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25 ATTORNEYS FOR PLAINTIFFS

26
 27 **UNITED STATES DISTRICT COURT**
 28 **DISTRICT OF ARIZONA**
 29

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

CASE NO. 2:10-cv-943

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**SECOND AMENDED
COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE**

v.

STATE OF ARIZONA, GOVERNOR JAN BREWER,)
 TERRY GODDARD, ARIZONA ATTORNEY)
 GENERAL, IN HIS OFFICIAL CAPACITY, JOSEPH)
 ARPAIO, MARICOPA COUNTY SHERIFF, IN HIS)
 OFFICIAL CAPACITY, RICHARD M. ROMLEY,)
 MARICOPA COUNTY ATTORNEY, IN HIS)

RELIEF

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

5
6 **I. PRELIMINARY STATEMENT**

7 **1.** This action is brought on behalf of U.S. citizens, a U.S. non-profit corporation, legal
8 U.S. residents and aliens seeking judicial clarification of the jurisdiction, authority, and
9 constitutional rights of the state of Arizona (“Arizona”), in adopting and enforcing an
10 immigration law known as S.B. 1070. If the law is found to be unconstitutional or in any
11 other way illegal, we respectfully request injunctive relief ordering Arizona to cease and
12 desist enforcement of the law. Specifically, Plaintiffs challenge Sections 1, 2, 3, 5, 6 and
13 10 of S.B. 1070, as amended by H.B. 2162, as unlawful, unconstitutional and preempted
14 by federal law.

15
16 **2.** The Supremacy Clause of the U.S. Constitution provides that federal laws and
17 treaties are “the supreme law of the land.” While federal and state power to regulate
18 certain matters is concomitant, the Supreme Court has long recognized that the regulation
19 of immigration “is unquestionably exclusively a federal power,” *Delanas v. Bica*, 424
20 U.S. 351, 354 (1976). In *Hines v. Davidowitz*, 312 U.S. 52 (1941), the Supreme Court
21 ruled that enforcement of a Pennsylvania statute requiring the registration of aliens was
22 precluded by the Federal Alien Registration Act of 1940, which established a
23 comprehensive federal scheme for the registration of aliens.

24
25 **3.** The Immigration and Nationality Act (“INA”) vests authority in the Attorney
26 General and Secretary of Homeland Security to administer and enforce all laws relating

1 to immigration and naturalization, including determinations regarding the immigration
2 status of aliens. As such, states and localities are preempted by federal law from making
3 their own independent assessment as to whether an alien has committed an immigration
4 violation and imposing penalties against such aliens (along with persons who have
5 provided them with assistance) on the basis of that assessment. Such authority is
6 conferred exclusively to designated federal authorities by the INA.

7
8 **4.** Arizona’s law is unconstitutionally vague and ambiguous. It does not afford
9 individuals adequate notice of what conduct is prohibited. It also does not provide a
10 mechanism to determine whether an immigration violation has occurred, when or
11 whether reasonable suspicion exists to question, arrest or detain an individual, or whether
12 someone has committed a public offense that makes the person removable. The State of
13 Arizona and its agents cannot make these determinations without running afoul of federal
14 law and the U.S. Constitution.

15
16 **5.** The Arizona law’s reliance on federal agents to “ascertain” someone’s
17 immigration status is not a reliable mechanism for this purpose, as the federal
18 government’s databases are notoriously out-of-date and unreliable. In many instances,
19 individuals have been afforded immigration relief that the databases simply do not
20 reflect. It is therefore likely that under S.B. 1070, local law enforcement will unlawfully
21 detain or arrest individuals who have legal status, even though they ultimately will not
22 prevail in the prosecution of any offense under the Arizona law.

1 6. Countless Arizona residents have moved out of the state due to fear that local
2 authorities will begin implementing S.B. 1070. The plaintiffs are being denied their
3 constitutional rights as the law violates the preemption clause, is unconstitutionally
4 vague, will lead to National origin and race discrimination and will cause unlawful
5 questioning, detention, and arrests.

