 1070 expressly prohibits racial profiling. (Deft's Mot. at 5.) It is Plaintiffs' contention, however, that racial profiling is inherent in the challenged provisions of S.B. 1070, because there is no way that the provisions can be enforced without resort to profiling. Specifically, Defendant has not articulated how Section 2 of S.B. 1070 can be implemented or enforced without officers resorting to an individual's racial appearance and/or proficiency in the English language. That an amendment to the provision purports to prohibit racial profiling—which is already unlawful—does not cure that problem. Rather, the amendment shows that the state legislature identified racial profiling as a legitimate concern raised by the legislation.

In addition, as argued above, Plaintiffs need not violate S.B. 1070 to be harmed by it. Each individual plaintiff who appears to be Latino, and/or speaks English with limited proficiency or a Spanish-language accent, faces the injury of being stopped, questioned and arrested by local law enforcement based on immigration inquiries, suspicions or status under Sections 2, 3, and 6 of S.B. 1070. Defendant's reliance on San Diego County again to suggest that Plaintiffs must articulate a concrete plan to violate provisions of S.B. 1070 in order to be at risk of racial profiling ignores that the harms caused by S.B. 1070 are not limited to prosecution, but include unlawful interrogation and prolonged stops and detention that ultimately prove unfounded. Moreover, many law-abiding citizens commit minor infractions (for example, traffic violations) that would justify a lawful stop (such as failing to signal before turning) and trigger S.B. 1070's immigration enforcement provisions. As S.B. 1070 requires any such interaction---no matter how minor the infraction---to result in an inquiry into the individual's immigration status, virtually all Arizonans of Latino origin or appearance are at risk of unlawful detention.

2. Individual Plaintiffs' Risk of Harms Caused by A.R.S. § 13-1509 Confers Standing

As alleged in the Amended Complaint, several of the individual plaintiffs risk arrest for violating (or being charged with violating) the new state crime created by Section 3 of S.B. 1070 for "willful failure to complete or carry an alien registration document." These include Plaintiffs Carmen Galindo, Laura Madera, and John Doe 2, all of whom are lawful permanent residents of Latino origin who may not be able to produce an alien registration document if required to do so by local law enforcement. (Am. Compl. ¶¶ 18, 19, 28, 30, 33.)

Plaintiff John Doe 2 in particular alleges that he has lost his lawful permanent resident card. Although he has applied for a replacement card, until he receives it he will not be able to produce a registration document when required to do so by local law enforcement. (Id. ¶ 33.)

Plaintiff Jane Doe 2, who is also Latina, fears arrest because although she is a U.S. Citizen, her only documentation is a Social Security Card and she therefore has no document to prove her citizenship if required to produce one by law enforcement. (Id. ¶ 35.)

Plaintiff John Doe, who also appears Latino, has been granted refugee status, a lawful immigration status that does not come with any sort of "alien registration document." (Id. ¶ 32.) John Doe therefore is also subject to being questioned, arrested or detained if asked to produce such a document because he will not be able to do so.

Defendant argues that the allegations of Plaintiffs Galindo and Madera are "speculative," and that even if they were pulled over, required to produce identification, and arrested for being unable to do so, they would not be subject to prosecution because A.R.S. § 13-1509 does not apply to those who have authorization to remain in the United States. (Deft's Mot. at 6-7.) The standing inquiry, however, does not require that Plaintiffs show they will be successfully prosecuted under the Arizona law, but only that they will be harmed by it. In this case, the inquiry into immigration status, the prolonged detention such an inquiry entails, and the threat of arrest for failure to possess a particular immigration document are injury enough, even if in the end these plaintiffs would not be convicted because they have lawful immigration status.

Also, as argued above, law-abiding members of the community regularly commit minor infractions that would justify a lawful stop (such as failing to signal before turning) and mandatorily trigger S.B. 1070's immigration enforcement provisions. Similarly, that John Doe and John Doe 2 would ultimately be exempt from a successful prosecution under A.R.S. § 13-1509 given their lawful status (Deft's Mot. at 7), does not shield them from the harms caused by inquiry into their immigration status, prolonged detention while that determination is made, and arrest on the suspicion of unlawful status for failure to possess immigration documents.[4]

