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

MARTIN H. ESCOBAR,
 Plaintiff,
 vs.

No. 4:10-CV-00249-DCB

COMPLAINT

(In Intervention)

JAN BREWER, Governor of the State of Arizona in her Official and Individual Capacity; TERRY GODDARD, the Attorney General of the State of Arizona, in his Official and Individual Capacity; the CITY OF TUCSON, a municipal corporation; and BARBARA LAWALL, County Attorney, Pima County,

Defendants.

Assigned to: Hon. David C. Bury

CITY OF FLAGSTAFF, an Arizona chartered municipal corporation; CITY OF TOLLESON, an Arizona municipal corporation; CITY OF SAN LUIS, an Arizona municipal corporation; CITY OF SOMERTON, an Arizona municipal corporation

Plaintiff-Intervenors,

vs.

STATE OF ARIZONA, a body politic; and JAN BREWER, Governor of the State of Arizona, in her Official and Individual Capacities.

Defendants in Intervention.

Plaintiffs allege:

JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, authority to grant declaratory relief pursuant to 28 U.S.C. §2202, and pendent jurisdiction over any state law claims.

2. Plaintiffs are intervenors under F.R.Civ.P. 24(b).

3. Plaintiffs' claims present many aspects of the case and controversy defined by the complaint in *Escobar v. Brewer et al*, USDC D. Ariz. No. CV10-249 TUC DCB; by the cross-claim entered by the City of Tucson in that action; and by other related

1 actions subject to pending motions to consolidate with that action. These claims thus
2 fall within this Court's supplemental jurisdiction.

3 **PARTIES**

4 4. Plaintiff City of Flagstaff is a municipal corporation and charter city in the
5 State of Arizona formed pursuant to Article 13, Section 2, of the Arizona Constitution.

6 5. Plaintiff City of San Luis is a general law city formed pursuant to Article
7 13, Section 1 of the Arizona Constitution and Title 9, Articles 1 and 4, of the Arizona
8 Revised Statutes with authority to exercise all powers granted to it under the law of the
9 State of Arizona.

10 6. Plaintiff City of Somerton is a general law city formed pursuant to Article
11 13, Section 1, of the Arizona Constitution and Title 9, Articles 1 and 4, of the Arizona
12 Revised Statutes with authority to exercise all powers granted to it under the law of the
13 State of Arizona.

14 7. Plaintiff City of Tolleson is a general law city formed pursuant to Article
15 13, Section 1 of the Arizona Constitution and Title 9, Articles 1 and 4. of the Arizona
16 Revised Statutes with authority to exercise all powers granted to it under the law of the
17 State of Arizona.

18 8. Defendant State of Arizona has legal authority to adopt general laws that
19 Plaintiffs are required to enforce -- as long as those laws comply with the United States
20 and Arizona Constitutions.

21 9. Defendant Jan Brewer is the Governor of the State of Arizona. As
22 Governor she is the chief executive and highest-ranking state constitutional officer
23 responsible for implementing the laws of Arizona in compliance with the United States
24 and Arizona Constitutions.

25
26 **PLAINTIFFS' ACTION**
27
28

1 do so. Further, such enforcement would conflict with federal-enforcement policies and
2 priorities and exceed the framework established by 8 USC § 13-1357(g) for delegation
3 of federal-immigration authority to local police agencies. The enforcement would also
4 conflict with the training and supervision contemplated by federal law to ensure that
5 enforcement complies with federal law and constitutional rights.

6 ***The Act Attempts to Regulate Both the Presence and the Employment of***
7 ***Immigrants through State Criminal Law***

8 16. The Act through A.R.S. §13-1509 creates a new state misdemeanor of
9 "willful failure to complete or carry an alien registration document," the single element
10 of which is "violation of 8 United States Code Section 1304(e) or 1306(2)." The Act
11 thus makes the failure to meet certain federal immigration requirements a state law
12 crime punishable by different penalties than the federal statutes on which it relies.

13 17. Although Federal law expressly preempts "any State or local law
14 imposing civil or criminal sanctions (other than through licensing and similar laws)
15 upon those who employ . . . unauthorized aliens," A.R.S. §13-2928 – not through
16 licensing but through the creation of new state law misdemeanors – attempts to regulate
17 the employment of immigrants unlawfully present in the United States.

