

1 **RICHARD M. MARTINEZ, SBA No. 7763**
 2 307 South Convent Avenue
 3 Tucson, Arizona 85701
 4 (520) 327-4797 phone
 5 (520) 320-9090 fax
 6 richard@richardmartinezlaw.com

7 Stephen Montoya, SBA No. 11791
 8 Augustine B. Jimenez III, SBA No. 12208
 9 **Montoya Jimenez, P.A.**
 10 The Great American Tower
 11 3200 North Central Avenue, Suite 2550
 12 Phoenix, Arizona 85012
 13 (602) 256-6718
 14 (602) 256-6667 (fax)
 15 stephen@montoyalawgroup.com
 16 attorney@abjlaw.com

17 **Counsel for Plaintiff**

18 **IN THE UNITED STATES DISTRICT COURT**
 19 **FOR THE STATE OF ARIZONA**

20 MARTIN H. ESCOBAR
 21 Plaintiff,
 22 v.
 23 JAN BREWER, Governor of
 24 the State of Arizona, in her
 25 Official and Individual
 26 Capacity, and the CITY of
 27 TUCSON, a municipal
 28 corporation,
 Defendants.

No. CV 10-249 TUC SRB

PLAINTIFF ESCOBAR'S STATUS
REPORT ON PENDING MOTIONS

CITY OF TUCSON,
 a municipal corporation,
 cross-plaintiff,
 v.
 THE STATE OF ARIZONA,
 a body politic; and JAN
 BREWER, in her capacity
 as the Governor of the
 State of Arizona,
 cross-defendants.

1 Plaintiff, through his undersigned counsel, hereby submits his report on the
2 status of pending motions in the instant action as instructed by the Court on June 25,
3 2010. CD No. 58.

4 **A. Pending Plaintiff Escobar Motions.**

5 1. Motion for Leave to File Excess Pages for Memorandum of Points and
6 Authorities Supporting Motion for Preliminary Injunction. CD No. 13.

7 Motion requests leave to file Memorandum of Points and Authorities in support
8 of Motion for Preliminary Injunction up to 35 pages.

9 Since filing on May 31, 2010, there has been no ruling and the Motion for
10 Preliminary Injunction remains in the Lodged status. The City of Tucson filed notice
11 of having no objection to Plaintiff's motion on June 9, 2010. CD No. 27. Defendant
12 Brewer also has objection. CD No. 25. Motion has been pending for 28 days.

13 2. Motion for Preliminary Injunction. CD No. 17.

14 Motion requests a preliminary injunction of SB 1070, as amended. Federal
15 authority in the field of immigration law is supreme, and any state law that contradicts
16 or undermines federal immigration law is void as violative of the Constitution. See,
17 *e.g., DeCanas v. Bica*, 424 U.S. 351, 354-355, and 358, n. 5 (1976) (“[the] [p]ower
18 to regulate immigration is unquestionably exclusively a federal power,” and “the
19 Supremacy Clause requires the invalidation of any state legislation that burdens or
20 conflicts in any manner with any federal laws”).¹

21 Plaintiff invokes these long-standing principles to enjoin the enforcement of the
22 “Support Our Law Enforcement and Safe Neighborhoods Act,” Senate Bill 1070, as
23

24 ¹ See also, *Hines v. Davidowitz*, 312 U.S. 52, 60-62 (1941) (“the supremacy of the
25 national power . . . over immigration, naturalization and deportation is made clear by the
26 Constitution”); *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1875) (voiding California
27 statute regulating Chinese immigration because immigration power is federal);
28 *Henderson v. Mayor of New York*, 92 U.S. 259, 270-274 (1875) (voiding New York law
requiring vessel owners to give a bond for each foreign passenger because it
undermined federal power “to regulate commerce with foreign nations”); and *Smith v.*
Turner, 48 U.S. 283, 394 (1849) (voiding New York and Massachusetts laws imposing
head taxes on landing foreign persons because they regulated foreign commerce).

