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10 **Counsel for Plaintiff**

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE STATE OF ARIZONA

12 MARTIN H. ESCOBAR

13 Plaintiff,

14 v.

15 JAN BREWER, Governor of  
the State of Arizona, in her  
16 Official and Individual  
Capacity, the City of Tucson,  
17 a municipal corporation, and  
Barbara LaWall, County  
18 Attorney, Pima County,

19 Defendants.

No. CIV 10-249 TUC DCB

**REQUEST FOR TRANSFER  
AND CONSOLIDATION**

20 DAVID SALGADO and  
21 Chicanos Por la Causa, Inc.,

22 Plaintiffs,

23 v.

24 JAN BREWER, individually  
and in her capacity as  
25 Governor of Arizona, and  
Capacity, the City of Phoenix,  
26 an Arizona municipal  
corporation,

27 Defendants.  
28

No. CIV 10-951 PHX ROS

1 Plaintiff, through his undersigned counsel, hereby requests transfer of this  
2 matter to the Phoenix Division to be consolidated with the *Salgado, et. al. v. Brewer,*  
3 *et al.*, CIV 10-951 PHX ROS.<sup>1</sup>, which is currently awaiting a final briefing schedule for  
4 plaintiffs motion for a preliminary injunction.<sup>2</sup> See CD No. 6 & 11 in CIV 10-951 PHX  
5 ROS.<sup>3</sup> Both cases, *Escobar* and *Salgado*, challenge the constitutionality of SB 1070  
6 (the “Support Our Law Enforcement and Safe Neighborhoods Act,” Senate Bill 1070,  
7 as amended by House Bill 2162 (the “Act”), which was recently signed into law by  
8 Governor Brewer.<sup>4</sup> This request is made pursuant to Rule 42, F.R.C.P. and LRCiv.  
9 42.1 for reasons of judicial economy and efficiency, and with the consent of the  
10 *Salgado* plaintiffs and the City of Tucson which filed an answer and cross claim on  
11 May 26, 2010 in the instant action.<sup>5</sup> See CD No. 9.

12 The factors relevant to plaintiff’s request include (1) whether substantive matters  
13 have been considered in a case; (2) which Judge has the most familiarity with issues  
14 involved in the cases; (3) whether a case is reasonably viewed as the lead or principal  
15 case; (4) any other factor serving the interest of judicial economy. All four factors are  
16 applicable in this instance.

17 Transfer and consolidation to *Salgado* is appropriate as it represents the lead  
18 case with the District of Arizona challenging SB 1070. In *Salgado* service has been  
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21 <sup>1</sup> Defendant Brewer filed a request for transfer to Judge Bolton on Friday, May 28,  
2010. CD No. 12-1 in CIV 10-926 PHX SRB.

22 <sup>2</sup> In *Salgado*, all defendants have been served and plaintiffs filed a motion for a  
23 preliminary injunction, briefing schedule and hearing date on May 17, 2010. CD No. 6.  
24 On May 26, 2010, Judge Silver issued an order requiring a response from all  
defendants to plaintiffs motion by June 2, 2010. CD No. 11. A briefing schedule and  
hearing date on the preliminary injunction is expected shortly from Judge Silver.

25 <sup>3</sup> Plaintiffs have also requested leave to commence discovery. See CD No. 10

26 <sup>4</sup> The Act takes effect July 29, 2010.

27 <sup>5</sup> Defendant Barbara LaWall, the Pima County Attorney has not stated a position  
28 on transfer or consolidation. Governor Brewer has requested transfer to the Phoenix  
Division and has not stated a position concerning consolidation.

1 completed on all defendants, a motion filed for preliminary injunction, briefing schedule  
2 and evidentiary hearing date. Plaintiffs' memorandum of points and authorities with  
3 exhibits has been filed.<sup>6</sup> Judge Silver ordered the defendants to submit their response  
4 to the briefing schedule by June 2, 2010. See CD No. 11 in CIV 10-1061 PHX ROS.<sup>7</sup>  
5 Additionally, leave to commence discovery has been requested in *Salgado*. See CD  
6 No. 10.

7 The *Salgado* and *Escobar* filings were initiated by two police officers, who as  
8 stated in their complaints, believe that SB1070 is preempted by federal law, denies  
9 equal protection and violates the 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendments to the United States  
10 Constitution. Both officers know from their combined 35 years of experience in patrol  
11 that in the urban setting, there are no race neutral factors that identify a person as  
12 undocumented.