18 18. Specifically, A.R.S. § 13-2928 subsections (A) and (B) target employment
19 of day laborers and criminalize potential employer and employee conduct by making it
20 a misdemeanor both (A) to stop a vehicle and impede traffic while attempting to hire
21 someone and transport him to work elsewhere and (B) to enter a stopped motor vehicle
22 to be hired and transported to work elsewhere. Additionally, subsection C makes it a
23 misdemeanor for an unauthorized alien to apply for work, solicit work in a public place,
24 or perform work in Arizona.

25 ***Citation and Release Effects***

26 19. Under the Act, "Any person who is arrested shall have the person's
27 immigration status determined before the person is released. The person's immigration
28 status shall be verified with the federal government pursuant to 8 United States Code

1 section 1373(C)". A.R.S. §11-1051B. As law enforcement agencies in the State of
2 Arizona, the Police Department of each Plaintiff is obligated to enforce the express
3 requirements of the Act.

4 20. A.R.S. §13-3903, however, provides that a person arrested for a
5 misdemeanor or petty offense may be cited and released at the site of the arrest in lieu
6 of being transported to a law enforcement facility. During fiscal year 2009 the Cities
7 used this procedure for the following number of individuals: Flagstaff, 1543; San Luis,
8 724; Somerton, 463; and Tolleson, 1019. These instances of citation and release
9 included arrests for criminal speeding, liquor offenses, minor drug offenses, assault,
10 trespass, disorderly conduct, and other misdemeanor and petty offenses. The Cities do
11 not currently condition these releases on the verification of the individual's immigration
12 status with the federal government prior to their release.

13 21. Although the Cities' Police Departments routinely cooperate with federal
14 immigration agents when, in the course of investigations, individuals are identified as
15 aliens who may be unlawfully present in the United States, they do not have the
16 resources to determine or seek verification of the immigration status of all persons they
17 arrest. Most often, federal immigration enforcement agents can respond while an
18 investigation is in process so that the Cities' police need not detain an arrestee solely on
19 potential immigration grounds. Occasionally, when federal immigration enforcement
20 agents cannot resolve the question of lawful presence in a timely way, a person eligible
21 for citation and release is released and a report is forwarded to federal immigration
22 enforcement agents.

23 22. On information and belief, federal immigration enforcement agents will
24 not be able to respond with an immediate verification of the immigration status of every
25 person who receives a criminal misdemeanor citation within the Cities' incorporated
26 limits and within the State of Arizona as contemplated by A.R.S. §11-1051(B).

27 23. Thus, cities will be required to incarcerate persons pending federal
28 verification of status who would otherwise have been released at the time of citation.

1 That verification will be particularly difficult for natural-born citizens who lack a
2 passport or other record with federal immigration agencies. The federal verification
3 may take days, substantially increasing the costs of incarceration for the Cities, not to
4 mention the consequences for the persons incarcerated.

5 ***The Act Imposes on the Cities Vague Standards and Potential Liability***
6 ***Regarding Considerations of Race, Color, and National Origin***

7 24. The Act repeatedly asserts that Arizona law enforcement officers and
8 agencies may not consider race, color, or national origin in the implementation and
9 enforcement of the Act "except to the extent permitted by the United States or Arizona
10 Constitution." A.R.S. §§ 11-1051(B), 13-1509(C), 13-2928(C), and 13-2929(C). In
11 A.R.S. § 11-1051(B), this provision applies to the exercise of reasonable suspicion in
12 assessing whether a stopped, detained or arrested person may be an alien who is
13 unlawfully present in the United States.

14 25. But the United States Constitution has been interpreted in the federal and
15 Arizona courts to permit "Mexican ancestry" and "ethnic factors" to be considered in the
16 enforcement of immigration laws.

17 26. A.R.S. § 11-1051(A) provides, "No official or agency of this state or a
18 county, city, town or other political subdivision of this state may limit or restrict the
19 enforcement of federal immigration laws to less than the full extent permitted by federal
20 law." A.R.S. § 11-1051(H) further provides that any legal resident of Arizona may
21 bring a claim in superior court to challenge any state or municipal official or agency that
22 implements a policy that limits or restricts the enforcement of federal immigration laws
23 "to less than the full extent permitted by federal law."

