

1 **RICHARD M. MARTINEZ, SBA No. 7763**

307 South Convent Avenue

2 Tucson, Arizona 85701

(520) 327-4797 phone

3 (520) 320-9090 fax

richard@richardmartinezlaw.com

4 Stephen Montoya, SBA No. 11791

5 Augustine B. Jimenez III, SBA No. 12208

Montoya Jimenez, P.A.

6 The Great American Tower

3200 North Central Avenue, Suite 2550

7 Phoenix, Arizona 85012

(602) 256-6718

8 (602) 256-6667 (fax)

stephen@montoyalawgroup.com

9 attorney@abjlaw.com

10 **Counsel for Plaintiff**

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

13 Roberto Javier Frisancho,

14 Plaintiff, pro se,

15 vs.

16 Jan Brewer, in her capacity as
 17 Governor of the State of Arizona, and
 18 Terry Goddard, in his official capacity
 19 as Attorney General of the State of
 20 Arizona,

Defendants.

No. CIV 10-926 PHX SRB

**PLAINTIFF MARTIN H. ESCOBAR'S
 RESPONSE TO DEFENDANT
 BREWER'S MOTION TO TRANSFER
 RELATED CASES TO THIS COURT**

No. CIV 10-249 TUC DCB

21 Martin H. Esobar, through his undersigned counsel, hereby responds to
 22 Defendant Brewer's motion to transfer *Escobar v. Brewer, et. al.*, CIV 10-249 TUC DCB
 23 to this Court. Transfer to the Phoenix Division is not opposed;¹ request is respectfully
 24 made that in accordance with the provisions of Rule 42, F.R.C.P. and LRCiv. 42.1 that
 25 the five identified SB 1070 cases be transferred to the Hon. Roslyn O. Silver. This
 26

27 ¹ Plaintiff filed a request for transfer and consolidation to the *Salgado, et al. v.*
 28 *Brewer, et al.*, CIV 10-951 PHX ROS on Friday, June 4, 2010 with Judge Bury. CD No.
 20 in CIV 10-249 TUC DCB.

1 request is consistent with the criteria set forth in Rule 42(d).²

2 Plaintiff agrees that the five cases challenging the legality of the “Support Our
3 Law Enforcement and Safe Neighborhoods Act,” Senate Bill 1070, as amended by HB
4 2162 (the “Act”), involve common legal questions and should be heard by the same
5 judge. This will avoid duplication of effort and potentially conflicting rulings.

6 The case with the lowest number, *Frisancho v. Brewer, et al.*, No. CIV 10-926
7 PHX SRB, was filed by an out of state resident who has never lived or visited Arizona.
8 In his Complaint, he states that he “plans on visiting Arizona in September 2010 and
9 [to] return over the next few years to research the ‘Chandler Roundup’ . . .” *Frisancho*
10 *v. Brewer*, CD No. 1, Complaint, p. 2, ¶ 5. The *Frisancho* complaint raises significant
11 issues of standing from defendants Brewer and Goddard that are not applicable to
12 Officer Escobar who is a long-term resident of Arizona.

13 The *National Coalition of Latino Clergy & Christian Leaders v. State of Arizona,*
14 *et al.*, No. CIV 10-943 PHX SRB, filed on April 29, 2010 after *Escobar*, and on the same
15 day that *Salgado* was filed, appears to be currently dormant. The Clerk’s Docket does
16 not contain any evidence that the 13 plaintiffs in *National Coalition* have been served
17 or any filings to further prosecution of the case.

18 The *Friendly House, et. al. v. Whiting, et. al.*, CIV 10-1061 PHX MEA, was filed
19 May 17, 2010. *Friendly House* has 24 plaintiffs and 30 defendants, and has no
20 defendant common to the *Escobar* case.³ *Friendly House* is factually complex, seeks
21 class certification and contains distinct legal issues regarding Article III standing. The
22 Clerk’s Docket reflects that the plaintiffs in *Friendly House* have yet to file proof of
23 service for the 30 defendants.

24 LRCiv. 42.1(a)(4), provides that assignment requires consideration of the

25

26 ² Defendant/cross claimant City of Tucson has no objection to transfer or
27 assignment to Judge Silver.

28 ³ Plaintiff filed a Rule 41 dismissal of Pima County Attorney Barbara LaWall from
his case on June 7, 2010. CD No. 24.