1 amended by House Bill 2162 (the “Act”). The Act cannot be lawfully enforced because:
2 (1) it conflicts with a comprehensive statutory regime codified in a series of
3 amendments to Title 8 of the United States Code, 8 U.S.C. §§1103(a)(10), 1252c(a),
4 1324©, and 1357(g); (2) it conflicts with 8 U.S.C. §§1304(e) and 1306(a) by adding
5 to the penalties already established by Congress for violations of Sections 1304(e)
6 and 1306(a); (3) it conflicts with federal due process requirements by mandating that
7 “any person who is arrested shall have the person’s immigration status determined
8 **before** the person is released;” and, (4) when enforced against primary and
9 secondary school students, it conflicts with the Supreme Court of the United States’
10 opinion in *Plyler v. Doe*, 457 U.S. 202 (1983).

11 First, the Act (at A.R.S. §§11-1051, 13-1509 and 13-3883(A)(5)) is preempted
12 by 8 U.S.C. §1103(a)(10), because the Attorney General of the United States has **not**
13 authorized state and local law enforcement officers to enforce federal immigration law
14 after the Attorney General has determined that an “actual or imminent mass influx of
15 aliens” at the border presents “urgent circumstances” requiring “immediate” assistance
16 from state or local law enforcement authorities.

17 Second, the Act (at A.R.S. §§11-1051, 13-1509 and 13-3883(A)(5)) is
18 preempted by 8 U.S.C. §1252c(a) because Section 1252c(a) limits the authority of
19 state and local law enforcement officers to arrest **only** those undocumented
20 immigrants (1) who have already been convicted of a felony in the United States, (2)
21 who have left or been deported from the United States after their conviction, and (3)
22 whom federal immigration authorities have **already** determined have unlawfully
23 reentered the United States.

24 Third, the Act (at A.R.S. §13-1509) conflicts with 8 U.S.C. §§1304(e) and
25 1306(a) by making it a Class 1 misdemeanor to violate either Section 1304(e) or
26 Section 1306(a). By adding to the specific penalties established by Congress for
27 violations of Sections 1304(e) and 1306(a), the Act violates the Supremacy Clause of
28 the United States Constitution. See, e.g., *Hines v. Davidowitz*, 312 U.S. at 60-62

1 (1941) (“[n]o state can add to . . . the force and effect of . . . [a federal immigration]
2 statute”).

3 Fourth, the Act (at A.R.S. §§11-1051, 13-1509 and 13-3883(A)(5)) is preempted
4 by 8 U.S.C. §1324©, because—except as provided by 8 U.S.C. §§1103(a)(10),
5 1252c(a), and 1357(g)—state and local law enforcement officials can only make arrests
6 for violations of 8 U.S.C. §1324(a), which criminalizes smuggling, transporting,
7 concealing, and harboring undocumented immigrants. Correspondingly, the Act (at
8 A.R.S. §§13-2319 and 13-2929) is also preempted by 8 U.S.C. §1324(a) because the
9 Act adds to the specific penalties established by Congress for violations of Section
10 1324(a) and thus violates the Supremacy Clause of the United States Constitution.
11 See, e.g., Hines v. Davidowitz, 312 U.S. at 60-62 (1941) (“[n]o state can add to . . . the
12 force and effect of . . . [a federal immigration] statute”).

13 Fifth, the Act (at A.R.S. §§11-1051, 13-1509, 13-2319, 13-2929, and 13-
14 3883(5)(A)) is also preempted by 8 U.S.C. §1357(g) because—except as provided by
15 8 U.S.C. §§1103(a)(10), 1252c(a) and 1324(c)—state and local law enforcement
16 officials can enforce federal immigration law only (1) **after** executing a “memorandum
17 of agreement” with the Secretary of the Department of Homeland Security, (2) **after**
18 receiving a written certification of their “adequate training” regarding the enforcement
19 of federal immigration law from the Department of Homeland Security, and (3) when
20 subject to the supervision of federal immigration law enforcement authorities, all in
21 accordance with all of the specific requirements of Section 1357(g)(1)-(3).

22 Sixth, the Act (at A.R.S. §11-1051(B)) conflicts with basic due process
23 requirements by mandating that anyone arrested for any reason in Arizona be
24 detained until their “immigration status [is] determined.” See generally, Mortimer v.
25 Baca, 594 F. 3d 714, 722-723 (9th Cir. 2010), and Brass v. County of Los Angeles, 328
26 F.3d 1192, 1200 (9th Cir. 2003).