6
7 7. The Department of Homeland Security's 287(g) is a federal program that allows
8 certain state and local law enforcement agencies to engage in federal immigration
9 enforcement activities, when such authority is expressly delegated by the federal
10 government. The federal government has permitted several Arizona law enforcement
11 agencies to participate in the 287(g) program, including Maricopa County. The 287(g)
12 program, as implemented by Arizona local law enforcement agencies, including
13 Maricopa County, has led to illegal racial profiling and civil rights abuses while diverting
14 scarce resources from traditional local law enforcement functions. A report released
15 earlier this year by the DHS Office of Inspector General (OIG) affirmed the concerns
16 with the 287(g) program. The DHS OIG report found a lack of federal oversight, training
17 and other failures in the 287(g) program and made it clear that the program does not have
18 adequate safeguards against racial profiling and other civil rights abuses. Many state and
19 local agencies accepted for the program have a documented history of serious allegations
20 of constitutional violations. Arizona's recently-enacted immigration law is an extension
21 of these unconstitutional and unlawful practices. It empowers local law enforcement
22 throughout the state to execute these important federal immigration powers without the
23 Congressionally-mandated federal authorization, oversight, training and accountability,

1 which can only lead to more racial profiling and other civil rights abuses, including
2 unlawful detentions.

3
4 **8.** Plaintiffs include La Hermosa Church, whose primary purpose is to promote
5 Christian values and spread the gospel of Jesus Christ. La Hermosa Church serves the
6 Latino community in Phoenix, and its membership is predominantly Latino. The
7 transportation and harboring provisions of S.B. 1070 violate Plaintiffs' freedom of
8 religion and association by interfering with their ability to reach out to and embrace all
9 members of the community; bring members of the community into the Church; minister
10 to the poor, sick and elderly; promote and perform acts of charity; nurture families; and
11 provide food, shelter and access to services, including by transportation, to those need---
12 all regardless of immigration status. Also, because of the documentation requirements
13 and criminal penalties imposed by S.B. 1070, certain parishioners will be unable or
14 unwilling to leave their houses to come to the Church, which interferes with the Church
15 and its members' right to freedom of association in the practice of their religion.

16
17 **II. JURISDICTION AND VENUE**

18 **9.** This Court has jurisdiction under its general federal question jurisdiction 28
19 U.S.C. § 1331, and specific jurisdiction over claims arising under the Immigration and
20 Nationality Act 8 U.S.C § 1329.

21 **10.** The District of Arizona is the proper venue for this action pursuant to 28 U.S.C. §
22 1391 (e), as it is here where the Defendants' policies and practices have been
23 implemented.

1 **III. STANDING**

2 **11.** Plaintiffs have standing to commence this action as they are individuals and
3 organizations which will suffer irreparable personal, constitutional and economic harm as
4 a result of the state’s unconstitutional and unlawful actions.

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

12 **13.** President Barack Obama recently mentioned that the Department of Justice is
13 investigating potential civil rights violations inherent in the new Arizona law.

14 **IV. PARTIES**

15 **Individual Plaintiffs And Their Factual Allegations**

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

18 **15.** Plaintiff Pastor Moises Herrera (“Pastor Herrera”) is a resident of Pheonix. Pastor
19 Herrera owns 3 Spanish language radio stations. His listeners are all Hispanic and he will
20 lose the large majority of his listeners if the challenged provisions of S.B. 1070 are not
21 declared invalid and enjoined, because many will move out of Arizona out of fear of
22 arrest, detention or prosecution under the new law. Pastor Herrera is also a well known
23 Pastor with thousands of church members that are all Hispanic, in a church he has spent

1 years building. Unless the challenged provisions of S.B. 1070 are declared invalid and
2 enjoined, he will lose a great percentage of his church members and donations to the
3 church, and his church will fail.

