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14 ATTORNEYS FOR PLAINTIFFS

15 **UNITED STATES DISTRICT COURT**
 16 **DISTRICT OF ARIZONA**

18 NATIONAL COALITION OF LATINO CLERGY)
 AND CHRISTIAN LEADERS (“CONLAMIC”),)
 19 PHOENIX, ARIZONA, ET AL.,)

20 Plaintiffs,)

21 v.)

22 STATE OF ARIZONA, ET AL.,)
 23 Defendants.)

CASE NO. 2:10-CV-00943-SRB

**PLAINTIFFS’ MOTION FOR
LEAVE TO FILE SECOND
AMENDED COMPLAINT**

24 _____)
 25 Plaintiffs, by and through undersigned counsel, hereby file this Motion for Leave to File
 26 Second Amended Complaint. In accordance with the Local Rules, Plaintiffs attach the proposed
 27 filing, with the revisions marked in the text, as Exhibit 1. For ease of review, Plaintiffs further attach
 28 a “clean” version of the proposed Second Amended Complaint as Exhibit 2.

1 **I. INTRODUCTION**

2 Plaintiff National Coalition of Latino Clergy and Christian Leaders (“CONLAMIC”),
3 joined by Latino parishioners, small business owners and other members of the Arizonan Latino
4 community, brings this action to challenge the legality of provisions of Arizona’s recently-
5 enacted immigration law, commonly known as “S.B.1070.” In the Amended Complaint,
6 Plaintiffs allege that S.B. 1070 violates the Supremacy Clause, is preempted by federal law, and
7 inherently leads to discrimination and civil rights violations on the basis of race, national origin
8 and alienage. Plaintiffs allege that the imminent enforcement of S.B.1070 has already caused
9 them economic and other harm, as countless Latino individuals and families have begun to leave
10 the State of Arizona out of fear of the law’s implementation. Plaintiffs seek injunctive and
11 declaratory relief.

12 **II. PROCEDURAL HISTORY**

13 Plaintiffs filed this action on April 29, 2010. (DE 1.) Plaintiffs filed the Amended
14 Complaint on June 6, 2010. (DE 13.) On or about July 14, 2010, Plaintiffs served the Amended
15 Complaint on all Defendants.

16 On July 15, 2010 Defendant Sheriff Arpaio moved to dismiss the Amended Complaint.
17 (DE 26.) On August 4, 2010, Defendant Governor Brewer and the State of Arizona also moved
18 to dismiss the Amended Complaint. (DE 30.) Their motion was joined by the remaining
19 Defendants, Terry Goddard and Richard M. Romley. (DE 31, 33.) Among other things,
20 Defendants’ motions asserted that the allegations in the Amended Complaint were vague,
21 confusing and/or insufficient to establish standing to challenge provisions of S.B. 1070.

22 On July 29, 2010, Plaintiffs filed their response in opposition to Defendant Sheriff
23 Arpaio’s Motion to Dismiss. (DE 28.) On August 23, 2010, Plaintiffs filed their opposition to
24 the other Defendants’ Motion to Dismiss. (DE 34.) Plaintiffs have asked that Defendants’
25 motions to dismiss be denied in their entirety, or, in the alternative, that Plaintiffs be granted
26 leave to amend to cure any deficiencies in the pleading. Plaintiffs now move affirmatively for
27 leave to amend for the reasons stated below.

1 **III. ARGUMENT**

2 The Federal Rules of Civil Procedure provide that the Court “should freely give leave [to
3 amend a pleading] when justice so requires.” Fed.R.Civ.P. 15(a)(2). To determine whether
4 leave to amend is appropriate, “the district court considers the presence of four factors: ‘bad
5 faith, undue delay, prejudice to the opposing party, and or/futility.’” *Fournier v. Johnson*, 677
6 F.Supp. 2d 1172, 1173 (D.Ariz. 2009) (citing *Griggs v. Pace American Group, Inc.*, 170 F.3d
7 877, 880 (9th Cir.1999)). In making this determination “all inferences [are made] in favor of
8 granting the motion.” *Id.*

9 Plaintiffs move to amend for the purpose of (1) adding a claim for violations of the First
10 Amendment freedoms of religion and association; (2) stating a separate claim under the Equal
11 Protection Clause based on allegations already in the Amended Complaint; (3) consolidating and
12 clarifying their claims under the Supremacy Clause (Counts II and IV) and Fourteenth
13 Amendment (Counts I, VI, and VI); (4) withdrawing Plaintiff Fermin Leon, one of the Jane Doe
14 Plaintiffs, and all class allegations; and (5) supplementing the factual allegations throughout the
15 complaint in support of Plaintiffs’ claims. Plaintiffs’ proposed Second Amended Complaint
16 significantly streamlines the factual allegations, and reduces the claims for relief from six to four.

