

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

and

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

Counsel for Plaintiff

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

19 Martin H. Escobar,)
 20 Plaintiff,)
 21 v.)
 22 Jan Brewer, Governor of)
 23 the State of Arizona, in her)
 24 Official and Individual)
 25 Capacity, the City of Tucson,)
 26 a municipal corporation, and)
 27 Barbara LaWall, County)
 28 Attorney, Pima County,)
 Defendants.)

No. CV 10-249 TUC DCB

MOTION FOR PRELIMINARY INJUNCTION
 ENJOINING THE ENFORCEMENT OF THE
 "SUPPORT OUR LAW ENFORCEMENT
 AND SAFE NEIGHBORHOOD ACT" a.k.a.
 SB 1070

(Expedited Evidentiary Hearing
 And Oral Argument Requested)

Pursuant to F.R.C.P. 65(a), Plaintiff hereby moves for a preliminary injunction to enjoin the "Support Our Law Enforcement And Safe Neighborhood Act" a.k.a. SB 1070 for the reasons set forth in accompanying memorandum of points and authorities.

Respectfully submitted this 3rd day of June 2010.

s/Richard M. Martinez, Esq.
 RICHARD M. MARTINEZ, ESQ.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction and Summary of Argument**

3 This case presents a question of fundamental national importance: can a state
4 unilaterally negate a comprehensive federal statutory regime specifically limiting the
5 enforcement of federal immigration law by state and local law enforcement
6 authorities? Although the question is of increasing importance,¹ the Supreme Court
7 of the United States answered it in the negative long ago—federal authority in the field
8 of immigration law is supreme, and any state law that contradicts or undermines
9 federal immigration law is void as violative of the Constitution. See, e.g., DeCanas v.
10 Bica, 424 U.S. 351, 354-355, and 358, n. 5 (1976) (“[the] [p]ower to regulate
11 immigration is unquestionably exclusively a federal power,” and “the Supremacy
12 Clause requires the invalidation of any state legislation that burdens or conflicts in any
13 manner with any federal laws”).²

14 Plaintiff invokes these long-standing principles to enjoin the enforcement of the
15 “Support Our Law Enforcement and Safe Neighborhoods Act,” Senate Bill 1070, as
16 amended by House Bill 2162 (the “Act”). See Exhibit B. The Act cannot be lawfully
17 enforced because: (1) it conflicts with a comprehensive statutory regime codified in
18 a series of amendments to Title 8 of the United States Code, 8 U.S.C. §§1103(a)(10),
19 1252c(a), 1324(c), and 1357(g); (2) it conflicts with 8 U.S.C. §§1304(e) and 1306(a)

21 ¹ According to the National Conference of State Legislators, in the first three
22 months of 2010, legislators in 45 states introduced 1,180 bills and resolutions regarding
23 immigration and have already passed 107 laws regarding immigration this year. See
24 Exhibit A.

25 ² See also, Hines v. Davidowitz, 312 U.S. 52, 60-62 (1941) (“the supremacy of the
26 national power . . . over immigration, naturalization and deportation is made clear by the
27 Constitution”); Chy Lung v. Freeman, 92 U.S. 275, 280 (1875) (voiding California
28 statute regulating Chinese immigration because immigration power is federal);
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 by adding to the penalties already established by Congress for violations of Sections
2 1304(e) and 1306(a); (3) it conflicts with federal due process requirements by
3 mandating that “any person who is arrested shall have the person’s immigration status
4 determined **before** the person is released;” and, (4) when enforced against primary
5 and secondary school students, it conflicts with the Supreme Court of the United
6 States’ opinion in *Plyler v. Doe*, 457 U.S. 202 (1983).

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

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

20 Third, the Act (at A.R.S. §13-1509) conflicts with 8 U.S.C. §§1304(e) and
21 1306(a) by making it a Class 1 misdemeanor to violate either Section 1304(e) or
22 Section 1306(a). By adding to the specific penalties established by Congress for
23 violations of Sections 1304(e) and 1306(a), the Act violates the Supremacy Clause of
24 the United States Constitution. See, e.g., *Hines v. Davidowitz*, 312 U.S. at 60-62
25 (1941) (“[n]o state can add to . . . the force and effect of . . . [a federal immigration]
26 statute”).

27 Fourth, the Act (at A.R.S. §§11-1051, 13-1509 and 13-3883(A)(5)) is preempted
28 by 8 U.S.C. §1324(c), because—except as provided by 8 U.S.C. §§1103(a)(10),

1 1252c(a), and 1357(g)—state and local law enforcement officials can only make arrests
2 for violations of 8 U.S.C. §1324(a), which criminalizes smuggling, transporting,
3 concealing, and harboring undocumented immigrants. Correspondingly, the Act (at
4 A.R.S. §§13-2319 and 13-2929) is also preempted by 8 U.S.C. §1324(a) because the
5 Act adds to the specific penalties established by Congress for violations of Section
6 1324(a) and thus violates the Supremacy Clause of the United States Constitution.
7 See, e.g., Hines v. Davidowitz, 312 U.S. at 60-62 (1941) (“[n]o state can add to . . . the
8 force and effect of . . . [a federal immigration] statute”).

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

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

23 Lastly, when enforced in primary and secondary schools, the Act (at A.R.S.
24 §§11-1051 and 13-3883(A)(5)) violates the Supreme Court of the United States’
25 opinion in Plyler v. Doe, 457 U.S. 202 (1982).

26 **II. Standard of Review**

27 A party is entitled to a preliminary injunction by demonstrating that: (1) it is likely
28 to succeed on the merits; (2) it will likely suffer irreparable harm in the absence of

1 preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is
2 in the public interest. See, e.g., Dominguez v. Schwarzenegger, 596 F.3d 1087, 1092
3 (9th Cir. 2010) (affirming a preliminary injunction enjoining enforcement of a California
4 statute that was preempted by the Medicaid Act).

5 As explained in detail below, Plaintiff meets this test and is consequently
6 entitled to a preliminary injunction enjoining the enforcement of the Act pending a trial
7 on the merits.³

8 **III. Argument**

9 **1. The Support Our Law Enforcement and Safe Neighborhoods Act.**

10 On April 23, 2010, acting in her official capacity as Governor of Arizona, Janice
11 K. (“Jan”) Brewer signed into law the “Support Our Law Enforcement and Safe
12 Neighborhoods Act,” Senate Bill 1070. See Exhibit B. On April 30, 2010, once again
13 acting in her official capacity, Governor Brewer approved several amendments to the
14 Act, House Bill 2162. Id.⁴

15 The Arizona Constitution directs Governor Brewer to ensure that the laws of
16 Arizona “shall . . . be faithfully executed.” Ariz. Const., Art. 5, §4. Correspondingly,
17 Governor Brewer is statutorily authorized to “direct” the Attorney General of Arizona
18 “in **any** challenge” of the Act in “state or federal court.” HB 2162 §8A (emphasis
19 added). Governor Brewer also has the statutory authority to “direct [legal] counsel
20

21 ³ See, e.g., Stormans, Inc. v. Selecky, 586 F.3d 1109, 1124 (9th Cir. 2009) (in a
22 pre-enforcement action by pharmacists seeking equitable relief against Washington
23 state rules requiring pharmacies to deliver any lawfully prescribed medication, including
24 “Plan B,” a postcoital contraceptive used to prevent pregnancy after the intended
25 method of birth control fails or after unprotected sexual intercourse, sometimes referred
26 to as “the abortion pill” or the “morning after pill.” The court found equitable relief was
27 appropriate, reasoning that “[a]lthough Mesler [a plaintiff] has not yet suffered the
28 consequences of the new rules, her employer has informed her that it will not be able
to accommodate her refusal to dispense Plan B under them. She is at serious risk of
losing her job because of these new rules. This risk is sufficiently real and immediate
such that, assuming her claims have merit, a declaratory judgment or injunction is
warranted”).

⁴ Both SB 1070 and HB 2162 were passed by the forty-ninth Arizona legislature
at its second regular session. See Exhibit B, p. 10.