4 **16.** Manuel Siguenza (“Manuel”) has owned a large car sales business for 16 years
5 that pays between \$200,000 and \$350,000 dollars a year in taxes to the State of Arizona.
6 His business is in a primarily Latino neighborhood and his clients are predominantly
7 Latinos. He will lose the majority of his business and he will have to close his business, if
8 the challenged provisions of S.B. 1070 are not declared invalid and enjoined. Manuel is
9 an Immigrant from El Salvador who is now a U.S. Citizen. He has one son who has
10 graduated from Arizona State University and another currently attending high school.
11 Manuel fears that because he looks Latino he may be stopped because of the color of his
12 skin. He fears that his rights may be violated.

13 **17.** Carmen Galindo (“Carmen”) is a lawful permanent resident and speaks English
14 with an accent. She appears to be Latina and is afraid that if she gets pulled over she will
15 be racially profiled and damaged by being required to produce her permanent residence
16 card. If she forgets it she would be charged with a crime according with this law. She is a
17 member of CONLAMIC, and does countless hours of Christian community service every
18 week. Unless the law is permanently enjoined and declared invalid, Plaintiff Galindo
19 expects to be questioned, detained or arrested. She is also a business owner who stands to
20 lose clientele and suffer economic harm as a result of Latinos leaving the State of
21 Arizona out of fear of the new law

22 **18.** Laura Madera (“Laura”) is a lawful permanent resident who fears being racially
23 profiled because she is and appears Latina, and will be harmed if required to produce her

1 permanent residence card. If she forgets it she would be charged with a crime according
2 with this law. Laura is pregnant and the father of the child lives with her and is currently
3 her domestic partner. He is undocumented and is in process of legalizing. Her pregnancy
4 would be at risk if her common law husband were to be arrested, detained or deported.
5 Unless the law is permanently enjoined and declared invalid, Plaintiff fears she and her
6 husband will be arrested, and that her family will be harmed and forced to leave the area.

7 **19.** Plaintiff Manuel Siguenza (“Siguenza”) is a resident of Arizona. Plaintiff
8 Siguenza owns a car dealership that caters primarily to Latino customers. Plaintiff
9 Siguenza already has lost much business, including prospective clients, due to the new
10 law. Plaintiff Siguenza does not know the immigration status of his present clients, nor of
11 the clients he lost.

12 **20.** Plaintiff Joe Rivera (“Rivera”) is a resident of Mesa, Arizona. Plaintiff Rivera
13 has a title/mortgage company, and has already lost clients due to the law, as Latinos have
14 begun leaving Arizona out of fear of the new law. Upon information and belief, Plaintiff
15 Rivera has lost prospective clients due to the law.

16 **21.** In the course of their businesses, Plaintiffs Siguenza and Rivera each allow Latino
17 clients into the buildings of their businesses without regard to the client’s immigration
18 status, whether the client is in possession of alien registration documents, or how the
19 client entered the United States. It is difficult if not impossible for Plaintiffs Siguenza
20 and Rivera to determine whether each of their clients is or is not an "authorized alien" as
21 defined by the law. Plaintiffs Siguenza and Rivera have no expertise in applying
22 immigration law or making immigration status determinations. As a result of S.B. 1070,

1 these Plaintiffs risk questioning, arrest, detention and/or prosecution for violating the
2 provisions related to harboring an “unlawful alien.” *See* A.R.S. 13-2929.

3 **22.** Plaintiffs Siguenza and Rivera also transport Latino clients in the course of their
4 businesses to different locales. Plaintiffs now risk being unlawfully questioned, arrested,
5 detained or charged with violation of the provision in S.B. 1070 related to transporting
6 “unlawful aliens” because they do not know, do not ask, and do not care to know the
7 immigration status of their clients, whether the client is in possession of alien registration
8 documents, or how the client entered the United States. *See* A.R.S. 13-2929.

9 **23.** Since the law was signed, Plaintiffs Siguenza and Rivera have lost approximately
10 80% of their businesses as a result of S.B. 1070.