1 following factors:

- 2 A. Whether substantive matters have been considered in
3 the case;
- 4 B. Which judge has the most familiarity with the issues
5 involved in the case;
- 6 C. Whether a case is reasonably viewed as the lead or
7 principal case; or
- 8 D. Other factors serving the interest of judicial economy.

9 The mere fact that a case may have the lowest number (*Frisancho*) does **not**
10 factor into the determination of to whom the related cases should be transferred for
11 further proceedings. Plaintiff offers that the *Salgado* case is the lead case of the five
12 pending cases challenging the Act; the plaintiffs in *Salgado* have:

- 13 • filed and served their Amended Complaint;
- 14 • filed and served a Motion for a Preliminary Injunction
15 and a Memorandum of Points and Authorities in
16 support of that Motion;
- 17 • filed and served a Motion for Leave to Engage in
18 Expedited Discovery;
- 19 • filed and served a Motion for a Status Conference; and
- 20 • filed and served a Motion for a Scheduling Order and
21 Hearing Date regarding their Motion for Preliminary
22 Injunction.

23 In *Salgado*, Defendant City of Phoenix has already answered Plaintiffs' Amended
24 Complaint and Governor Brewer is scheduled to answer/respond to Plaintiffs' Amended
25 Complaint today. Additionally, Judge Silver issued an order setting a briefing schedule
26 for the pending request for a preliminary injunction yesterday, June 10, 2010. CD No.
27 34 in CIV 10-951 PHX ROS.

28 *Salgado* is procedurally and substantively further along than the other actions
challenging the legality of the Act.

Escobar has developed in a manner that mirrors *Salgado* in many respects.
Service has occurred, the City of Tucson has filed an answer and asserted a cross-
claim and two motions for preliminary injunction have been submitted. Additionally,

1 **after** motions for transfer were filed in *Friendly House* and then by Governor Brewer,
2 plaintiff requested transfer to the Phoenix Division and consolidation with *Salgado*. The
3 City of Tucson has joined in this request.

4 Should this Court decide to adjudicate all five cases, Plaintiff respectfully requests
5 that this Court designate the *Escobar/Salgado* case(s) as the lead case so as to allow
6 timely consideration of their pending motions for a Preliminary Injunction.

7 Respectfully submitted this 11th day of June 2010.

8 s/Richard M. Martinez, Esq.
9 Richard M. Martinez, Esq.

10 Stephen Montoya, SBA No. 11791
11 Augustine B. Jimenez III, SBA No. 12208
12 **Montoya Jimenez, P.A.**

13 Counsel for Plaintiff

14
15 Copy electronically transmitted
16 this 11th day of June 2010
17 via the USDC Clerk of Court
18 using the CM/ECF System for
19 filing and transmittal to:

20 Michael Rankin, City Attorney
21 City of Tucson
22 Michael W.L. McCory
23 Principal Assistant City Attorney
24 P.O. Box 2710
25 Tucson, Arizona 85726-7210
26 Attorneys for the City of Tucson

27 John J. Bouma
28 Robert A. Henry
29 Joseph G. Adams
30 SNELL & WILLMER, LLC
31 One Arizona Center
32 400 East Van Buren
33 Phoenix, Arizona 85004-2202

34 Joseph A. Kanfield
35 Office of Governor Janice K. Brewer
36 1700 West Washington, 9th Floor
37 Phoenix, Arizona 85007
38 Attorneys for Defendant Governor Janice K. Brewer

1 Mary R. O'Grady,
Solicitor General
2 Christopher A. Munns,
Assistant Attorney General
3 1275 West Washington Street
Phoenix, Arizona 85007-2997
4 Attorneys for the State of Arizona

5 Gary Verburg
Elaine K. Cardwell
6 Office of the City Attorney
City of Phoenix
7 200 West Washington
Phoenix, Arizona 85003
8 Attorneys for Defendant City of Phoenix

9 COPY of the foregoing e-mailed
this 11th day of June 2010 to:

10
11 Barbara LaWall
County Attorney-Pima County
c/o Regina Nassen & Amelia Cramer
12 32 North Stone, Suite 1400
Tucson, Arizona 85701
13 Defendant

14 COPY of the foregoing mailed
this 11th day of June 2010 to:

15
16 Roberto Javier Frisancho,
1311 Delaware Avenue, S.W., Apt. S 337
Washington, D.C. 20024
17 plaintiff pro se

18 s/Richard M. Martinez, Esq.

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