

1 John J. Bouma (#001358)
Robert A. Henry (#015104)
2 Joseph G. Adams (#018210)
SNELL & WILMER L.L.P.
3 One Arizona Center
400 E. Van Buren
4 Phoenix, AZ 85004-2202
Phone: (602) 382-6000
5 Fax: (602) 382-6070
jbouma@swlaw.com
6

7 Joseph A. Kanefield (#015838)
Office of Governor Janice K. Brewer
1700 W. Washington, 9th Floor
8 Phoenix, AZ 85007
Telephone: (602) 542-1586
9 Fax: (602) 542-7602
jkanefield@az.gov
10

*Attorneys for Defendant Janice K. Brewer,
Governor of the State of Arizona*

11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 Martin H. Escobar,

15 Plaintiff,

16 v.

17 Jan Brewer, Governor of the State of
18 Arizona, in her Official and Individual
Capacity, the City of Tucson, a
19 municipal corporation,

20 Defendants.

Case No. CV10-00249-TUC-DCB

**GOVERNOR BREWER'S
RESPONSE TO PLAINTIFF'S
REQUEST FOR TRANSFER AND
CONSOLIDATION**

21 David Salgado and Chicanos Por La
22 Causa, Inc.

23 Plaintiffs,

24 v.

25 Jan Brewer, individually and in her
26 capacity as Governor of Arizona, and the
City of Phoenix, an Arizona municipal
27 Corporation,

28 Defendants.

Case No. CV10-00951-PHX-ROS

1 Defendant Janice K. Brewer (“Governor Brewer”) hereby responds to the request
2 to transfer and consolidate filed by plaintiffs in this action.

3 This case is one of the five actions now pending in the U.S. District Court for the
4 District of Arizona that challenge the “Support Our Law Enforcement and Safe
5 Neighborhoods Act,” Arizona Senate Bill 1070, as amended by House Bill 2162 (“SB
6 1070”). Of the five pending actions, this action is the second-filed case. Plaintiff now
7 wishes to transfer and consolidate this case with the fourth-filed case pending in the
8 Phoenix Division, which was also filed by the same plaintiffs’ counsel. Governor Brewer
9 respectfully submits that all five cases should be handled by a single judge rather than
10 transferring and consolidating them on a piecemeal basis.

11 **I. Background of Related Cases.**

12 Five cases challenging the validity of SB 1070 have been filed in the U.S. District
13 Court for the District of Arizona, in the following order:

14 A. ***Roberto Javier Frisancho v. Brewer, et al.***, Case No. CV10-00926-PHX-
15 SRB (“*Frisancho*”), filed on April 27, 2009. The case is assigned to the Hon. Susan R.
16 Bolton. The complaint filed by this out-of-state, *pro se* plaintiff has not been updated
17 since SB 1070 was amended on April 30, 2010. Governor Brewer’s response is due to be
18 filed by June 11, 2010. Governor Brewer anticipates filing a motion to dismiss based on
19 plaintiff’s lack of standing to challenge SB 1070.

20 B. ***Martin H. Escobar v. Jan Brewer, et al.***, Case No. CV10-00249-TUC-
21 DCB (“*Escobar*”), filed on April 29, 2010 at 7:56 a.m. The case is assigned to the Hon.
22 David C. Bury. Plaintiff has lodged a motion for preliminary injunction on June 3, 2010.
23 The City of Tucson filed a motion for preliminary injunction on June 7, 2010.

24 C. ***National Coalition of Latino Clergy and Christian Leaders v. State of***
25 ***Arizona, et al.***, Case No. CV10-00943-PHX-SRB (“*National Coalition*”), filed on April
26 29, 2010 at 1:43 p.m. The case is assigned to the Hon. Susan R. Bolton. An amended
27 complaint was filed on June 9, 2010 but has not yet been served.
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1 D. *David Salgado v. Jan Brewer, et al.*, Case No. CV10-00951-PHX-ROS
2 (“*Salgado*”), filed on April 29, 2010 at 3:54 p.m. The case is assigned to the Hon. Roslyn
3 O. Silver. Plaintiffs’ motion for preliminary injunction was deemed filed on June 9,
4 2010. Governor Brewer’s response to the amended complaint is due to be filed by June
5 11, 2010.

6 F. *Friendly House v. Whiting, et al.*, Case No. CV10-01061-PHX-MEA
7 (“*Friendly House*”), filed on May 17, 2010. The case is presently assigned to Magistrate
8 Judge Mark E. Aspey. Plaintiffs lodged a motion for preliminary injunction on June 4,
9 2010. Plaintiffs have moved to transfer the case to Judge Bolton.