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

15 **25.** Plaintiff John Doe 1 was approved refugee status last year. Under federal
16 immigration law, he is not required to carry an alien registration document. He is afraid
17 of being arrested because he looks Latino and is an immigrant, but has no alien
18 registration document to show law enforcement when required to produce one. His
19 children have the same status. Unless the law is enjoined, he will not take his children to
20 school or go to work as he is afraid of being arrested.

21 **26.** Plaintiff John Doe 2 is an adult. He works in, and obtains goods and services in,
22 Phoenix, Arizona. Plaintiff John Doe 2 lost his Green Card. He has filed an application
23 to replace his Green Card. Plaintiff John Doe 2 has no other way to prove his

1 immigration status. Plaintiff John Doe 2 will be unable to prove that he is not an
2 “unauthorized alien” as that term is defined under the law until he receives his
3 replacement Green Card. Unless the law is permanently enjoined and declared invalid,
4 Plaintiff John Doe 2 will be unable to rent, work, or obtain goods and services in Phoenix
5 because he cannot prove his immigration status.

6 **27.** Plaintiff John Doe 3 is currently employed and is a U.S. citizen. He lost his
7 passport. Plaintiff John Doe 3 was born in the United States. In accordance with the new
8 Arizona law, Plaintiff John Doe 3 is required to carry proof of his legal status in the US.
9 If he is stopped by police and asked for proof of residency, he can only show his driver’s
10 license and birth certificate. He does not know whether he would have to notarize his
11 birth certificate in order to authenticate it. He is afraid of being arrested as he looks
12 Latino.

13 **28.** Plaintiff Jane Doe is a citizen of the United States born in Puerto Rico. Her only
14 English-language form of identification is a Social Security card. Plaintiff Jane Doe
15 speaks very little English. Plaintiff Jane Doe is afraid she will be arrested if she leaves
16 her home as she appears to be Latina. As a U.S.-born U.S. Citizen, Jane Doe’s status
17 cannot be ascertained by direct or indirect reliance on the federal government’s
18 immigration databases because these maintain data only on immigrants, not U.S.-born
19 citizens. Jane Doe requires constant visits to the doctor, but is afraid of leaving her
20 home. Unless the law is permanently enjoined and declared invalid, Plaintiff Jane Doe
21 will be unable to live, work, or obtain goods and services in Phoenix, Arizona.

22 **29.** Plaintiffs Siguenza, Rivera, Herrera, Galindo, Madera, and John Does 1-3 and
23 Jane Doe are collectively referred to herein as “Individual Plaintiffs.”

1 **30.** All Individual Plaintiffs desire to continue to live and work in Arizona but will be
2 unable to do so without fear and risk of unlawful questioning, arrest and detention unless
3 the challenged provisions of S.B. 1070 are declared invalid and permanently enjoined.

4 **Organizational Plaintiffs And Their Factual Allegations**

5 **31.** Plaintiff La Hermosa Church (“La Hermosa”) is an Arizona non-profit
6 organization. La Hermosa’s primary purpose is to promote Christian values and spread
7 the gospel of Jesus Christ.

8 **32.** As a Church, La Hermosa’s religious mission is to reach out to and embrace all
9 members of the community; bring members of the community into the Church; minister
10 to the poor, sick and elderly; promote and perform acts of charity; nurture families; and
11 provide food, shelter and access to services, including by transportation, to those need---
12 all regardless of immigration status.

13 **33.** In order to comply with the challenged provisions of S.B. 1070, however, the
14 Church and its parishioners will have to go against their religious beliefs by limiting
15 certain of their activities (such as providing shelter and transportation to those in need)
16 based on an individual’s immigration status, or risk prosecution for harboring or
17 transporting individuals who are deemed “unauthorized aliens” or not carrying papers as
18 required under the Arizona law. Also, because of the documentation requirements and
19 criminal penalties imposed by S.B. 1070, certain parishioners will be unable or unwilling
20 to leave their houses to come to the Church, which interferes with the Church and its
21 members’ right to freedom of association in the practice of their religion.