1 other than the attorney general to appear on behalf of [Arizona] to defend **any**
2 challenge” of the Act. HB 2162 §8B (emphasis added).⁵

3 Thus, Governor Brewer signed the Act into law, has an obligation under the
4 Arizona Constitution to faithfully execute the Act, and has an obligation under Arizona
5 statutory law to defend the legality of the Act in “any challenge” of the Act “in state or
6 federal court.” In accordance with her duty to enforce the Act, Governor Brewer has
7 already issued an Executive Order directing the Arizona Peace Officer Standards and
8 Training Board (“AzPOST”) to formulate a uniform training program so that
9 approximately 170 state and local law enforcement agencies can train approximately
10 15,000 law enforcement officers throughout the State in the enforcement of the Act.

11 See Exhibit D.⁶

12 The purpose of the Act is announced in Section 1 of the Act:

13 Intent

14 The legislature finds that there is a compelling interest in the
15 cooperative enforcement of federal immigration laws
16 throughout all of Arizona. The legislature declares that the
17 intent of this act is to make **attrition through enforcement**
18 the public policy of all state and local government agencies
19 in Arizona. The provisions of this Act are intended to work
20 together to **discourage and deter the unlawful entry and**
21 **presence** of aliens and economic activity by persons
22 unlawfully in the United States (emphasis added).

23 SB 1070, §1. Based on the specific language of Section 1, the Act expressly requires
24 all state and local law enforcement officers to engage in and enforce federal
25 immigration law in accordance with the terms of the Act without **any** authorization **or**
26 supervision by federal immigration law enforcement authorities.

27 In order to achieve its broad purpose, the Act compels any state or local law

28 ⁵ In fact, Governor Brewer has exercised her right to retain counsel other than the
Arizona Attorney General in this lawsuit. See Exhibit C.

⁶ Moreover, on May 26, 2010, acting in accordance with her legal obligation to
enforce and defend the Act, Governor Brewer issued another Executive Order creating
the “Governor’s Border Security and Immigration Legal Defense Fund” in order to
(among other things) help pay the private attorneys that she has retained to represent
her in this case. See Exhibit E.

1 enforcement officer involved in “**any** lawful stop, detention or arrest” in connection with
2 the “enforcement of **any** other law or ordinance of a county, city or town or this state”
3 to “attempt . . . to determine the immigration status of the person” when a “reasonable
4 suspicion exists that the person is an alien and is unlawfully present in the United
5 States” A.R.S. §11-1051(B) (emphasis added). Based on this language, the Act
6 applies to any lawful “stop,” even **non**-criminal stops for routine traffic violations or civil
7 violations of municipal ordinances.

8 The Act also authorizes state and local law enforcement officers to
9 arrest—without a warrant—**any** person whom the officer has “probable cause to believe
10 . . . has committed any public offense that makes the person removable from the
11 United States.” A.R.S. §13-3883(A)(5). Significantly, the Act does **not** in any way
12 limit the investigative techniques customarily used by state and local law enforcement
13 officers to obtain “probable cause” of criminal violations. Thus, the Act does **not**
14 prohibit state and local law enforcement officials from asking anyone to voluntarily
15 disclose either their nationality or immigration status (lawful or otherwise) in the course
16 of trying to obtain probable cause of a crime.

17 The Act also makes it a Class 1 misdemeanor under Arizona law for a person
18 to engage in the “willful failure to complete or carry an alien registration document if
19 the person is in violation of 8 United States Code section 1304(e) or 1306(a).” A.R.S.
20 §13-1509(A) and (H).

21 The Act also requires that “any person who is arrested [for any reason] **shall**
22 have the person’s immigration status determined **before** the person is released.”
23 A.R.S. §11-1051(B) (emphasis added) .

24 The Act also mandates that “no official or agency of this state or county, city,
25 town or other political subdivision of this state may limit or restrict the enforcement of
26 federal immigration laws to less than the full extent permitted by federal law.” A.R.S.
27 §11-1051(A). This provision ensures that the Act will be enforced to a **greater** extent
28 than the enforcement of federal immigration law by federal law enforcement

1 authorities. Indeed, a central assumption of the Act is the belief that federal authorities
2 are **not** adequately enforcing federal immigration law.⁷

3 The Act also creates its own private enforcement mechanism by establishing
4 a private right of action by any “legal resident” of Arizona against any state or local
5 “official” or “agency” that “adopts or implements a policy that limits or restricts the
6 enforcement of federal immigration laws . . . to less than the full extent permitted by
7 federal law.” A.R.S. §11-1051(H).

8 Correspondingly, the Act also creates a “civil penalty of not less than five
9 hundred dollars and not more than five thousand dollars for **each** day that the policy
10 [limiting or restricting full enforcement of the Act] has remained in effect after the filing
11 of an action pursuant to this subsection.” *Id.* (Emphasis added.) The Act’s private
12 right of action and attendant civil penalties do **not** exist in the field of federal
13 immigration law and are designed to ensure that the Act will be enforced **more**
14 aggressively than the enforcement of federal immigration law by federal authorities.

15 Based on the breadth of its express language, one of the Act’s principal
16 legislative sponsors has described it as the “toughest immigration law” in the nation.⁸

17
18 ⁷ Except through the electoral process, states cannot legally compel the federal
19 government to enforce immigration law any more or less than the federal government
20 deems appropriate. *See generally, Texas v. United States*, 106 F.3d 661, 663 (5th Cir.
21 1997) (“Texas . . . and its political subdivisions appeal a dismissal of their complaint
22 seeking declaratory and injunctive relief which would require that the United States pay
23 the educational, medical, and criminal justice expenses allegedly incurred as a result
24 of the presence of undocumented or illegal aliens in Texas. Concluding that the
25 complaint raises questions of policy rather than colorable claims of constitutional or
26 statutory violations, we affirm”), and *Chiles v. United States*, 69 F.3d 1094, 1075 (11th
27 Cir. 1995) (dismissing an action against the United States and federal law enforcement
28 officials alleging that they had improperly failed to enforce immigration policies because
it presented nonjusticiable political questions and the question of whether the United
States Attorney General was “adequately guarding United States borders is committed
to agency discretion by law and unreviewable”).

26 ⁸ *See* Russel Goldman, Arizona Law Promises to Be 'Toughest' on Illegal
27 Immigration, <http://abcnews.go.com>, March 26, 2010 (“It will be, there’s no doubt, the
28 toughest immigration enforcement bill in the nation, said [State Senator Russell] Pearce
. . . the Mesa Republican who sponsored the bill”). *See also*, Craig Harris, *et al.*,
Arizona Governor signs immigration law; foes promise fight, *The Arizona Republic*, April
24, 2010 (“Arizona’s immigration law, now considered the toughest in the nation, makes

1 Indeed, as reflected in the Act's express mandate of "full enforcement" and the
2 creation of private enforcement actions backed by hefty civil fines, the Act is designed
3 to be **broader** and more **strictly** enforced than federal immigration law.

4 Under the Arizona Constitution, Art. 4, Part 1, §1(3), the Act is effective on July
5 29, 2010,⁹ ninety days after the close of the forty-ninth legislature's second regular
6 session on April 30, 2010.

7 **2. The nature of Plaintiff's claims against the Act.**

8 Martin Escobar is a full-time Lead Patrol Officer for the Tucson Police
9 Department and has been for fifteen years. In the course of his police work, Officer
10 Escobar frequently stops individuals of Mexican and Latin-American ancestry in the
11 City of Tucson. These individuals include children and minors who do **not** have or
12 carry any form of state or federal identification. Officer Escobar reasonably suspects
13 that some of these adults and children are **not** lawfully in the United States. Officer
14 Escobar does **not** believe that he can lawfully enforce the Act because (1) he is **not**
15 authorized to enforce federal immigration law, (2) he is **not** trained to enforce federal
16 immigration law, and (3) enforcing federal immigration law under these circumstances
17 has a high probability of in resulting in the violation of the civil rights of those
18 individuals whom he attempts to enforce the Act against.

19 Officer Escobar is aware that all schools within the City of Tucson are legally
20 obligated to work with state and local law enforcement agencies and officers—including
21 the City of Tucson Police Department and the Arizona Department of Public Safety—to
22 help insure the safety and welfare of its students. See, e.g., A.R.S. §13-3620(A)1.

23 For example, if an educator suspects that one of his or her students is abused
24

25 it a state crime to be in the country illegally and requires local police to enforce federal
26 immigration law"), and Randal C. Archibold, Arizona Enacts Stringent Law on
27 Immigration, New York Times, April 23, 2010 ("Gov. Jan Brewer of Arizona signed the
28 nation's toughest bill on illegal immigration into law on Friday"). These articles are
reproduced at Exhibit F.