17 As to Count I, Plaintiffs add and clarify allegations regarding the unconstitutional
18 vagueness of the challenged provisions of S.B. 1070. As to Count II, Plaintiffs add and clarify
19 allegations regarding the federal preemption of the challenged provisions. As to Count III,
20 Plaintiffs withdraw all allegations based on A.R.S. § 13-2928 (related to day laborers). In its
21 place, Plaintiffs assert a First Amendment Claim under Count III, alleging that the
22 “transportation” and “harboring” provisions of S.B. 1070 interfere with their freedoms of religion
23 and association. Plaintiffs strike the original Counts IV, V, and VI. The revised Count IV asserts
24 a claim for violation of the Equal Protection Clause.

25 In addition, in their proposed Second Amended Complaint, Plaintiffs address many of the
26 concerns raised in Defendants’ motions to dismiss. These include updating the caption,
27 specifying the sections of S.B. 1070 which Plaintiffs are challenging, streamlining and clarifying
28 the factual allegations, and correcting inadvertent errors that may have caused confusion.

1 As relates to concerns raised by Defendants, the proposed amendments would:

- 2 • Caption: Add La Hermosa Church as a named plaintiff;
- 3 • Preliminary Statement (¶¶ 1-8): Specify which sections of S.B. 1070 Plaintiffs are
4 challenging; strike references to the Fair Housing Act, Section 1981, and federal
5 immigration ;
- 6 • Jurisdiction and Venue (¶¶ 9-10): Strike references to mandamus relief;
- 7 • Standing (¶¶ 11-13): Clarify basis for standing, also in the ensuing allegations
8 regarding the individual and organizational Plaintiffs.
- 9 • Parties (¶¶ 14-53): Clarify individual plaintiffs’ allegations; supplement the
10 organizational plaintiffs’ allegations regarding their purpose, mission, and
11 activities, as well as the harms to them caused by S.B. 1070; and strike allegations
12 related to plaintiff Miranda, who was not named in the caption.

13 In light of the Rule 15 standard, Plaintiffs’ motion to file the Second Amended Complaint
14 should be granted. Plaintiffs’ request to amend is made without bad faith or undue delay. This is
15 Plaintiffs’ first motion to amend. It is being made at the earliest stage of the litigation, before any
16 defendant has answered the complaint. Plaintiffs request leave of Court because they amended
17 the Complaint once prior to serving the defendants. Also, given the early stage of the litigation,
18 Defendants will not be prejudiced by amendment. To the contrary, Plaintiffs’ proposed
19 amendments address many of the concerns Defendants raised in their motions to dismiss. Lastly,
20 Plaintiffs’ amendments supplement and clarify Plaintiffs’ factual allegations, the harms caused
21 by S.B. 1070, and Plaintiffs’ claims for relief. Plaintiffs’ amendments, therefore, are not futile.

22 IV. CONCLUSION

23 Based on the foregoing, Plaintiffs respectfully request that the Court grant the Motion for
24 Leave to File Second Amended Complaint.

25 **Dated: August 25, 2010**

26 RESPECTFULLY SUBMITTED,

27 /s/ Tania Galloni
28 FLORIDA IMMIGRANT ADVOCACY CENTER

/s/ Ben R. Miranda

1 LAW OFFICE OF BEN R. MIRANDA

2 /s/ William J. Sanchez
3 SANCHEZ LAW, LLC

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5 **CERTIFICATE OF SERVICE**

6 I hereby certify that on August 25, 2010 I electronically transmitted the attached
7 document to the Clerk's Office using the CM/ECF system for filing and for transmittal of a
8 Notice of Electronic Filing to the following CM/ECF registrants:

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