Defendant's argument that Jane Doe 2 will not be harmed because as a U.S. Citizen she is not required to carry an alien registration document (Deft's Mot. at 7) misses the point that this plaintiff lacks any document to prove that she is a U.S. Citizen when required to do so. As a Latina who speaks very little English, Jane Doe 2 runs the risk of being improperly detained on a "suspicion" that she is an alien who is required to carry a registration document but has failed to comply with that law. Moreover, as Jane Doe 2 is a native-born U.S. Citizen, local law enforcement will be unable to verify her "immigration status" by resort to federal agents' immigration databases, as these maintain data only on immigrants not U.S.-born Citizens. She therefore faces a heightened risk of unlawful interrogation, detention and arrest, and is afraid to leave her home as a result. (Am. Compl. ¶ 35.)[5]

3. Individual Plaintiffs' Risk of Prosecution Under A.R.S. § 13-2929 Confers Standing

Plaintiffs Manuel Siguenza and Joe Rivera, small business owners, allege that they regularly transport clients from one locale to another without regard for their clients' immigration status, and that these clients often stay in their businesses for extended periods of time. (Am.

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[4] It is worth pointing out that the Arizona law's reliance on federal agents to "ascertain" someone's immigration status is not a reliable mechanism for this purpose, as the federal government's databases are notoriously out-of-date and unreliable. In many instances, individuals have been afforded relief that the databases simply do not reflect. It is therefore likely that local law enforcement will unlawfully arrest individuals who have legal status under S.B. 1070, even if they ultimately will not prevail in the prosecution of the charged offense.

[5] These allegations are also supplemented and clarified in Plaintiffs' proposed Second Amended Complaint.

Compl. ¶¶ 20, 21. 22, 24.) Also, although not explicitly alleged in the Amended Complaint, churches and their members regularly transport parishioners to services and other events without checking the immigration status of their passengers or asking how they entered the United States.[6] Under S.B. 1070, however, these Arizona residents now face the very real danger of arrest and prosecution for transporting or harboring those deemed "unauthorized aliens."

Although, as Defendant points out, the transportation and harboring provisions of S.B. 1070 limit their application to those who are "in violation of a criminal offense," A.R.S. § 13-2929, the predicate offense could very well be failure to carry alien registration documents as required by the new law, and with which some are not able to comply despite their lawful status. The provision's requirement that these acts be carried out "in furtherance of the illegal presence of the alien" is unconstitutionally vague, and could be read to cover any activity that does not promote the detection and apprehension of someone considered unlawfully present. In any event, Plaintiffs have adequately alleged a reasonable fear of prosecution under the new law, which criminalizes the transportation and harboring in "any building" of an undocumented individual with disregard of that individual's immigration status or how the individual entered the country.

4. Individual Plaintiffs' Alleged Economic Harm Confers Standing

Defendant next argues that Plaintiffs' allegations of economic harm cannot be traced to S.B. 1070 as opposed to other potential causes. (Deft's Mot. at 7-8.) However, Plaintiff pastors and business owners who primarily serve the Latino community in Arizona have specifically alleged that the enactment of S.B. 1070 has caused Latinos to leave the state out of fear of unlawful interrogation, detention and arrest, if not prosecution, which has damaged Plaintiffs' enterprises economically. (Am. Compl. ¶¶ 14-17, 20, 21, 25-27, 36.)

The exodus of Latinos from Arizona as a result of S.B. 1070 is not some speculative assertion. It has been widely observed and experienced, and even documented by the press. On July 23, 2010, for example, the Los Angeles Times reported that business owners in Arizona have seen residents pack up and leave and "sales plummet" as a result of the Arizona law. See

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[6] Plaintiffs develop these allegations further in their proposed Second Amended Complaint.

Nicholas Riccardi, A double-edged worry in Arizona: As families flee the immigration law, already-struggling Phoenix businesses lose their clientele, L.A. Times, July 23, 2010 (available at 2010 WLNR 14693128). Where businesses were already struggling in a bad economy, S.B. 1070 has been "like a bullet in the head" because even those immigrant consumers who remain are afraid to leave their houses or spend much time in a business establishment. Id.

These circumstances are quite distinct from the cases on which Defendants rely. In San Diego County, plaintiff-consumers speculated that the passage of a gun control law regulating new guns had caused the prices of existing weapons to skyrocket, thereby interfering with those plaintiffs' exercise of their Second Amendment rights. 98 F.3d at 1130. The court rejected this theory given that it was third-party weapons dealers and manufacturers, not the government, who had raised the prices, and that many market factors affect prices for consumers. Id. (citing Common Cause v. Department of Energy, 702 F.2d 245, 251 (D.C.Cir.1983) (noting that "consumer standing" presents "especially difficult conceptual hurdles")). Here, Plaintiff pastors and business owners do not seek consumer standing. Moreover, unlike the consumers in San Diego County, Plaintiffs have observed the impact of S.B. 1070 on their Latino clientele, many of whom have moved out of state specifically out of fear of the new law. This economic harm, and its traceability to the passage of S.B. 1070, has even been reported in the press.