13 In contrast, the SB 1070 cases currently before Judge Bolton have yet to be  
14 served, responded to and no motion for a preliminary injunction has been filed or  
15 briefed, no briefing schedule has been requested nor has any hearing date been set.  
16 Additionally, the efforts to transfer to Judge Bolton are premised on the *Frisancho*  
17 filing which is subject to immediate dismissal as the plaintiff lacks standing to bring suit  
18 in Arizona challenging SB 1070. (Mr. Frisancho lives in Washington DC, has never  
19 been to Arizona and plans to visit Arizona in September to research the "Chandler  
20 Roundup" which occurred in July of 1997. CIV 10-926 PHX SRB, CD No. 1, ¶5) The  
21 *National Coalition of Latino Clergy & Christian Leaders v. State of Arizona*, CIV 10-943  
22 PHX SRB case shows no evidence of service and the *Friendly House, et. al. v.*  
23 *Whiting, et. al.*, CIV 10-1061 PHX MEA case seeks class certification, does not name  
24 Governor Brewer as a defendant, has yet to include a motion seeking a preliminary

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25 <sup>6</sup> In *Escobar*, the motion and brief for a preliminary injunction was submitted yesterday.

26 <sup>7</sup> The City of Phoenix consented to the proposed briefing schedule. Governor  
27 Brewer seeks to delay consideration of the pending motion for preliminary injunction  
28 and failed to offer any viable schedule in an attempt to avoid consideration of an order  
enjoining implementation of SB 1070 .

1 injunction, names 30 defendants and includes 24 plaintiff parties. This will result in the  
2 court having to make a significant number of distinct decisions concerning standing.

3 In contrast, the *Salgado* and *Escobar* cases arise from the same event, the  
4 passage of SB 1070, name Governor Brewer as a common defendant and include the  
5 two named cities that are plaintiff Escobar's and Salgado's employer.<sup>8</sup> Chicanos Por  
6 La Causa, Inc., ("CPLC"), operates statewide, including Tucson and Pima County.<sup>9</sup>  
7 Additionally, both cases seek a determination on the same issue of law, the  
8 constitutionality of SB1070. Proceeding as a consolidated matter will avoid substantial  
9 duplication of judicial resources, promote efficiency and avoid the possibility of  
10 inconsistent results.

11 For the reasons noted, it is respectfully request that CIV 10-249 TUC DCB be  
12 transferred to the Phoenix Division of the Federal District Court for the District of  
13 Arizona and that it be consolidated with CIV 10-951 PHX ROS.

14 Respectfully submitted this 4<sup>th</sup> day of June 2010.

15 s/Richard M. Martinez, Esq.  
16 Richard M. Martinez, Esq.

17 Stephen Montoya, SBA No. 11791  
18 Augustine B. Jimenez III, SBA No. 12208  
19 **Montoya Jimenez, P.A.**

20 Counsel for Plaintiff

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23 Copy electronically transmitted  
24 this 4<sup>th</sup> day of June 2010

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25 <sup>8</sup> All defendants in *Escobar* have been served. The City of Tucson filed an answer  
26 and cross claim to plaintiff's first amended complaint on May 26, 2010. CD. No. 9.  
27 Therein, the City clearly and unequivocally states the belief that SB 1070 in  
28 unconstitutional and an impossible unfunded mandate. The City also seeks a temporary  
restraining order and consented to the briefing schedule proposed in *Salgado*. CD No.

<sup>9</sup> CPLC Tucson operations include three charter schools that serve Hispanic  
students.

1 via the USDC Clerk of Court  
2 using the CM/ECF System for  
filing and transmittal to:

3 Michael Rankin, City Attorney  
4 City of Tucson  
5 Michael W.L. McCory  
6 Principal Assistant City Attorney  
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Attorneys for the City of Tucson

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13 Attorneys for Defendant Governor Janice K. Brewer

14 Mary R. O'Grady,  
15 Solicitor General  
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Assistant Attorney General  
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17 Phoenix, Arizona 85007-2997

18 Attorneys for the State of Arizona

19 COPY of the foregoing e-mailed  
20 this 4<sup>th</sup> day of June 2010 to:

21 Barbara LaWall  
22 County Attorney-Pima County  
c/o Regina Nassen & Amelia Cramer  
32 North Stone, Suite 1400  
Tucson, Arizona 85701

23 Defendant

24  
25 s/Richard M. Martinez, Esq.

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