⁹ See Exhibit G.

1 or neglected, that teacher and school administrator have a legal duty to report that
2 suspicion to local law enforcement authorities. See A.R.S. §13-3620(A)1. This report
3 will often result in contact with local law enforcement officials on campus and/or at the
4 student's home. The failure to make such a report is a crime. See A.R.S. §13-
5 3620(O). Officer Escobar reasonably suspects that some of the students within the
6 City of Tucson are undocumented immigrants and that state and local law
7 enforcement authorities cannot lawfully enforce federal immigration law against
8 students at schools or Head Start centers.

9 The government of the United States of America, acting through the Secretary
10 of the Department of Homeland Security in accordance with the Immigration and
11 Nationality Act, 8 U.S.C. §1357(g)(1), has not authorized the law enforcement officers
12 employed by the Tucson Police Department—including Officer Escobar—to enforce
13 federal immigration law to the “full extent permitted by federal law” as required by the
14 Act. See A.R.S. §11-1051(A) and (11). See Answer filed by City of Tucson. CD No.
15 9.

16 Nor will every member of the Tucson Police Department—including Officer
17 Escobar—receive federally approved training regarding the enforcement of federal
18 immigration law or obtain written certification of their receipt of such training from the
19 Department of Homeland Security as expressly required by the Immigration and
20 Nationality Act, 8 U.S.C. §1357(g)(2), **before** a local law enforcement officer purports
21 to enforce federal immigration law as required by the Act. See Answer filed by City of
22 Tucson. CD No. 9.

23 Nor will all of the members of the Tucson Police Department—including Officer
24 Escobar—be subject to the direct supervision of United States Immigration and
25 Customs Enforcement (“ICE”) officers as required by the Immigration and Nationality
26 Act, 8 U.S.C. §1357(g)(3), when engaged in the immigration law enforcement
27 activities mandated by the Act. See Answer filed by City of Tucson. CD No. 9.

28 Notwithstanding the fact that the Tucson Police Department lacks the requisite

1 authorization from the Department of Homeland Security to enforce federal
2 immigration law to the “full extent permitted by federal law,” A.R.S. §11-1051(A), the
3 Tucson Police Department is already planning to prepare its officers—including Officer
4 Escobar—to enforce federal immigration law as required by the Act. See Exhibit H and
5 Answer filed by City of Tucson. CD No. 9. .

6 Under these circumstances, Plaintiff is placed in an impossible dilemma: if
7 Officer Escobar refuses to enforce the Act, he can be disciplined by his employer and
8 AzPOST and subjected to costly private enforcement actions under the Act;
9 conversely, if he enforces the Act, he can be subjected to costly civil actions alleging
10 the deprivation of the civil rights of the individuals against whom he enforces the Act.

11 These facts combine to require this Court’s speedy equitable relief.¹⁰

12 **3. The Act conflicts with and is preempted by the Immigration and**
13 **Nationality Act.**

14 The Supremacy Clause of the Constitution of the United States, Article VI,
15 Section 2, provides that:

16 This Constitution, and the Laws of the United States
17 which shall be made in Pursuance thereof . . . shall be the
18 supreme Law of the Land; and the Judges in every State
19 shall be bound thereby, any Thing in the Constitution of
20 Laws of any State to the Contrary notwithstanding.

21 The Supremacy Clause mandates that federal law preempts any state law that
22 conflicts or interferes with federal law. Federal supremacy in the field of immigration
23 law is predicated on the Constitution’s grant of the authority to the federal government
24 to “establish a uniform Rule of Naturalization,” U.S. Const., Art. I, §8, cl. 4., and to
25 “regulate Commerce with foreign Nations.” *Id.*, cl. 3. As the Supreme Court of the
26 United States observed in *Hines v. Davidowitz*, 312 U.S. at 60-62 (1941):

27 That the supremacy of the national power in the general
28 field of foreign affairs, including power over immigration,

26 ¹⁰ See generally, *Steffel v. Thompson*, 415 U.S. 452, 462 (1974) (“a refusal on the
27 part of the federal courts to [grant equitable relief] . . . may place the hapless plaintiff
28 between the Scylla of intentionally flouting state law and the Charybdis of forgoing what
he believes to be constitutionally protected activity”).

1 naturalization and deportation, is made clear by the
2 Constitution was pointed out by authors of *The Federalist* in
3 1787, and has since been given continuous recognition by
4 this Court. When the national government by treaty or
5 statute has established rules and regulations touching the
rights, privileges, obligations or burdens of aliens as such,
the treaty or statute is the supreme law of the land. No state
can add to or take from the force and effect of such treaty or
statute.¹¹

6 See also, *DeCanas v. Bica*, 424 U.S. at 358, n. 5 (1976) (“the Supremacy Clause
7 requires the invalidation of any state legislation that burdens or conflicts in any manner
8 with any federal laws”).¹² The Supreme Court has also long recognized that national
9 control of immigration law is essential to the United States’ status as a “nation-state,”
10 **not** just a confederation of states.¹³

11 This issue is of increasing importance because state laws purporting to regulate
12 immigration have dramatically increased in recent years. According to a report issued
13 by the National Conference of State Legislators on April 27, 2010:

14
15
16 ¹¹ In support of its conclusion, in footnotes eleven and twelve of its opinion in
17 *Hines*, the Court quotes James Madison (“The second class of powers, lodged in the
18 general government, consist of those which regulate in intercourse with foreign nations.
19 . . . This class of powers forms an obvious and essential branch of the federal
20 administration. If we are to be one nation in any respect, it clearly ought to be in respect
to other nations”) and Alexander Hamilton (“The peace of the whole ought not to be left
at the disposal of a part. The Union will undoubtedly be answerable to foreign powers
for the conduct of its members”) from *The Federalist*, No. 41 and 80. The Act threatens
these principles by repudiating federal limits on state and local enforcement of
immigration law.

21 ¹² See, e.g., *Toll v. Moreno*, 458 U.S. 1, 10 (1982) (“[o]ur cases have long
22 recognized the preeminent role of the Federal Government with respect to the
23 regulation of aliens within our borders”), and *Nyquist v. Mauclet*, 432 U.S. 1, 10 (1977)
 (“[c]ontrol over immigration and naturalization is entrusted exclusively to the Federal
Government, and a State has no power to interfere”).

24 ¹³ See, e.g., *Chy Lung v. Freeman*, 92 U.S. 275, 279, (1876) (“if this plaintiff and
25 her twenty companions had been subjects of the Queen of Great Britain, can any one
26 doubt that this matter would have been the subject of international inquiry, if not of a
27 direct claim for redress? Upon whom would such a claim be made? Not upon the State
28 of California; for, by our Constitution, she can hold no exterior relations with other
nations. It would be made upon the government of the United States. If that government
should get into a difficulty which would lead to war, or to suspension of intercourse,
would California alone suffer, or all the Union?”).

- 1 • In 2006, 570 bills regarding immigration were introduced, 84 laws were enacted and 12 resolutions adopted.
- 2
- 3 • In 2007, activity almost tripled and 1,562 bills regarding immigration were introduced, 240 laws were enacted and 50 resolutions were adopted.
- 4
- 5 • In 2008, 1,305 bills regarding immigration were introduced, 206 laws were enacted and 64 resolutions adopted.
- 6
- 7 • In 2009, more than 1,500 regarding immigration were introduced, 222 laws were enacted and 131 resolutions adopted.
- 8
- 9 • In 2010, legislators in 45 states introduced 1,180 bills and resolutions regarding immigration and state legislatures have already enacted 107 laws regarding immigration as of March 31, 2010.
- 10
- 11 •

12 See Exhibit A. Based on the dramatic rise of state laws attempting to regulate immigration—if the Supremacy Clause is ignored or trivialized—the potential for a complex, conflicting, and chaotic mix of immigration laws throughout the states is imminent.¹⁴

15 The Supreme Court of the United States has set forth three basic principles governing “federal preemption” under the Supremacy Clause. See English v. General Electric Co., 496 U.S. 72, 78-79 (1990). A state law is preempted when:

- 18 (1) Congress enacts a statute that explicitly preempts state law (known as “express preemption”);
- 19
- 20 (2) federal law occupies a legislative field to such an extent that it is reasonable to conclude that Congress left no room for state regulation in that field (“field preemption”); or
- 21
- 22 (3) state law actually conflicts with federal law (“conflict preemption”).
- 23

24 Id.¹⁵ In this case, the Act is unlawful because it “actually conflicts” with (at least) six specific substantive provisions of the Immigration and Nationality Act, 8 U.S.C.