1 **34.** As a result of S.B. 1070, the Church has had to divert resources from its religious
2 mission to defending against the harms caused by this legislation both to the Church and
3 to the community it serves.

4 **35.** La Hermosa does not require its members to prove their citizenship, residency or
5 immigration status as a condition to membership. The law has created great hostility
6 towards the Latino community in Arizona and therefore adversely affects the work La
7 Hermosa performs in Phoenix and for Phoenix residents, forcing it to divert resources
8 away from its mission. La Hermosa's membership and constituency (herein, collectively
9 "members") includes individuals - many but not all of whom are Latino - who reside and
10 who are employed in and around Phoenix, some of whom have school-aged children. The
11 membership includes persons who have Spanish as their native tongue with a limited
12 proficiency in English. The interests La Hermosa seeks to protect through this action are
13 germane to its purpose, and neither the claims asserted nor the relief requested herein
14 require the personal participation of La Hermosa's members.

15 **36.** Plaintiff CONLAMIC Arizona is an Arizona non-profit organization, doing
16 business in Arizona. CONLAMIC has over 30,000 affiliated churches throughout the
17 United States.

18 **37.** CONLAMIC's mission is to educate and empower Latino churches throughout
19 the United States so they can bring about effective Christian leadership in their
20 communities. Affiliated with over 30,000 Latino churches throughout the country,
21 CONLAMIC serves as a clearinghouse for information on issues that matter most to
22 these churches, including Christian education and values. CONLAMIC does not require
23 its individual members to prove their citizenship, residency or immigration status as a

1 condition to membership. The law has generated great hostility towards the Latino
2 community in Arizona and therefore adversely affects the work CONLAMIC performs in
3 Arizona and for Arizona businesses and residents. As a result of Arizona's new law,
4 CONLAMIC has been forced to divert its resources away from its core mission to spend
5 countless hours educating members about the effects and impact of the law.

6 **38.** CONLAMIC's membership and constituency (herein, collectively "members")
7 includes individuals – many, but not all, are Latino or who service Latino and other
8 customers -who reside or operate businesses in and around Arizona, some of whom have
9 school-aged children. The membership includes over 300 Arizona Pastors.

10 **39.** CONLAMIC's membership includes individuals who have Spanish as their native
11 tongue with a limited proficiency in English.

12 **40.** The interests CONLAMIC seeks to protect through this action are germane to its
13 purpose, and neither the claims asserted nor the relief requested herein require the
14 personal participation of CONLAMIC's members.

15 **Defendants**

16 **41.** At all relevant times described herein, Arizona acted through its duly authorized
17 agent Governor Jan Brewer, and any other state employees she may designate in
18 accordance with Arizona law.

19 **42.** At all times alleged herein, Arizona's officials, employees and agents were acting
20 under color of state law.

21 **43.** Defendant Arizona is a state of the USA.

22 **44.** Defendant Jan Brewer is the governor of Arizona and is being sued in her official
23 capacity.

1 **45.** Defendant Terry Goddard is the Attorney General for the State of Arizona. As
2 such, Defendant Goddard is responsible for the enforcement of SB 1070 within the state
3 of Arizona. Defendant Goddard is sued in his official capacity.

4 **46.** Defendant Sheriff Joseph Arpaio is the County Sheriff of Maricopa County,
5 Arizona. As such, Defendant Arpaio is responsible for the enforcement of SB 1070
6 within Maricopa County. Defendant Arpaio is sued in his official capacity.

7 **47.** Defendant Richard M. Romley is the County Attorney of Maricopa County,
8 Arizona. As such, Defendant Romley is responsible for the enforcement of SB 1070
9 within Maricopa County. Defendant Romley is sued in his official capacity.