Defendant's reliance on Roe 1 v. Prince William County, 525 F.Supp.2d 799 (E.D.Va. 2007) is also misplaced. In Roe 1, plaintiffs challenged a County resolution authorizing police officers and County personnel to make inquiries into individuals' immigration status. Plaintiffs alleged standing based on economic loss caused by the flight of immigrants from the County. The court rejected that argument, finding that the losses were not directly traceable to the language of the local law, which did not directly regulate business. 525 F.Supp.2d at 806-807.

The harms alleged here, by contrast, are directly traceable to the language of S.B. 1070. S.B. 1070 expressly articulates the statute's goal as "attrition through enforcement," meaning that it aims to reduce the presence of the targeted population throughout the State of Arizona. Section 1 of S.B. 1070 states that the statute's purpose is "to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the

United States." The language of the statute, then, is expressly directed at causing an economic impact in immigrant communities by reducing the presence of aliens in the state.

In addition, unlike the resolution at issue in Roe 1, S.B. 1070 does regulate business and employment. For example, A.R.S. § 13-2928 criminalizes the solicitation of work by and the hiring of day laborers. Additionally, A.R.S. §§ 23-212 and 23-212.01 criminalize the employment of "unauthorized aliens." Lastly, A.R.S. § 23-214 requires verification of employment eligibility based on immigration status.

To the extent Defendants object to Plaintiffs' calculation of the extent of the economic impact of S.B. 1070, or suppose that other factors account for the economic losses experienced by Plaintiffs, these are questions of fact that are not properly resolved in a motion to dismiss. Plaintiffs Rivera, Herrera, Leon, and Siguenza have adequately and reasonably alleged that the economic harms they are experiencing are traceable to S.B. 1070, and have thus established standing on this basis as well.

5. Individual Plaintiffs Have Standing Based on Other Alleged Civil Rights Violations

Lastly, the individual plaintiffs have established standing based on other allegations of harm as well. Specifically, Plaintiffs have alleged that they will be harmed by S.B. 1070 in the form of family separation. Defendant relies on Roe 1 for the proposition that the possibility of separation by deportation or unlawful detention is speculative. (Deft's Mot. at 9.) Again, however, the mandatory and aggressive enforcement provisions of S.B. 1070—which the legislature expressly intended as a systematic implementation of its policy of attrition through enforcement—are far different from the County resolution at issue in Roe 1, which simply authorized police inquiry into immigration status under limited circumstances, and specifically required that such inquiry not otherwise prolong the person's detention. 525 F.Supp.2d at 802. In addition, the harms that the challenged provisions of S.B. 1070 are likely to cause are not limited to family separation through deportation of a family member, but include every unlawful stop, detention, arrest and prosecution of a family member under this unconstitutional law.

With regard to Defendant's objections to Plaintiffs' allegations regarding the Fair Housing Act and day laborers, Plaintiffs withdraw those allegations and have removed them from their proposed Second Amended Complaint.

B. THE ORGANIZATIONAL PLAINTIFFS HAVE ALLEGED SUFFICIENT FACTS TO ESTABLISH ASSOCIATIONAL STANDING

Defendant argues that the organizational plaintiffs, National Coalition of Latino Clergy and Christian Leaders ("CONLAMIC") and La Hermosa Church ("La Hermosa"), lack standing to sue on behalf of their members.

An organization has standing to sue on behalf of its members if (1) its members would have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to its purposes; and (3) neither the claim asserted nor relief requested requires the participation of individual members in the litigation. White Tanks Concerned Citizens, Inc. v. Strock, 563 F.3d 1033, 1038 (9th Cir. 2009) (citations omitted).

CONLAMIC Arizona is a non-profit organization devoted to promoting the interests of its members, which includes more than 300 Arizona pastors working to spread the gospel of Jesus Christ and Christian values. (See, e.g., Am. Compl. ¶¶ 40-44.) La Hermosa Church is a non-profit organization whose primary purpose is to promote Christian values and spread the gospel of Jesus Christ. (Am. Compl. ¶ 39.) La Hermosa does not require Church members to prove their citizenship, residency or immigration status as a condition to membership. Its member includes individuals who are Latino and persons who have Spanish as their native tongue with a limited proficiency in English. (Id.)

Defendant argues that CONLAMIC and La Hermosa lack associational standing because they have not alleged that their members are at risk of injury and have not identified their members. (Deft's Mot. at 9-11.) These concerns are readily addressed through amendment (for example, though not expressly alleged, Plaintiff Galindo is a member of CONLAMIC), and therefore should not be a basis to dismiss this action.