26 ¹⁴ See, e.g., Randal C. Archibold, Side by Side, but Divided Over Immigration, New York Times, May 11, 2010.

27 ¹⁵ See also, Chae v. SLM Corp., 593 F.3d 936, 942 (9th Cir. 2010), and National Audubon Society, Inc. v. Davis, 307 F.3d 835, 851 (9th Cir. 2002).

1 §§1304(e), 1306(a), and 1324(c), as amended by the Illegal Immigration Reform Act
2 and Immigration Responsibility Act of 1996, 8 U.S.C. §§1103(a)(10) and 1357(g), and
3 the Antiterrorism and Effective Death Penalty Act of 1996, 8 U.S.C. §1252c(a).¹⁶ Each
4 section expressly limits the enforcement of federal immigration law by state and local
5 governments, and each section is examined below.

6 **A. The Act is preempted by 8 U.S.C. §1103(a)(10).**

7 The Act negates 8 U.S.C. §1103(a)(10), which provides that:

8 In the event the Attorney General determines that an actual
9 or imminent mass influx of aliens arriving off the coast of the
10 United States, or near a land border, presents urgent
11 circumstances requiring an immediate Federal response,
12 the Attorney General may authorize any State or local law
13 enforcement officer, with the consent of the head of the
department, agency, or establishment under whose
jurisdiction the individual is serving, to perform or exercise
any of the powers, privileges, or duties conferred or
imposed by this chapter or regulations issued thereunder
upon officers or employees of the Service.

14 The Act (at §§11-1051, 13-1509, 13-2319, 13-2929, and 13-3883(A)(5)) nullifies
15 Section 1103(a)(10) by compelling state and local law enforcement officials to enforce
16 federal immigration law without **first** obtaining authorization by the Attorney General
17 of the United States based on the Attorney General's determination that an "actual or
18 imminent mass influx of aliens" requires the assistance of state and local law
19 enforcement officials. These sections of the Act are consequently preempted and
20 must be enjoined.

21
22 ¹⁶ Although Plaintiff primarily argues that the Act is preempted because it
23 specifically conflicts with Title 8 of the United States Code, so-called "conflict
24 preemption," in this case the various sections of Title 8 that the Act contradicts also
25 "occupy the legislative field" of laws governing the direct enforcement of federal
26 immigration law by state and local law enforcement officers. Consequently, the Act is
27 also preempted under the second category of federal preemption (so-called "field
28 preemption") set forth in *English v. General Electric Co.*, 462 U.S. at 79 n.5 ("[b]y
referring to these three categories, we should not be taken to mean that they are rigidly
distinct. Indeed, field pre-emption may be understood as a species of conflict
pre-emption: A state law that falls within a pre-empted field conflicts with Congress'
intent (either express or plainly implied) to exclude state regulation"). Plaintiff makes
note of this issue only to underscore that he is **not** waiving any of his preemption
arguments.

1 **B. The Act is preempted by 8 U.S.C. §1252c(a).**

2 8 U.S.C. §1252c(a) provides that:

3 (a) In general

4 Notwithstanding any other provision of law, to
5 the extent permitted by relevant State and local
6 law, State and local law enforcement officials
 are authorized to arrest and detain an
 individual who--

- 7 1. is an alien illegally present in the United
 States; and
- 8 2. has previously been convicted of a
9 felony in the United States and deported
10 or left the United States after such
11 conviction, but only after the State or
12 local law enforcement officials obtain
13 appropriate confirmation from the
14 Immigration and Naturalization Service
15 of the status of such individual and only
16 for such period of time as may be
17 required for the Service to take the
18 individual into Federal custody for
19 purposes of deporting or removing the
20 alien from the United States.

21 (b) Cooperation

22 The Attorney General shall cooperate with the
23 States to assure that information in the control
24 of the Attorney General, including information
25 in the National Crime Information Center, that
26 would assist State and local law enforcement
27 officials in carrying out duties under subsection
28 (a) of this section is made available to such
 officials.

(Emphasis added.) Thus, Section 1252c(a) applies **only** to felons and authorizes
detention and arrest only **after** local law enforcement officers confirm with federal
authorities that the felon in question is in fact unlawfully in the United States.

In contrast, the Act is far broader than Section 1252c(a) because the Act
requires all state and local law enforcement officials to arrest **anyone**—convicted felon
or otherwise—whom they have probable cause to believe has “committed any public
offense that makes the person removable from the United States,” A.R.S. §13-
3883(A)(5), and “any person who is arrested [for any reason] shall have that person’s

1 immigration status determined **before** the person is released.” A.R.S. §11-1051(B).

2 The Act consequently negates the express limitations of Section 1252c(a) in
3 reference to both the **class** of “offenses” (the Act applies to civil, misdemeanor and
4 felony “stops,” A.R.S. §11-1051(B); in contrast, Section 1252c(a) applies only to felony
5 “convictions”) and **when** the arrest occurs (under the Act arrest is based on probable
6 cause and release is contingent upon a prior “determination” of lawful presence in the
7 United States; in contrast, under Section 1252c(a) arrest is authorized only **after**
8 confirming a suspect’s unlawful immigration status with federal immigration
9 authorities).

10 **C. The Act is preempted by 8 U.S.C. §§1304(e) and 1306(a).**

11 The Act also conflicts with 8 U.S.C. §§1304(e)¹⁷ and 1306(a).¹⁸ Specifically, the
12 Act provides that:

13 In addition to any violation of federal law, a person is guilty
14 of willful failure to complete or carry an alien registration

15 ¹⁷ 8 U.S.C. §1304(e) provides that:

16 Personal possession of registration or receipt card; penalties

17 Every alien, eighteen years of age and over, shall at all times
18 carry with him and have in his personal possession any
19 certificate of alien registration or alien registration receipt card
20 issued to him pursuant to subsection (d) of this section. Any
21 alien who fails to comply with the provisions of this subsection
22 shall be guilty of a misdemeanor and shall upon conviction for
23 each offense be fined [in an amount] not to exceed \$100 or
24 be imprisoned not more than thirty days, or both.

25 ¹⁸ 8 U.S.C. §1306(a) provides that:

26 Willful failure to register

27 Any alien required to apply for registration and to be
28 fingerprinted in the United States who willfully fails or refuses
to make such application or to be fingerprinted, and any
parent or legal guardian required to apply for the registration
of any alien who willfully fails or refuses to file application for
the registration of such alien shall be guilty of a misdemeanor
and shall, upon conviction thereof, be fined [in an amount] not
to exceed \$1,000 or be imprisoned not more than six months,
or both.

1 document if the person is in violation of United States Code
2 section 1304(e) or 1306(a).

3 A.R.S. §13-1509(A). Under subsection (H) of Section 13-1509, a violation of
4 subsection (A) is a Class 1 misdemeanor with a maximum fine of \$100.00 and a jail
5 sentence of no more than 20 days for the first offense and no more than 30 days for
6 any subsequent violation.

7 Under 8 U.S.C. §1304(e), “any alien who fails to comply with the provisions of
8 this subsection shall be guilty of a misdemeanor and shall upon conviction for each
9 offense be fined [in an amount] not to exceed \$100 or be imprisoned not more than
10 thirty days, or both.” Under 8 U.S.C. §1306(a), “any alien who willfully fails or refuses
11 to file application for the registration of such alien shall be guilty of a misdemeanor and
12 shall, upon conviction thereof, be fined [in an amount] not to exceed \$1,000 or be
13 imprisoned not more than six months, or both.”

14 Thus, the Act “adds to” the specific penalties already established by Congress
15 for violations of 8 U.S.C. §§1304(e) and 1306(a). However, as the Supreme Court
16 observed in *Hines v. Davidowitz*, 312 U.S. at 60-62 (1941),

17 When the national government . . . has established rules
18 and regulations touching the rights, privileges, obligations or
19 burdens of aliens as such, the . . . statute is the supreme
20 law of the land. No state can add to . . . the force and effect
21 of such . . . statute.