27 Lastly, when enforced in primary and secondary schools, the Act (at A.R.S.
28 §§11-1051 and 13-3883(A)(5)) violates the Supreme Court of the United States’

1 opinion in *Plyler v. Doe*, 457 U.S. 202 (1982).

2 This motion has been lodged since June 3, 2010. No response to the motion
3 has been filed by any Defendant. The motion has been pending for 25 days.

4 3. Motion to Consolidate Cases. CD No. 20.

5 Motion filed on June 4, 2010. Consolidation with *Salgado, et al v. Brewer, et al.*,
6 CV 10-943 PHX SRB requested due to similarity of issues presented and common
7 counsel for all plaintiffs. The City of Tucson also filed a request for consolidation on
8 June 7, 2010. CD No. 23. Defendant Brewer filed a Response in Opposition to
9 Plaintiff's request for consolidation on June 10, 2010. CD No. 29. The City of Phoenix
10 has no objection to consolidation. CD No. 39. The City of Flagstaff, *et. al.*, joined in the
11 motion on June 23, 2010. Cd. 52. Defendant Brewer filed a response in opposition
12 thereto on June 24, 2010. CD No. 57. This Motion has been pending for 21 days.

13 **B. Pending City of Tucson Motions.**

14 1. Motion for Leave to Exceed Page Limitation. CD No. 21.

15 Request filed on June 7, 2010. Plaintiff has no objection to request. CD No.
16 Defendant Brewer has filed no response to the motion. Request has been pending for
17 21 days.

18 2. Motion for Preliminary Injunction. CD No. 22.

19 This motion has been lodged since June 7, 2010. No response to the motion
20 has been filed by Defendant Brewer. The motion has been pending for 21 days.

21 3. Motion to Consolidate Cases. CD No. 23.

22 Motion filed on June 7, 2010. Consolidation with *Salgado, et al v. Brewer, et al.*,
23 CV 10-943 PHX SRB requested. Plaintiff has no objection. Defendant Brewer has not
24 filed a Response. But see CD No. 57. The motion has been pending for 21 days.

25 4. Joinder in Request for Evidentiary Hearing. CD No. 45.

26 Filed on June 18, 2010. There has been no ruling on requests for an evidentiary
27 hearing in connection with Plaintiffs (Escobar & City of Tucson) motions for preliminary
28 injunction.

1 Copy electronically transmitted
2 this 28th day of June 2010
3 via the USDC Clerk of Court
4 using the CM/ECF System for
5 filing and transmittal to:

6 **Michael Rankin**, City Attorney
7 City of Tucson
8 **Michael W.L. McCory**
9 Principal Assistant City Attorney
10 P.O. Box 2710
11 Tucson, Arizona 85726-7210
12 Attorneys for the City of Tucson

13 **Noel Fidel**
14 MARISCAL, WEEKS, McINTYRE
15 & FRIEDLANDER, P.A.
16 2901 North Central Avenue, Suite 200
17 Phoenix, Arizona 85012

18 **Jose de Jesus Rivera**
19 **Robert Pastor**
20 **Nathan Fidel**
21 HARALSON, MILLER, PITT
22 FELDMAN & McNALLY
23 2800 North Central Avenue, Suite 840
24 Phoenix, Arizona 85006

25 **Stanley Feldman**
26 **Rebecca A. Reed**
27 **Jeffery A. Imig**
28 HARALSON, MILLER, PITT
29 FELDMAN & McNALLY
30 1 South Church Avenue, Suite 900
31 Tucson, Arizona 85701

32 **David L. Abney**
33 LAW OFFICE OF DAVID ABNEY
34 414 East Southern Avenue
35 Mesa, Arizona 85204

36 Counsel for Plaintiff-Intervenors

37 **John J. Bouma**
38 **Robert A. Henry**
39 **Joseph G. Adams**
40 SNELL & WILLMER, LLC
41 One Arizona Center
42 400 East Van Buren
43 Phoenix, Arizona 85004-2202

44 and

45 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Joseph A. Kanfield
Office of Governor Janice K. Brewer
1700 West Washington, 9th Floor
Phoenix, Arizona 85007

Attorneys for Defendant Governor Janice K. Brewer

s/Richard M. Martinez, Esq.