10 II. All Five Cases Should be Transferred to a Single Judge.

11 Governor Brewer submits that all five cases should be handled by a single judge.
12 All five cases challenge the validity of SB 1070 on similar and overlapping grounds.
13 Having a single judge handle all five cases would be more efficient than litigating the
14 cases in separate courts, would permit a single judge to coordinate the multiple motions
15 for preliminary injunction that have now been filed, and would avoid “the potential of
16 inconsistent outcomes.” See *BAE Systems Mobility & Protection Systems, Inc. v.*
17 *Armorworks Enterprises, LLC*, No. CV08-1697-PHX-JAT, 2009 U.S. Dist. LEXIS
18 35920, at *4 (D. Ariz. Apr. 14, 2009) (applying LRCiv 42.1).

19 However, plaintiffs in this action ask this Court to consolidate only the *Escobar*
20 and *Salgado* cases and then transfer the consolidated case from this Court to Judge Silver,
21 who is assigned to the *Salgado* case. Governor Brewer takes no position on which judge
22 would be best suited to hear the cases. Governor Brewer stands ready to litigate the cases
23 before any of the district court judges who are assigned to these cases.¹ No matter which
24 judge is assigned, Governor Brewer submits that it would strongly serve the public
25 interest to have a single judge be assigned to all five cases on an expedited basis,

26
27 ¹ There are three district court judges presently assigned to the related cases. Judge
28 Bolton has two of the cases, including the first-filed action; Judge Silver is assigned to
Salgado, the fourth-filed action; and this Court is assigned to *Escobar*, which was filed
before *Salgado*.

1 especially now that at least four motions for preliminary injunction challenging SB 1070
2 have been filed or lodged with the Court in various cases. A single judge would be able
3 to coordinate briefing schedules on preliminary injunction motions, any hearings that the
4 Court wishes to schedule, and other case management tasks. Governor Brewer further
5 submits that any decision on consolidating the related cases should be made by the single
6 judge assigned to handle all five cases.

7 Governor Brewer agrees with plaintiff in this action that the *Escobar* and *Salgado*
8 cases present common issues of law and fact. However, Governor Brewer submits that it
9 would serve little purpose to transfer only two of the cases to a single judge. Plaintiffs
10 characterize *Salgado* as the “lead case,” but there is little support for such a distinction.
11 In truth, this action was filed prior to *Salgado*. Plaintiffs’ counsel in *Escobar* and
12 *Salgado* filed their cases on the same day, April 29, 2010. Plaintiff’s counsel filed the
13 *Escobar* case at 7:56 a.m. in the Tucson Division, which was assigned to this Court.
14 Plaintiff’s counsel then filed a substantially similar case in *Salgado* at 3:54 p.m. in the
15 Phoenix Division, which was assigned to Judge Silver.² Governor Brewer was served
16 with the *Salgado* case on May 17, 2010; the same lawyers waited until June 2, 2010 to
17 serve Governor Brewer with the *Escobar* complaint. Further, plaintiffs in at least one
18 other action (*Friendly House*) have also lodged a motion for preliminary injunction with
19 the Court. In that case, the plaintiffs have moved to transfer the case to Judge Bolton.

20 In light of the similarity between the five cases and the likelihood of plaintiffs
21 seeking preliminary injunctive relief in other cases, Governor Brewer submits that all five
22 cases (rather than only two cases) should be handled by a single judge.

23 **III. Conclusion.**

24 For these reasons, Governor Brewer respectfully requests that the request for
25 transfer and consolidation be denied insofar as it is limited to two of the five related

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27 ² In their initial complaints, one set of plaintiffs’ attorneys was counsel of record in
28 the *Escobar* case and another law firm was counsel of record in *Salgado*. In their
amended complaints, the two groups of plaintiffs’ lawyers joined together and all of these
lawyers are now counsel of record for both the *Escobar* and *Salgado* cases.

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cases. Governor Brewer instead submits that it would be far more efficient to have a single judge handle all five cases, and that any decisions on consolidating the related cases should be made by that single judge.

Respectfully submitted this 10th day of June, 2010.

SNELL & WILMER L.L.P.

By s/John J. Bouma
John J. Bouma
Robert A. Henry
Joseph G. Adams
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202

and

By s/Joseph A. Kanefield with permission
Joseph A. Kanefield
Office of Governor Janice K. Brewer
1700 W. Washington, 9th Floor
Phoenix, AZ 85007

*Attorneys for Defendant Janice K. Brewer,
Governor of the State of Arizona*

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record:

s/John J. Bouma

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