22 The Act is consequently preempted by 8 U.S.C. §§1304(e) and 1306(a).

23 **D. The Act is preempted by 8 U.S.C. §1324.**

24 8 U.S.C. §1324(a) establishes criminal penalties for smuggling, transporting,
25 concealing, and harboring undocumented immigrants. Subsection (c) of Section
26 1324, provides that:

27 Authority to arrest

28 No officer or person shall have authority to make any
arrests for a violation of any provision of this section except
officers and employees of the Service designated by the
Attorney General, either individually or as a member of a
class, and **all** other officers whose duty it is to enforce
criminal laws.

1 (Emphasis added.) The legislative history of Section 1324(c) indicates that the phrase
2 “all other officers whose duty it is to enforce the criminal laws” includes state and local
3 law enforcement officers authorized to enforce criminal law.¹⁹

4 In contrast to Section 1324(c), the Act authorizes state and local law
5 enforcement authorities to detain any individual that they “reasonably suspect” is
6 “unlawfully present in the United States,” A.R.S. §11-1051(B), and to arrest
7 anyone—smuggler, transporter, harbinger or otherwise—whom they have probable cause
8 to believe has “committed any public offense that makes the person removable from
9 the United States,” A.R.S. §13-3883A(5). The Act is consequently far broader than
10 Section 1324(c).

11 In addition, the Act is preempted by 8 U.S.C. §1324(a)(1)(B) because Sections
12 13-2319(B) and (C) and 13-2929(F) of the Act add to the specific penalties enacted
13 by Congress for violations of Section 1324(a) and thus violate the Supremacy Clause
14 of the United States Constitution. See, e.g., *Hines v. Davidowitz*, 312 U.S. at 60-62
15 (1941) (“[n]o state can add to . . . the force and effect of . . . [a federal immigration]
16 statute”).

17 **E. The Act is preempted by 8 U.S.C. §1357(g).**²⁰

18 The Act also conflicts with 8 U.S.C. §1357(g), which provides that:

- 19 (1) Notwithstanding section 1342 of Title 31,
20 the Attorney General may enter into a
21 written agreement with a State, or any

22 ¹⁹ The Senate version of Section 1324(c) provided that arrests for violations of
23 Section 1324(a) could be made by INS agents and “other officers of the United States
24 whose duty it is to enforce criminal laws.” However, the House struck the words “of the
25 United States” in order to enable state and local law enforcement officials to enforce
26 Section 1324(a). This change to the language of Section 1324(c) indicates that
Congress intended that all criminal law enforcement officers, including state and local
officers, are authorized to enforce Section 1324(a). See 98 Cong. Rec. 810, 813, 1414-
15 (1952), and Conf. Rep. No. 1505, 82 Cong., 2d (1952).

27 ²⁰ Section 1357(g) is often referred to by its original section number in the Illegal
28 Immigration Reform Act and Immigration Responsibility Act of 1996, “Section 287(g).”
For purposes of simplicity, throughout this Memorandum, 8 U.S.C. §1357(g) will be
referred to as Section 1357(g).

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

political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

- (2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.
- (3) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of the Attorney General.
- (4) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.
- (5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set forth in a written

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

agreement between the Attorney General and the State or political subdivision.

- (6) The Attorney General may not accept a service under this subsection if the service will be used to displace any Federal employee.
- (7) Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of Title 5 (relating to compensation for injury) and sections 2671 through 2680 of Title 28 (relating to tort claims).
- (8) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.
- (9) Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.
- (10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State--
 - (A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or
 - (B) otherwise to cooperate with the Attorney General in the

1 identification,
2 apprehension, detention, or
3 removal of aliens not
lawfully present in the
United States.²¹

4 The Act negates all of the express limitations of Section 1357(g). Specifically,
5 pursuant to Subsection (1) of Section 1357(g), the Secretary of the Department of
6 Homeland Security “may” enter into an agreement (called a “memorandum of
7 agreement” or “MOA”) with state or local law enforcement authorities whom the
8 Secretary believes to be qualified to “perform the functions of an immigration law
9 officer.” The Act nullifies Section 1357(g)(1) by unilaterally compelling all state and
10 local law enforcement officers in Arizona to enforce federal immigration law under the
11 specific terms of the Act **without** a Section 1357(g)(1) agreement with the Secretary.

12 Correspondingly, **if** the Secretary of the Department of Homeland Security
13 elects to enter into an agreement authorizing state and local law enforcement officials
14 to enforce federal immigration law, pursuant to Section 1357(g)(2), the memorandum
15 of agreement “shall” certify that the local law enforcement authorities operating under
16 the agreement have received “adequate training” in the enforcement of federal
17 immigration law. In fact, the training of state and local law enforcement officials in
18 federal immigration law is central to Section 1357(g)(2). Accordingly, ICE’s standard
19 memorandum of agreement provides that:

20 Training:

21 The [1357](g) training program, the Immigration Authority
22 Delegation Program (IADP), will be taught by ICE
23 instructors and tailored to the immigration functions to be
performed. ICE Office of Training and Development (OTD)
will proctor examinations during the IADP. The AGENCY
nominee must pass each examination with a minimum

25 ²¹ Section 1357(g) specifically names the “United States Attorney General,” rather
26 than the Secretary of the Department of Homeland Security, as the federal official
27 having the authority to authorize state and local law enforcement officers to enforce
28 federal immigration law. However, this and other immigration enforcement functions of
the former Immigration and Naturalization Service were transferred to the Department
of Homeland Security under the Homeland Security Act of 2002. See 6 U.S.C. §251.

1 score of 70 percent to receive certification. If the AGENCY
2 nominee fails to attain a 70 percent rating on an
3 examination, the AGENCY nominee will have one
4 opportunity to remediate the testing material and re-take a
5 similar examination. During the entire duration of the IADP,
6 the AGENCY nominee will be offered a maximum of one
7 remediation examination. Failure to achieve a 70 percent on
8 any two examinations (inclusive of any remediation
9 examination), will result in the disqualification of the
10 AGENCY nominee and their discharge from the IADP.

11 Training will include, among other topics: (i) discussion of
12 the terms and limitations of this MOA; (ii) the scope of
13 immigration officer authority; (iii) relevant immigration law;
14 (iv) the ICE Use of Force Policy; (v) civil rights laws; (vi) the
15 U.S. Department of Justice "Guidance Regarding the Use
16 Of Race By Federal Law Enforcement Agencies," dated
17 June 2003; (vii) public outreach and complaint procedures;
18 (viii) liability issues; (ix) cross-cultural issues; and (x) the
19 obligation under Federal law and the Vienna Convention on
20 Consular Relations to make proper notification upon the
21 arrest or detention of a foreign national.

22 Approximately one year after the participating AGENCY
23 personnel are trained and certified, ICE may provide
24 additional updated training on relevant administrative, legal,
25 and operational issues related to the performance of
26 immigration officer functions. Local training on relevant
27 issues will be provided as needed by ICE supervisors or
28 designated ICE team leaders. An OSLC designated official
shall, in consultation with OTD and local ICE officials,
review on an annual basis and, if needed, refresh training
requirements.

17 See Exhibit I, pp. 17-18. In stark contrast to Section 1357(g)(2), the Act does **not**
18 even mention (much less mandate) training.

19 Moreover, under Subsection (3) of Section 1357(g), whenever local or state law
20 enforcement officers are enforcing federal immigration law, they "must" act under the
21 supervision of the Department of Homeland Security. Specifically, ICE's standard
22 memorandum of agreement provides that:

23 Supervision:

24 A [1357](g) delegation of authority task force is designed to
25 proactively respond to, identify, and remove criminal aliens
26 that reside within the AGENCY's jurisdiction pursuant to the
27 tiered level of priorities set forth in Appendix D's
28 "Prioritization" section. The following identifies each entity's
roles and responsibilities. These roles and responsibilities
include, but are not limited to: If the AGENCY conducts an
interview and verifies identity, alienage, and deportability,

1 they must contact ICE for arrest approval. **No arrest for a**
2 **violation of Title 8 is to be conducted by an AGENCY**
3 **task force officer without prior approval from the ICE**
4 **supervisor.**

5 The AGENCY is responsible for ensuring proper record
6 checks have been completed, obtaining the necessary
7 court/conviction documents, and, upon arrest, ensuring that
8 the alien is processed through ENFORCE/IDENT and
9 served with the appropriate charging documents.

