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Attorney for Intervention Applicant Richard Mack

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

CASE NO: CV 10-1413-PHX-SRB

v.

Judge: Susan Bolton

State of Arizona; and Janice K. Brewer,
Governor of the State of Arizona, in her
Official Capacity,

Defendants

and

Richard Mack,

Intervenor-Plaintiff

INTERVENOR COMPLAINT

[Proposed]

Plaintiff Richard Mack, by and through his undersigned counsel Van Irion of Liberty Legal Foundation, brings this Intervenor Complaint for declaratory and injunctive relief against the United States, its employees, and its agents, and in support thereof allege the following upon information and belief.

JURISDICTION & VENUE

1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1346, and 1361. The Court has authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28

U.S.C. §§ 2201 and 2202, and pursuant to the Federal Rules of Civil Procedure 57 and 65, and the general legal and equitable powers of this Court.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2) and 1402.

PARTIES

3. Intervenor-plaintiff Richard Mack is a United States citizen, is a citizen of the State of Arizona, is a former Sheriff for Graham County, Arizona, and was one of the parties that successfully challenged aspects of the Brady Bill which attempted to compel state law enforcement officers to act at the direction of the federal government. See *Printz/Mack v. United States*, 521 U.S. 898 (1997). The Intervenor-plaintiff is an author and lecturer on the subjects of State Sovereignty, the 10th Amendment, and the proper role of law enforcement in American government.
4. Defendant State of Arizona is a State of the United States and was sued by the United States. The Intervenor-plaintiff makes no claims against the State of Arizona.
5. Defendant Jan Brewer is the Governor of the State of Arizona, and was sued by the United States in her official capacity. The Intervenor-plaintiff makes no claims against Governor Brewer.
6. Plaintiff United States of America (hereinafter “US”) is a political entity formed by and under the Constitution of the United States. The US was created for the sole purpose of serving the individual States and the people. The US sued the State of Arizona on its own behalf, as well as on behalf of the US Department of Homeland Security (“DHS”).
7. DHS is an executive department of the United States. *See* Homeland Security Act, Pub. L. No. 107-296, 116 Stat. 2135 (2002). DHS is responsible for the

administration and enforcement of laws relating to immigration, as well as the investigation of immigration crimes and protection of the United States border against the illegal entry of aliens. *See* 8 U.S.C. § 1103.

STATEMENT OF FACTS

8. Article IV §4 of the United States Constitution states in relevant part: “The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion.
9. Currently the State of Arizona is experiencing “rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns” caused by illegal immigration. *See* Or. Granting Pl.s’ Mot. Prelim. Inj. at 1 (July 28, 2010).
10. The State of Arizona’s delegation of authority to the United States to regulate immigration created an implied condition that the United States would enforce such regulations sufficient to prevent “rampant illegal immigration.” *See also* U.S. Const. Amd. X.
11. No part of the U.S. Constitution waives the State of Arizona’s sovereign right to protect its citizens against “rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns” caused by illegal immigration.
12. Where the US has refused to enforce immigration regulations sufficient to prevent “rampant illegal immigration,” the US has waived its right to exercise authority delegated to it by the State of Arizona regarding immigration.

13. Where the US has refused to enforce immigration regulations sufficient to prevent “rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns” caused by illegal immigration, the US has waived its right to prevent the sovereign State of Arizona from protecting its citizens by any means necessary.
14. 8 U.S.C. §1373(b) states in relevant part “Notwithstanding any other provision of Federal, State, or local law, ...no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual: (1) ...requesting or receiving such information from, the Immigration and Naturalization Service.”
15. The US has requested that this Court invalidate an Arizona law that would require Arizona law enforcement to request information referred to in 8 U.S.C. §1373(b).
16. The current President of the United States, through the DHS, is violating 8 U.S.C. §1373(b) and is attempting to invalidate Arizona law because both the Arizona law and existing federal immigration law, signed by a previous President, interfere with priorities the current President and his administrative department have established.
17. By ignoring existing federal immigration law, including 8 U.S.C. §1373, DHS and the current President of the United States have asserted authority that was explicitly granted to Congress, not to the Executive branch, by the U.S. Constitution.

FIRST CAUSE OF ACTION

(Abuse of Authority/Breach of Separation of Powers)

18. The actions of the US and DHS, as set forth in paragraphs 1-17 above, which are fully incorporated herein, are not within the scope of authority granted to the Executive branch of the United States, through the U.S. Constitution.
19. As a direct result of the US and DHS's abuse of authority, the Intervenor-plaintiff has suffered direct and immediate violations of his Constitutional rights and is therefore entitled to injunctive and declaratory relief pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. § 2201; to redress and remedy of the violations, and to prevent irreparable harm and future violations of his rights and the rights of others.

SECOND CAUSE OF ACTION

(Violation of 8 U.S.C §1373)

20. The actions of the US and DHS, as set forth in paragraphs 1-17 above, which are fully incorporated herein, violate the explicit mandates placed upon the US and DHS by 8 U.S.C §1373.
21. As a direct result of the US and DHS's actions, the Intervenor-plaintiff has suffered direct and immediate violations of his Constitutional rights and is therefore entitled to injunctive and declaratory relief, pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. § 2201; and to redress and remedy of the violations, and to prevent irreparable harm and future violations of his rights and the rights of others.

THIRD CAUSE OF ACTION

(Violation of Article IV §4)

22. The actions of the US and DHS, as set forth in paragraphs 1-17 above, which are fully incorporated herein, represent a violation of Article IV §4 the U.S. Constitution because the US has failed to protect the State of Arizona against invasion and has instead materially hampered the sovereign State of Arizona's attempts to protect its citizens from "rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns" caused by illegal immigration.
23. As a direct result of the US and DHS's actions, the Intervenor-plaintiff has suffered direct and immediate violations of his constitutional rights and is therefore entitled to injunctive and declaratory relief pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. § 2201; and to redress and remedy of the violations, and to prevent irreparable harm and future violations of his rights and the rights of others.

Prayer and Relief

WHEREFORE, the Intervenor-plaintiff respectfully asks for judgment in his favor and against the US and DHS, including:

- 1) a declaration that the actions of the US and DHS violated 8 U.S.C §1373
- 2) a declaration that the actions of the US and DHS were in contravention of Plaintiff's Constitutional rights;
- 3) an order granting permanent injunctive relief requiring federal agencies to follow priorities set by Congress in existing immigration law;

- 4) this Court's retention of jurisdiction of this action to ensure compliance with this Court's decrees; and
- 5) a grant of such other relief as this Court deems equitable, just, and proper.

Dated: 9/16/10

s/Van Irion
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