10
11 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

12 Plaintiffs reallege and incorporate paragraphs 1 through 47 inclusive and allege:

13 **48.** There exists confusion as to Arizona's authority to pass and enforce the
14 challenged provisions of S.B. 1070 and whether the statute is otherwise unlawful and/or
15 unconstitutional.

16 **49.** WHEREFORE, Plaintiffs seek judicial clarification of the Arizona law. An actual
17 and substantial controversy exists between Plaintiffs and Defendants as to their respective
18 legal rights and duties. Plaintiffs contend that Defendants' actions violate the
19 constitutional rights of Plaintiffs and the proposed class. In violating Plaintiffs' rights
20 under the U.S. Constitution and federal statues, Defendants are acting under color of law.
21 The Arizona law, and Defendants' policies, practices and procedures implementing them,
22 have caused and will continue to cause irreparable injury to Plaintiffs and the proposed
23 class. Plaintiffs and the proposed class have no plain, speedy and adequate remedy at law

1 against the Arizona law and Defendants’ policies, practices and procedures implementing
2 them.

3 **CLAIMS FOR RELIEF**

4 **COUNT I. VIOLATION OF SUBSTANTIVE DUE PROCESS 14TH**

5 **AMENDEMENT**

6 **50.** The foregoing allegations are repeated and incorporated as though fully set forth
7 herein.

8 **51.** The Fourteenth Amendment to the U.S. Constitution provides that “No State
9 shall. . . deprive any person of life, liberty, or property, without due process of law”
10 Plaintiffs have a liberty interest in being free from unlawful, discriminatory or arbitrary
11 questioning, arrest and detention by local law enforcement.

12 **52.** For example, A.R.S §13-3883 grants Arizona police officers authority to conduct
13 warrantless arrests of persons whom the officer has probable cause to believe have
14 committed any public offense that makes those persons deportable. This appears to be an
15 attempt to create a completely independent state arrest authority for administrative
16 violations of federal law. In essence, it is the “criminalization” of certain portions of
17 immigration law, which, in and of itself, is civil. The issue was previously addressed in
18 *Gonzales v. City of Phoenix*, 722 F.2d 468 (9th Cir 1983) (*overruled in part on other*
19 *grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999)). The Ninth
20 Circuit held that while Arizona could authorize Peoria to enforce the criminal provisions
21 of the immigration law, the court “firmly emphasize[d] that this authorization is limited
22 to criminal violations. Many of the problems arising from implementation of the City’s
23 written policies have derived from a failure to distinguish between civil and criminal

1 violations of the Act.” 722 F.2d at 476. This portion of the Arizona law attempts to
2 criminalize civil administrative violations of federal law. It will lead to countless arrests
3 of individuals who are undocumented but have not violated criminal provisions of the
4 immigration law.

5 **53.** Additionally, Section 2 of S.B. 1070 permits state and local law enforcement
6 officials to seize, detain, arrest and transfer individuals without appropriate procedures,
7 thereby depriving Plaintiffs of their liberty without due process of law. Section 2 is also
8 unconstitutionally vague. The terms “reasonable suspicion,” “reasonable attempt,”
9 “unlawfully present” and “determine the immigration status” fail to provide meaningful
10 guidance to law enforcement officers as to how to implement this provision, creating an
11 unacceptable risk of arbitrary and discriminatory enforcement. The provision of Section
12 5 that makes it unlawful for any person who is “in violation of a criminal offense” to
13 transport or move “an alien” in Arizona “in furtherance of the [person’s] illegal presence”
14 with knowledge or reckless disregard that “the alien has come to, has entered or remains
15 in the United States in violation of law,” is vague and violates due process. Section 10’s
16 use of these terms is also vague and unconstitutional.

17 **54.** The provision of Section 5 that makes it unlawful for any person who is “in
18 violation of a criminal offense” to conceal, harbor or shield from detection “an alien” in
19 “any place,” including “any building or any means of transportation,” with knowledge or
20 reckless disregard that “the alien has come to, has entered or remains in the United States
21 in violation of law,” is vague and violates due process. Section 10’s use of these terms is
22 also vague and unconstitutional.