C. THE ORGANIZATIONAL PLAINTIFFS HAVE ALSO ALLEGED SUFFICIENT FACTS TO ESTABLISH ORGANIZATIONAL STANDING

Defendant also argues that CONLAMIC and La Hermosa lack organizational standing. (Deft's Mot. at 11-13.) An organizational plaintiff has standing in its own right when it can show that a challenged statute frustrates the organization's goals and requires it to divert resources it would otherwise spend in other ways. Comite de Jornaleros de Redondo Beach v. City of Redondo Beach, 607 F.3d 1178, 1183 (9th Cir. 2010) (citations omitted).

As stated above, CONLAMIC is devoted to promoting the interests of its members, which includes more than 300 Arizona pastors working to spread the gospel of Jesus Christ and Christian values. (See, e.g., Am. Compl. ¶¶ 40-44.) As a result of S.B. 1070, however, CONLAMIC has been forced to divert resources away from its religious objectives and instead redirect them to educating and defending Arizona's Latino community against the new immigration law. (Id. ¶ 41.) La Hermosa, as a Church, ministers to and serves the community without regard to immigration status. (Id. ¶ 39.) Although not expressly alleged, S.B. 1070 has forced the Church to divert resources away from its affirmative programs in service to the community to defend against the harms caused by S.B. 1070.

To the extent Defendant takes issue with the specificity or adequacy of the organizational plaintiffs' allegations regarding the diversion of resources away from their purposes, these can readily be cured through amendment. Plaintiffs supplement and clarify these allegations in their proposed Second Amended Complaint.

D. Plaintiffs Have Satisfied Prudential Standing

As a final argument on standing, Defendant urges the Court not to exercise jurisdiction in this case, arguing that Plaintiffs' complaints are generalized and abstract. (Deft's Mot. at 13.) However, for the same reasons Plaintiffs have standing to challenge the unlawful provisions of S.B. 1070, they have also alleged particular and concrete harms that can, and should, be redressed by the Court.

E. Named Plaintiffs and Class Certification

Lastly, Defendant asks the Court to drop Plaintiffs Miranda and La Hermosa Church, who are discussed in the complaint but not listed in the case caption. (Deft's Mot. at 13-14.) Plaintiffs voluntarily withdraw Plaintiff Miranda from this case, but ask for leave to add Plaintiff La Hermosa Church to the caption. Defendant has not been prejudiced by this technical oversight. Defendant has been on notice of La Hermosa's allegations from the start, and has formulated her response to those allegations in her Motion to Dismiss.

Plaintiffs also voluntarily withdraw the class action allegations, and the designation of this case as a class action.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the court deny Defendant Governor Brewer's Motion to Dismiss (DE 30) in its entirety. In the alternative, Plaintiffs respectfully request leave to amend to cure any deficiencies in the pleading. See Doe v. United States, 58 F.3d 494, 497 (9th Cir.1995) (if a complaint is dismissed for failure to state a claim, the court should grant leave to amend unless it determines that pleading could not possibly be cured by the allegation of other facts).

Dated: August 23, 2010

RESPECTFULLY SUBMITTED,

/s/ Tania Galloni
FLORIDA IMMIGRANT ADVOCACY CENTER

/s/ Ben R. Miranda
LAW OFFICE OF BEN R. MIRANDA

/s/ William J. Sanchez
SANCHEZ LAW, LLC

CERTIFICATE OF SERVICE

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Thomas P. Liddy
Maria R. Brandon
MARICOPA COUNTY OFFICE OF SPECIAL LITIGATION SERVICES
234 North Central Avenue, Suite 4400
Phoenix, Arizona 85004
Telephone No. (602) 372-3859
Facsimile No. (602) 506-1416
tliddy@mail.maricopa.gov
brandonm@mail.maricopa.gov

Attorneys for Defendant Joseph Arpaio

John J. Bouma, Esq.
Robert A. Henry, Esq.
Joseph G. Adams, Esq.
SNELL & WILMER, L.L.P.
1 Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-0001
jbouma@swlaw.com
bhenry@swlaw.com
jgadams@swlaw.com

Joseph A. Kanefield
OFFICE OF THE GOVERNOR
State of Arizona
1700 West Washington Street, 9th Floor
Phoenix, Arizona 85007
jkanefield@az.gov

Attorneys for Defendant Governor Janice K. Brewer

/s/ Tania Galloni
FLORIDA IMMIGRANT ADVOCACY CENTER