24 27. The Cities and their Police Departments undertake, through training and
25 enforcement, for multiple reasons of law, public policy and community relations, to
26 avoid engaging in what is commonly referred to as "racial profiling."

27 28. The Act may expose the Cities to citizen lawsuits and potential liability
28 under A.R.S. § 11-1051(H) for a failure, in the enforcement of its provisions, to

1 consider race, color, or national origin to the full, yet vague and uncertain, extent
2 permitted by federal law. Yet the Cities also face lawsuits and potential liability for
3 violations of equal protection to the extent that they engage in such considerations.

4 ***Further Harm to the Cities***

5 29. State law requires the Cities to adopt an annual budget effective July 1 of
6 each year. In doing so, the Cities must weigh their multiple responsibilities, including
7 responsibilities for public health, safety, and law enforcement; and they adopt priorities
8 for meeting such responsibilities to the extent possible within budgetary constraints.

9 30. The Cities' budgets will not include sufficient funds for the enforcement
10 of federal immigration laws to the fullest extent permitted by federal law.

11 31. If compliance with the Act is not enjoined, the Cities will be obliged to
12 alter their priorities and subordinate other essential law enforcement objectives to the
13 enforcement of federal immigration laws. This may result in decreased protection of the
14 public from other criminal activity, decreased investigation, and decreased prosecution
15 of violent crimes against persons and other major felonies.

16 32. The Cities are entitled to declaratory and injunctive relief from the
17 unconstitutionally preemptive and violative mandates of the Act.

18 33. The Cities and their inhabitants will suffer irreparable harm unless this
19 Court enjoins enforcement of the Act. The Cities have no plain, speedy and adequate
20 remedy at law against enforcement of the Act.

21
22 **COUNT I**

23 **FEDERAL PREEMPTION AND THE SUPREMACY CLAUSE**

24 34. Federal Immigration law preempts the Act, as does Article VI of the
25 United States Constitution.

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2 **COUNT II**

3 **UNITED STATES CONSTITUTION**

4 **4th AND 14th AMENDMENT VIOLATION**

5 35. The Act requires the Cities to violate the United State Constitution's
6 Fourth and Fourteenth Amendments by mandating the detention and verification of the
7 immigration status of arrestees without reasonable suspicion, probable cause or other
8 independent legal basis for continued detention. That eliminates the presumption of
9 innocence and forces arrestees to prove they are authorized to be in the United States
10 before they can be released.

11
12 **COUNT III**

13 **UNCONSTITUTIONAL VAGUENESS**

14 36. The Act is unconstitutionally vague because it combines a prohibition that
15 the Cities may not consider race, color, or national origin except to an uncertain degree,
16 with a mandate to enforce immigration law to the full extent permitted by the United
17 States and Arizona Constitutions, and liability for private lawsuits under A.R.S. §11-
18 1051(H) for failure to enforce to the full extent of federal law.

19
20 **COUNT IV**

21 **DECLARATORY RELIEF**

22 37. Plaintiff seeks a declaratory judgment as provided in 28 U.S.C. §2201 *et.*
23 *seq.*

24
25 **RELIEF REQUEST**

26 The Cities request that this Court grant them judgment as follows:

- 27 A. Declaring that enforcement of the Act would violate the United States
28 Constitution as set forth herein;

- 1 B. Preliminarily enjoining Defendants from any enforcement of the Act
- 2 or enforcement of such provisions as the Court determines to be
- 3 unconstitutional;
- 4 C. Permanently enjoining Defendants from any enforcement of the Act or
- 5 enforcement of such provisions as the Court determines to be
- 6 unconstitutional;
- 7 D. Awarding the Cities their costs and attorneys' fees; and
- 8 E. Awarding such other and further relief as may be just and appropriate.
- 9

10 DATED this 11th day of June, 2010.

11 MARISCAL, WEEKS, McINTYRE
12 & FRIEDLANDER, P.A.

13 s/ Noel A. Fidel
14 Noel A. Fidel

15 and

16 HARALSON, MILLER, PITT,
17 FELDMAN & McANALLY, P.L.C.

18 s/ Jose de Jesus Rivera
19 Stanley G. Feldman
20 José de Jesús Rivera

21 and

22 LAW OFFICES OF DAVID ABNEY. ESQ.

23 s/ David L. Abney
24 David L. Abney

25 Attorneys for Plaintiffs
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