1 **55.** The phrase “the alien has come to, has entered or remains in the United States in
2 violation of law,” is also unduly broad, as some immigrants enter the United States
3 unlawfully but subsequently acquire lawful immigration status. The phrase’s vagueness
4 and ambiguity fail to provide sufficient notice of what is prohibited in order to allow
5 individuals to conform their conduct to the requirements of the law, and to prevent
6 arbitrary and discriminatory enforcement.

7 **56.** Section 6 of S.B. 1070 is unconstitutionally vague as well. The terms “any public
8 offense that makes the person removable” are not defined, do not provide meaningful
9 standards, require a federal immigration determination regarding removability that local
10 law enforcement are not equipped or authorized to make, and vest officers with unbridled
11 discretion, creating an unacceptable risk of arbitrary and discriminatory stops, detentions
12 and arrests.

13 **COUNT II. VIOLATION OF SUPREMACY CLAUSE**

14 **57.** The foregoing allegations sections are repeated and incorporated as though fully
15 set herein.

16 **58.** The Supremacy Clause mandates that federal law preempts state law in any area
17 over which Congress expressly or impliedly has reserved exclusive authority, which is
18 constitutionally reserved to the federal government, or where state law conflicts or
19 interferes with federal law.

20 **59.** Sections 1, 2, 3, 5, 6 and 10 of S.B. 1070, as amended by H.B. 2162, are
21 unconstitutional and preempted by federal law because they attempt to regulate
22 immigration, conflict with federal laws and policies, usurp powers exclusively vested in
23 the federal government, attempt to legislate in fields occupied by the federal government,

1 impose burdens and penalties on legal residents not authorized by and contrary to federal
2 law, and unilaterally imposes burdens on the federal government's resources.

3 **60.** For example, Section 1 expresses the legislature's intent to regulate immigration,
4 criminalize civil provisions of federal immigration law, and adopt an immigration policy
5 that conflicts with the federal government's immigration policies and priorities, each in
6 violation of the Supremacy Clause.

7 **61.** Sections 2, 3 and 6 grant local law enforcement officers powers over enforcement
8 of federal immigration law, including the power to interrogate, arrest and detain aliens
9 relative to their immigration status. The power to enforce federal immigration law,
10 however, is exclusively the province of federal authorities, as Congress has demonstrated
11 through comprehensive legislation occupying the field of immigration enforcement. See,
12 e.g., 8 U.S.C. § 1357(g). The powers to question an individual about his or her
13 immigration status, to detain an individual pending a determination of immigration status,
14 and to arrest those in violation of immigration laws are powers that Congress has
15 expressly conferred only to federal immigration officers and their agents. See 8 U.S.C. §
16 1226 (detention and apprehension of aliens); id. § 1231 (detention and removal of aliens
17 ordered removed); id. § 1357(a)(1)-(2) (power of authorized immigration officers to
18 interrogate and arrest aliens). The state's attempt to confer these powers on state and
19 local law enforcement burdens and conflicts with federal law, and regulates the field of
20 immigration law enforcement which Congress has intended to occupy.

21 **62.** Sections 3, 5 and 10 aim to create state penalties and lead to state prosecutions for
22 violation of federal laws, intruding on federal law regulating that conduct under the

1 circumstances and in the manner deemed appropriate by Congress, see e.g., 8 U.S.C.
2 § 1324(a)(1)(A)(ii)-(iv), and imposing impermissible burdens and penalties.

3 **63.** Section 5’s provisions criminalizing the harboring and transporting of certain
4 aliens further conflicts with federal law by failing to exempt *bona fide* religious
5 denominations and their agents from its reach as the comparable federal statute does. See
6 8 U.S.C. § 1324(a)(1)(C).