10 Prior to an AGENCY conducting any enforcement operation
11 that will involve the use of its [1357](g) delegation of
12 authority, the AGENCY must provide the ICE supervisor
13 with a copy of the operations plan, and the SAC/FOD **must**
14 concur and approve with the plan prior to it being initiated.

15 The ICE supervisor is responsible for requesting alien files,
16 reviewing alien files for completeness, approval of all
17 arrests, and TECS checks and input. The SAC/FOD office
18 is responsible for providing the AGENCY with current and
19 updated DHS policies regarding the arrest and processing
20 of illegal aliens.

21 On a regular basis, the ICE supervisor is responsible for
22 conducting an audit of the IDENT/ENFORCE computer
23 system entries and records made by the LEA officers. Upon
24 review and auditing of the IDENT/ENFORCE computer
25 system entries and records, if errors are found, the ICE
26 supervisor will communicate those errors in a timely manner
27 to the responsible official for the AGENCY. The ICE
28 supervisor will notify the AGENCY of any errors in the
system and the AGENCY is responsible for submitting a
plan to ensure that steps are taken to correct, modify, or
prevent the recurrence of errors that are discovered.

19 See Exhibit I, pp. 20-21 (emphasis added). The Act nullifies the supervisory
20 requirements of Section 1357(g)(3) by mandating that all state and local law
21 enforcement officers enforce federal immigration law to the “full extent permitted by
22 federal law” **without** any federal supervision whatsoever.

23 Underscoring the breadth of Section 1357(g), Subsection 10 of Section 1357(g)
24 expressly provides that local law enforcement officials do not need a Section 1357(g)
25 agreement in order (1) to communicate with the Department of Homeland Security
26 regarding the immigration status of any individual, or (2) to cooperate with the
27 Department of Homeland Security “in the identification, apprehension, detention or
28 removal of aliens not lawfully present in the United States.” Subsection 10 thus

1 underscores the fact that state and local law enforcement authorities **require** express
2 authorization under Subsection 1 of Section 1357(g) to directly enforce federal
3 immigration law. The Act ignores and nullifies this requirement.

4 Finally, in March of this year, the Office of the Inspector General of the United
5 States (“OIG”) conducted a review of ICE’s Section 1357(g) program during the period
6 of February 2009 through July 2009. See Exhibit J. Since the OIG audit was
7 conducted, ICE has “fundamentally” reformed the Section 1357(g) program by (among
8 other things) “prioritizing the arrest and detention of criminal aliens.” See Exhibit K.

9 Specifically, in order to reform the Section 1357(g) program, ICE:

- 10 • Implemented comprehensive guidelines for ICE field
11 offices that supervise [1357](g) partnerships,
12 prioritizing the arrest and detention of criminal aliens;
- 13 • Now requires [1357](g) officers to maintain
14 comprehensive alien arrest, detention, and removal
15 data in order to ensure operations focused on
16 criminal aliens, who pose the greatest risk to public
17 safety and community;
- 18 • Strengthened the [1357](g) basic training course and
19 created a refresher training course, providing detailed
20 instruction on the terms of the new MOA and the
21 responsibilities of a [1357](g) officer;
- 22 • Deployed additional supervisors to the field to ensure
23 greater oversight over [1357](g) operations;
- 24 • Established an Internal Advisory Committee, which
25 includes the DHS Office of Civil Rights and Civil
26 Liberties, to review and assess ICE field office
27 recommendations about pending [1357](g)
28 applications.

Id. p. 1. Thus, in contrast to the Act—which can be enforced based on the mere
22 **allegation** of a violation of a **civil** municipal ordinance—Section 1357(g) is directed
23 at “the arrest and detention of criminal aliens.”

24 The limited purpose of Section 1357(g) is reflected in the new standard
25 “memorandum of agreement” (“MOA”) between the Department of Homeland Security
26 and participating local law enforcement agencies:

27 Purpose

1 The purpose of this collaboration is to enhance the safety
2 and security of communities by focusing resources on
3 identifying and processing for removal criminal aliens who
4 pose a threat to public safety or a danger to the community.
5 This MOA sets forth the terms and conditions pursuant to
6 which selected AGENCY personnel (participating AGENCY
7 personnel) will be nominated, trained, and approved by ICE
8 to perform certain functions of an immigration officer within
9 the AGENCY'S area of responsibility. Nothing contained
10 herein shall otherwise limit the jurisdiction and powers
11 normally possessed by participating AGENCY personnel as
12 members of the AGENCY. However, the exercise of the
13 immigration enforcement authority granted under this MOA
14 to participating AGENCY personnel shall occur only as
15 provided in this MOA.

16 See Exhibit I p. 1 (emphasis added). ICE's new standard memorandum of agreement
17 also establishes the following priorities:

18 Prioritization:

19 ICE retains sole discretion in determining how it will manage
20 its limited resources and meet its mission requirements. To
21 ensure resources are managed effectively, ICE requires the
22 AGENCY to also manage its resources dedicated to [1357]
23 (g) authority under the MOA. To that end, the following list
24 reflects the categories of aliens that are a priority for arrest
25 and detention with the highest priority being Level 1 criminal
26 aliens. Resources should be prioritized to the following
27 levels:

- | | | |
|----|---------|---|
| 28 | Level 1 | Aliens who have been convicted of or arrested for major drug offenses and/or violent offenses such as murder, manslaughter, rape, robbery, and kidnapping; |
| | Level 2 | Aliens who have been convicted of or arrested for minor drug offenses and/or mainly property offenses such as burglary, larceny, fraud, and money laundering; and |
| | Level 3 | Aliens who have been convicted of or arrested for other offenses. |

29 See Exhibit I, p. 17. Correspondingly, under ICE's new standard memorandum of
30 understanding, the detention and arrest powers of participating state and local law
31 enforcement authorities are strictly limited and supervised:

32 The participating AGENCY personnel are authorized to
33 perform the following functions in the investigation,
34 detention, and removal of aliens in the United States as
35 allowed for the TFO model (INA 287(g)), pursuant to the
36 tiered level of priorities set forth in Appendix D's

1 “Prioritization” section:

2 The power and authority to interview any person reasonably
3 believed to be an alien about his right to be or remain in the
4 United States and to take into custody for processing an
5 alien solely based on an immigration violation (INA §§
6 [1357](a)(1) and (2)) **will** be delegated **only** on a case-by-
7 case basis. To exercise such authority, a TFO first **must**
8 obtain approval from an ICE supervisor, who will approve
9 the exercise **only** to further the priorities of removing
10 serious criminals, gang members, smugglers, and traffickers
11 and when reasonable suspicion exists to believe the alien
12 is or was involved in criminal activity. When an alien is
13 arrested for the violation of a criminal law, a TFO may
14 process that alien for removal **subject** to ICE supervision as
15 outlined in this agreement;

16 The power and authority to arrest without warrant for
17 felonies which have been committed and which are
18 cognizable under any law of the United States regulating the
19 admission, exclusion, expulsion, or removal of aliens, if
20 there is reason to believe that the person so arrested has
21 committed such felony and if there is likelihood of the
22 person escaping before a warrant can be obtained (INA §
23 [1357](a)(4) and 8 C.F.R. § 287.5(c)(2)). Arrested
24 individuals must be presented to a federal magistrate judge
25 or other authorized official without unnecessary delay (INA
26 § [1357](a)(4); Fed. R. Crim. P. 5). Notification of such
27 arrest must be made to ICE within twenty-four (24) hours;

28 The power and authority to arrest for any criminal offense
against the United States if the offense is committed in the
officer’s presence pursuant to INA § [1357](a)(5)(A) and 8
C.F.R. § 287.5(c)(3).

See Exhibit I, p 19. In contrast to the express limits on the authority of state and local law enforcement officers to arrest under Section 1357(g), the Act allows state and local law enforcement officers to engage in warrantless arrests of anyone who “has committed any public offense that makes the person removable from the United States.” A.R.S. §13-3883(A) (5).

Similarly, in contrast to the focus of Section 1357(g) on the “arrest and detention of criminal aliens,” the Act directs state and local law enforcement officers to “determine the immigration status” of individuals “stopped” in connection with the alleged violations of “ordinances,” which are primarily civil, **not** criminal, in nature. See ARS §11-1051(B).

