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

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

Martin H. Escobar,

Plaintiff,

v.

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

Defendants.

The City of Tucson,

Cross-plaintiff,

v.

The State of Arizona, a body politic; and
Jan Brewer, in her capacity as Governor
of the State of Arizona,

Cross-defendants.

Case No. CV10-00249-TUC-DCB

**GOVERNOR BREWER’S ANSWER
TO CROSS-CLAIM FILED BY THE
CITY OF TUCSON**

Snell & Wilmer
L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
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1 For her Answer to the Cross-Claim filed by the City of Tucson, defendant/cross-
2 defendant Janice K. Brewer, in her capacity as Governor of the State of Arizona
3 (“Governor Brewer”), hereby admits, denies, and alleges as follows:

4 1. Governor Brewer admits the allegations in paragraph 23.

5 2. Responding to the allegations in paragraph 24, Governor Brewer admits
6 that the State of Arizona has the legal authority to adopt general laws and that the City of
7 Tucson is required to enforce them.

8 3. Governor Brewer admits the allegations in paragraph 25.

9 4. Governor Brewer admits the allegations in paragraph 26 with respect to
10 Governor Brewer only.

11 5. Responding to paragraph 27, Governor Brewer admits that Article VI,
12 Section 2 of the United States Constitution provides, among other things, that “the Laws
13 of the United States” shall be “the supreme Law of the Land.”

14 6. Responding to paragraph 28, Governor Brewer admits that Article 2,
15 Section 3 of the Arizona Constitution provides that “The Constitution of the United
16 States is the supreme law of the land.”

17 7. Responding to the allegations in paragraph 29, Governor Brewer admits
18 only that she has those obligations imposed by applicable law.

19 8. Responding to the allegations in paragraph 30, Governor Brewer admits
20 that the United States has the authority to regulate immigration law as set forth in
21 applicable federal case law.

22 9. Governor Brewer denies the allegations in paragraph 31.

23 10. Governor Brewer denies the allegations in paragraph 32.

24 11. Governor Brewer admits the allegations in paragraph 33.

25 12. Governor Brewer admits the allegations in paragraph 34.

26 13. Governor Brewer admits the allegations in paragraph 35.

27 14. Governor Brewer denies the allegations in paragraph 36.

28 15. Responding to the allegations in paragraph 37, Governor Brewer admits

1 that a Section 287(g) agreement provides a way for federal immigration authority to be
2 delegated to local police agencies. Governor Brewer affirmatively alleges that Section
3 287(g) provides, among other things, that “Nothing in this subsection shall be construed
4 to require an agreement under this subsection in order for any officer or employee of a
5 State or political subdivision of a State... to cooperate with the Attorney General in the
6 identification, apprehension, detention, or removal of aliens not lawfully present in the
7 United States.” Governor Brewer lacks knowledge or information sufficient to form a
8 belief about the truth of the remaining allegations in paragraph 37.

9 16. Responding to paragraph 38, Governor Brewer admits that A.R.S. § 13-
10 3903 provides a procedure for the citation and release of persons arrested for
11 misdemeanors. Governor Brewer lacks knowledge or information at this time sufficient
12 to form a belief about the truth of the remaining allegations in paragraph 38.

13 17. Governor Brewer admits the allegations in paragraph 39.

14 18. Governor Brewer denies the allegations in paragraph 40.

15 19. Governor Brewer denies the allegations in paragraph 41.

16 20. Governor Brewer lacks knowledge or information at this time sufficient to
17 form a belief about the truth of the allegations in paragraph 42.

18 21. Governor Brewer denies the allegations in paragraph 43.

19 22. Governor Brewer denies the allegations in paragraph 44.

20 23. Governor Brewer denies the allegations in paragraph 45.

21 24. Governor Brewer denies the allegations in paragraph 46.

22 25. Governor Brewer denies the allegations in paragraph 47.

23 26. Governor Brewer lacks knowledge or information sufficient to form a
24 belief about the truth of the allegations in paragraph 48.