7 COUNT III

8 FIRST AMENDMENT; FREEDOM OF RELIGION, ASSOCIATION

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

11 **64.** The First Amendment to the U.S. Constitution provides that “Congress shall
12 make no law respecting an establishment of religion, or prohibiting the free exercise
13 thereof; or abridging the freedom of speech, or of the press; or the right of the people
14 peaceably to assemble, and to petition the Government for a redress of grievances.” The
15 First Amendment’s guarantees are applied to the States through the Fourteenth
16 Amendment.

17 **65.** The transportation and harboring provisions of S.B. 1070 violate the freedom of
18 religion and association by interfering with La Hermosa Church’s and other parishioners’
19 ability to reach out to and embrace all members of the community; bring members of the
20 community into the Church; minister to the poor, sick and elderly; promote and perform
21 acts of charity; nurture families; and provide food, shelter and access to services,
22 including by transportation, to those need---all regardless of immigration status. In order
23 to comply with the challenged provisions of S.B. 1070, however, the Church and

1 parishioners will have to go against their religious beliefs by limiting certain of their
2 activities (such as providing shelter and transportation to those in need) based on an
3 individual’s immigration status, or risk prosecution for harboring or transporting
4 individuals who are deemed “unauthorized aliens” or not carrying papers as required
5 under the Arizona law. Also, because of the documentation requirements and criminal
6 penalties imposed by S.B. 1070, certain parishioners will be unable or unwilling to leave
7 their houses to come to the Church, which interferes with the Church and its members’
8 right to freedom of association in the practice of their religion.

9 **COUNT IV**

10 **FOURTEENTH AMENDMENT; EQUAL PROTECTION**

11 The foregoing allegations are repeated and incorporated as though fully set forth
12 herein.

13 **66.** The Fourteenth Amendment to the U.S. Constitution provides that “No State shall
14 . . . deny to any person within its jurisdiction the equal protection of the laws.”

15 **67.** S.B. 1070 was enacted with the purpose and intent to discriminate against racial
16 and national origin minorities, including Latinos, on the basis of race and national origin.

17 **68.** S.B. 1070 impermissibly and invidiously targets Plaintiffs who are racial and
18 national origin minorities, including Latinos, residing or traveling in Arizona and subjects
19 them to stops, detentions, questioning, and arrests based on their race and/or national
20 origin.

21 **69.** S.B. 1070 impermissibly deprives Plaintiffs who are racial and national origin
22 minorities, including Latinos, residing or traveling in Arizona of the equal protection of
23 the laws within the meaning of the Fourteenth Amendment to the U.S. Constitution.

1 **70.** Section 3 of S.B. 1070 impermissibly discriminates against non-citizen Plaintiffs
2 on the basis of alienage and deprives them of the equal protection of the laws within the
3 meaning of the Fourteenth Amendment to the U.S. Constitution.

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, in light of the foregoing facts and arguments, Plaintiffs reallege and
7 incorporate paragraphs 1 through 70 inclusive and file this and request that this court:

- 8 a. Assume jurisdiction over this matter;
- 9 b. Declare that the Arizona law is unconstitutional under the Supremacy clause,
10 the Due Process Clause of the Fourteenth Amendment, the Equal Protection
11 Clause and the First Amendment's right to freedom of religion and
12 association;
- 13 c. Declare that the law is preempted by federal law and the plenary power of
14 Congress to regulate immigration;
- 15 d. Enjoin Defendants from enforcing the law;
- 16 e. Grant Plaintiffs' reasonable attorneys' fees, costs, and other expenses pursuant
17 to 42 U.S.C. § 1988; and
- 18 f. Grant such other relief as the Court may deem appropriate.

19
20 Dated: August 25, 2010

21 **NATIONAL COALITION OF LATINO**
22 **CLERGY AND CHRISTIAN LEADERS**
23 **("CONLAMIC") PHOENIX, ARIZONA,**
24 **ET AL.**
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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

Attorneys for Plaintiffs