1 The foregoing materials demonstrate beyond question that the Act conflicts with
2 Section 1357(g). The Act is consequently preempted by Section 1357(g). See, e.g.,
3 *Hines v. Davidowitz*, 312 U.S. at 60-62 (1941), *League of United Latin American*
4 *Citizens v. Wilson*, 908 F. Supp. 755, 771 (D. Cal.,1995), *Lozano v. City of Hazelton*,
5 496 F. Supp. 2d 477 (D. Pa. 2007), and *Villas at Parkside Partners v. The City of*
6 *Farmers Branch, Texas*, 2010 WL 1141398 (D. Tex. March 24, 2010).

7 **4. The Act violates due process by mandating the continued incarceration**
8 **of anyone arrested until their immigration status is determined.**

9 As the United States Supreme Court recognized in *Mathews v. Diaz*, 426 U.S.
10 67, 78 (1976),

11 There are literally millions of aliens within the jurisdiction of
12 the United States. The Fifth Amendment, as well as the
13 Fourteenth Amendment, protects every one of these
14 persons from deprivation of life, liberty, or property without
15 due process of law. . . . Even one whose presence in this
16 country is unlawful, involuntary, or transitory is entitled to
17 that constitutional protection.

18 The Act provides that “[a]ny person who is arrested [for any reason] **shall** have the
19 person’s immigration status determined **before** the person is released.” A.R.S. §11-
20 1051(B) (emphasis added). Based on this language, an individual could be arrested
21 for a minor misdemeanor offense and qualify for release under state law, but
22 nonetheless be subject to indefinite detention until their “immigration status [is]
23 determined.” Fundamental due process requirements prohibit the government from
24 incarcerating someone indefinitely during which time their immigration status is
25 determined. See, e.g., *Mortimer v. Baca*, 594 F.3d 714, 722-723 (9th Cir. 2010), and
26 *Brass v. County of Los Angeles*, 328 F.3d 1192, 1200 (9th Cir. 2003). Because the Act
27 facially violates this principle, this provision of the Act must be enjoined.

28 **5. The Act violates the Supreme Court of the United States’ ruling in**
***Plyler v. Doe*, 457 U.S. 202 (1982).**

In *Plyler v. Doe*, 457 U.S. 202 (1982), the Supreme Court of the United States
concluded that the State of Texas could **not** exclude undocumented children from its
primary and secondary schools consistent with the due process clause of the

1 Fourteenth Amendment to the Constitution of the United States.

2 Ignoring *Plyler's* long-standing mandate, under the Act, state and local law
3 enforcement officers will be required "to determine the immigration status" of any
4 student they "stop" for any potential violation of an another "law or ordinance," if the
5 officer "reasonable suspects" that the child "is unlawfully present in the United States."
6 See A.R.S. §11-1051(B). Thus, if a student gets into a school yard fight and a "school
7 resource officer" intervenes and in so doing "reasonably suspects" that one of the
8 students is "unlawfully present in the United States," the officer is obligated to ask the
9 student if he or she is lawfully in the United States. If the student answers "no," the
10 officer is obligated to arrest the child in accordance with the express language of the
11 Act. See A.R.S. §13-3883A(5)

12 By **not** excluding enforcement of the Act in or around the public schools, the Act
13 violates *Plyler v. Doe* and is consequently unconstitutional. *League of United Latin*
14 *American Citizens v. Wilson*, 908 F. Supp. 755, 785 (D. Cal.,1995)(enjoining
15 California's Proposition 187 as applied to primary and secondary children as violative
16 of *Plyler v. Doe*).

17 **6. Plaintiff is entitled to a preliminary injunction.**

18 **A. Martin Escobar will likely prevail on the merits.**

19 Based on the authorities set forth above, Plaintiff submits that he has
20 established that he will likely prevail on the ultimate merits of this dispute. This
21 likelihood is underscored by the success of other lawsuits challenging the
22 constitutionality of laws similar to (but not as extreme as) the Act. See, e.g., *Hines v.*
23 *Davidowitz*, 312 U.S. at 60-62 (1941), *League of United Latin American Citizens v.*
24 *Wilson*, 908 F. Supp. at 771 (D. Cal.,1995), *Lozano v. City of Hazelton*, 496 F. Supp.
25 2d 477 (D. Pa. 2007), and *Villas at Parkside Partners v. The City of Farmers Branch,*
26 *Texas*, 2010 WL 1141398 (D. Tex. March 24, 2010).

27 **B. Plaintiff will likely suffer irreparable harm if the Act is enforced.**

28 If Defendants are allowed to enforce the Act, Plaintiff will suffer irreparable harm

1 based on the violation of his federal rights under the Constitution. See, e.g.,
2 *Dominguez v. Schwarzenegger*, 596 F.3d 1087, (9th Cir. 2010) (affirming grant of
3 preliminary injunction against a California law that was preempted by the federal
4 Medicaid Act). As the Ninth Circuit observed in *Associated General Contractors v.*
5 *Coalition For Economic Equity*, 950 F.2d, 1401, 1412 (9th Cir. 1991), “an alleged
6 constitutional infringement will often alone constitute irreparable harm.”

7 Moreover, when considering the likelihood of irreparable injury, the Court should
8 consider the danger of racial profiling in the enforcement of federal immigration law
9 by state and local governments in Arizona. See generally, Carie L. Arnold, Racial
10 Profiling in Immigration Enforcement: State and Local Agreements to Enforce Federal
11 Immigration Law, 49 Ariz. L. Rev. 113, 119-121 (2007) (discussing the “disaster” of
12 the “Chandler Roundup” of 1997, which the Arizona Attorney General concluded
13 “violated the Equal Protection and Fourth Amendment rights of American citizens and
14 legal residents in the Chandler area”), and United States Commission on Civil Rights,
15 The Tarnished Golden Door: Civil Rights Issues and Immigration Law, p. 11 (1980)
16 (“In the 1950's many Americans were alarmed by the number of immigrants from
17 Mexico. As a result, then United States Attorney General Herbert Brownell, Jr.,
18 launched “Operation Wetback” to expel Mexicans from this country. Among those
19 caught up in the expulsion were American citizens of Mexican decent who were forced
20 to leave the country of their birth”).²²

21 In fact, the Ninth Circuit has repeatedly warned of the dangers of racial profiling

22
23 ²² If fact, the Act’s principal sponsor in the Arizona State legislature, Mesa
24 Republican Russell Pearce, has called for the return of Operation Wetback: “We know
25 what we need to do. In 1953 Dwight D. Eisenhower put together a task force called
26 ‘Operation Wetback.’ He removed, in less than a year, 1.3 million illegal aliens. They
27 must be deported.” Sarah Lynch, Pearce calls on “Operation Wetback” for illegals,
28 East Valley Tribune, September 29, 2006. See Exhibit F. At the evidentiary hearing
on Plaintiff’s Motion for a Preliminary Injunction, Plaintiff will introduce evidence of this
statement to support the claim that the Act violates his rights under the Equal Protection
clause based on its sponsors’ discriminatory intent. See, e.g., United States v.
Makowski, 120 F.3d 1078, 1080-1082 (9th Cir. 1997)(use of the term “wetback” used as
evidence of “racial animus”). See Also Exhibit L, Koback Pierce e-mail.

1 in the enforcement of immigration law. See, e.g., *United States v. Garcia-Camacho*,
2 53 F.3d 244, 246 n.2 (9th Cir. 1995) (finding a suspicious reoccurrence of border patrol
3 agents facts supporting a “reasonable suspicion” to justify a stop), and *United States*
4 *v. Rodriguez*, 976 F.2d 592, 594-595 (9th Cir. 1992) (courts “must be watchful for mere
5 rote citations of factors which were held, in some past situations, to have generated
6 reasonable suspicion”). See also, Carrie L. Arnold, *Racial Profiling in Immigration*
7 *Enforcement: State and Local Agreements to Enforce Federal Immigration Law*, 49
8 Ariz. L. Rev., p. 136 (“immigration officers are familiar with case law and are
9 experienced enough to create pre-fabricated profiles that will satisfy courts that their
10 stops were not based solely upon race or ethnic appearance”). Without doubt, this
11 danger is magnified by the Act’s failure to conform to federal training requirements for
12 immigration law enforcement officers.²³

13 **C. The balance of hardships tips sharply in Officer Escobar’s favor.**

14 The “balance of hardships” is overwhelmingly in favor of Officer Escobar. If
15 Officer Escobar refuses to enforce the Act, he could be disciplined or fired after more