25 27. Responding to the allegations in paragraph 49, Governor Brewer admits
26 that the Act presumes that a person is not an alien and unlawfully present in the United
27 States if the person produces a valid Arizona driver’s license or any other valid United
28 States federal, state, or local government issued identification if the entity requires proof

1 of legal presence in the United States before issuance. Governor Brewer further admits
2 that certain states, such as New Mexico, do not require proof of citizenship for issuance
3 of a driver's license. Governor Brewer denies the remaining allegations in paragraph 49.

4 28. Governor Brewer denies the allegations in paragraph 50.

5 29. Governor Brewer denies the allegations in paragraph 51.

6 30. Governor Brewer lacks knowledge or information sufficient to form a
7 belief about the truth of the allegations in paragraph 52.

8 31. Governor Brewer lacks knowledge or information sufficient to form a
9 belief about the truth of the allegations in paragraph 53.

10 32. Governor Brewer lacks knowledge or information sufficient to form a
11 belief about the truth of the allegations in paragraph 54.

12 33. Governor Brewer lacks knowledge or information sufficient to form a
13 belief about the truth of the allegations in paragraph 55.

14 34. Responding to the allegations in paragraph 56, Governor Brewer admits
15 that the statute provides for civil actions by legal residents of this state to challenge
16 officials or agencies that limit or restrict the enforcement of federal immigration law.
17 Governor Brewer denies the remaining allegations in paragraph 56.

18 35. Governor Brewer denies the allegations in paragraph 57.

19 36. Governor Brewer denies the allegations in paragraph 58.

20 37. Governor Brewer denies the allegations in paragraph 59.

21 38. Governor Brewer denies the allegations in paragraph 60.

22 39. Governor Brewer denies the allegations in paragraph 61.

23 40. Governor Brewer denies the allegations in paragraph 62.

24 41. Governor Brewer denies the allegations in paragraph 63.

25 42. Governor Brewer denies each and every allegation not specifically admitted
26 in this answer.

27 **AFFIRMATIVE DEFENSES**

28 43. The Cross-Claim fails to a claim upon which relief can be granted.

1 44. The Court lacks subject matter jurisdiction over the Cross-Claim asserted
2 by the City of Tucson.

3 45. The Cross-Claim against the State of Arizona is prohibited by the Eleventh
4 Amendment of the United States Constitution.

5 46. The City of Tucson lacks standing to pursue this Cross-Claim. Among
6 other things, the City of Tucson has failed to allege facts demonstrating an injury in fact
7 sufficient to grant it standing.

8 47. The City of Tucson’s facial challenge to the constitutionality of SB 1070 is
9 barred to the extent that it relies on hypothetical or speculative circumstances.

10 48. SB 1070 is not preempted by federal law or the United States Constitution.
11 SB 1070 does not conflict with federal law, does not constitute an improper regulation of
12 immigration, and Congress has not fully occupied the field.

13 49. 8 U.S.C. § 1357(g) is not the sole means by which state or local law
14 enforcement can enforce federal immigration law.

15 50. SB 1070 does not violate the Fourth Amendment of the United States
16 Constitution.

17 51. SB 1070 does not violate the Commerce Clause of the United States
18 Constitution or discriminate against interstate commerce.

19 52. SB 1070 does not provide for an impermissible delegation of police powers
20 to individuals.

21 53. The City of Tucson’s budget policies and other policies do not provide a
22 basis to invalidate or undermine SB 1070.

23 WHEREFORE, having fully answered the Cross-Claim, Governor Brewer
24 respectfully prays as follows:

25 A. That the Cross-Claim be dismissed with prejudice in its entirety and that
26 the City of Tucson take nothing thereby;

27 B. That Governor Brewer be awarded and recover from the City of Tucson
28 her reasonable costs and attorneys’ fees incurred in the defense of this Cross-Claim to the

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extent allowed by law; and

C. For such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 21st day of June, 2010.

SNELL & WILMER L.L.P.

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and

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

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 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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