16 ²³ Although the Act purports to preclude racial profiling, “this state may not
17 consider race, color or national origin in implementing the requirements of this
18 subsection except to the extent permitted by the United States or Arizona Constitution,”
19 A.R.S. §10-1050(B), the issue of whether or not law enforcement officials can consider
20 these characteristics when enforcing federal immigration law is unclear, compare *United*
21 *States v. Cruz-Hernandez*, 62 F.3d 1353, 1355-56 (11th Cir. 1995) (“Agent Zetts
22 enumerated several factors upon which he relied in deciding to stop Cruz Hernandez:
23 (1) Cruz-Hernandez was dressed in clothes typical of undocumented aliens working in
24 the local fields; (2) Cruz-Hernandez quickly averted his gaze and jerked his head to the
25 front, when Zetts looked at him, and he seemed nervous; (3) Cruz-Hernandez appeared
26 to be Hispanic; (4) Cruz-Hernandez was driving a van typical of those that transport
27 large numbers of undocumented aliens to and from the fields; (5) the vehicle displayed
28 an out-of-state license plate; (6) Zetts knew that many undocumented aliens lived in a
local trailer park near the location of the stop; and (7) local businesses and citizens had
complained of undocumented aliens living in the area and working in area fields. Zetts
articulated specific facts from which he made reasonable inferences, and the totality of
the circumstances supported Zetts’s suspicion. Therefore, the stop was constitutionally
based on reasonable suspicion, and the motion to suppress properly was denied”), with
United States v. Montero-Camargo, 208 F.3d 1122, 1135 (9th Cir. 2000)(“at this point
in our nation’s history, and given the continuing changes in our ethnic and racial
composition, Hispanic appearance is, in general, of such little probative value that it
may not be considered as a relevant factor where particularized or individualized
suspicion is required. Moreover, we conclude, for the reasons we have indicated, that
it is also not an appropriate factor”).

1 than fifteen years of dedicated service to the Tucson Police Department. As the Ninth
2 Circuit observed in *Nelson v. National Aeronautics and Space Administration*, 530
3 F.3d 865, 881-882 (9th Cir. 2008):

4 The balance of hardships tips sharply toward Appellants,
5 who face a stark choice-either violation of their constitutional
6 rights or loss of their jobs. . . . Moreover, the loss of one's
7 job does not carry merely monetary consequences; it
8 carries emotional damages and stress, which cannot be
9 compensated by mere back payment of wages.

10 See also, *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1124 (9th Cir. 2009) (finding
11 injunctive relief was appropriate when plaintiff was “at serious risk of losing her job
12 because of [the] new rules [the legality of which she challenged]”).

13 Similarly, school administrators and educators have a statutory obligation under
14 Arizona law to report potential abuse and neglect of its students to local law
15 enforcement authorities. However, if the Act is enforced, such reports of potential
16 abuse and neglect to law enforcement officers, its students will be threatened with
17 unlawful interrogation, detention, and arrest if they cannot quickly prove that they are
18 lawfully in the United States. See, e.g., *Steffel v. Thompson*, 415 U.S. 452, 462
19 (1974)(“a refusal on the part of the federal courts to [grant equitable relief] . . . may
20 place the hapless plaintiff between the Scylla of intentionally flouting state law and the
21 Charybdis of forgoing what he believes to be constitutionally protected activity”).

22 **D. The issuance of a preliminary injunction is in the public interest.**

23 “The public interest analysis for the issuance of a preliminary injunction requires
24 [the court] to consider whether there exists some critical public interest that would be
25 injured by the grant of preliminary relief.” *Independent Living Center of Southern*
26 *California, Inc. v. Maxwell-Jolly*, 572 F.3d 644, 659 (9th Cir. 2009). In this case, the
27 public interest strongly weighs in favor of an injunction maintaining the status quo
28 pending a trial on the merits because the people of Arizona have **no** interest in having
 15,000 law enforcement officers throughout the State enforce federal immigration law
 with little or no training.

1 In accordance with the Governor of Arizona's Executive Order, see Exhibit D,
2 AzPOST is creating a training program so that approximately 15,000 law enforcement
3 officers employed by approximately 170 municipal, county, and state law enforcement
4 agencies throughout the State of Arizona can proceed to enforce the Act on July 29,
5 2010. See Exhibit M, p. 1-3.

6 AzPOST's proposed training program does **not** comport with federal standards
7 for the training of state and local law enforcement officers expressly authorized to
8 enforce federal immigration law under 8 U.S.C. §1357(g).

9 AzPOST's "training" program will consist of:

- 10 • approximately a one to two hour "Digital Media"
11 training program that will be sent on approximately
12 June 30, 2010 by AzPOST to 170 police agencies
approximately one month before the Act becomes
effective; and
- 13 • according to at least one report, the AzPOST training
14 is not mandatory and it will remain up to the various
15 law enforcement agencies throughout the State to
determine if and how the training program will be
administered to their officers.

16 See Exhibits M and N.

17 In contrast to AzPOST's "training" program, ICE requires state and local law
18 enforcement officials participating in the enforcement of federal immigration law under
19 Section 1357(g) to meet the following requirements:

- 20 • United States citizenship;
- 21 • Successful completion of a background investigation;
- 22 • Minimum of two years experience in current position;
- 23 • No disciplinary action pending; and
- 24 • Completion of a four-week training program at the
25 ICE Academy conducted by certified instructors.

26 See Exhibit O, p. 2. ICE also **requires** state and local law enforcement officers
27 participating in Section 1357(g) programs to pass examinations equivalent to those
28 given to full-time ICE officers **before** state and local officers can use federal

1 immigration enforcement powers under Section 1357(g). See Exhibit J, pp. 27-28.

2 ICE's standard memorandum of agreement provides that:

3 Training:

4 The [1357](g) training program, the Immigration Authority
5 Delegation Program (IADP), will be taught by ICE
6 instructors and tailored to the immigration functions to be
7 performed. ICE Office of Training and Development (OTD)
8 will proctor examinations during the IADP. The AGENCY
9 nominee must pass each examination with a minimum
10 score of 70 percent to receive certification. If the AGENCY
11 nominee fails to attain a 70 percent rating on an
12 examination, the AGENCY nominee will have one
13 opportunity to remediate the testing material and re-take a
14 similar examination. During the entire duration of the IADP,
15 the AGENCY nominee will be offered a maximum of one
16 remediation examination. Failure to achieve a 70 percent on
17 any two examinations (inclusive of any remediation
18 examination), will result in the disqualification of the
19 AGENCY nominee and their discharge from the IADP.

20 Training will include, among other topics: (i) discussion of
21 the terms and limitations of this MOA; (ii) the scope of
22 immigration officer authority; (iii) relevant immigration law;
23 (iv) the ICE Use of Force Policy; (v) civil rights laws; (vi) the
24 U.S. Department of Justice "Guidance Regarding the Use
25 Of Race By Federal Law Enforcement Agencies," dated
26 June 2003; (vii) public outreach and complaint procedures;
27 (viii) liability issues; (ix) cross-cultural issues; and (x) the
28 obligation under Federal law and the Vienna Convention on
Consular Relations to make proper notification upon the
arrest or detention of a foreign national.

Approximately one year after the participating AGENCY
personnel are trained and certified, ICE may provide
additional updated training on relevant administrative, legal,
and operational issues related to the performance of
immigration officer functions. Local training on relevant
issues will be provided as needed by ICE supervisors or
designated ICE team leaders. An OSLC designated official
shall, in consultation with OTD and local ICE officials,
review on an annual basis and, if needed, refresh training
requirements.

See Exhibit I pp. 17-18.

The 170 law enforcement agencies throughout Arizona simply do not have
enough time to responsibly train 15,000 officers by July 29, 2010. This lack of training
is likely to result in irreparable injuries to Plaintiffs and individuals of Mexican ancestry

1 in Arizona, given the fact that the vast majority of immigration enforcement actions are
2 directed against individuals of Mexican Ancestry, who as a group are **not** “immigrants”
3 to this region and are in fact some of its oldest residents. See generally, A. Chavez,
4 Origins of New Mexico Families, (1992) (chronicling Hispanic settlers in present day
5 New Mexico from 1598 to the eighteenth century).²⁴

6 Moreover, as explained above, Arizona already has multiple avenues by which
7 to enforce federal immigration law under the existing federal statutory regime codified
8 at 8 U.S.C. §§1103(A)(10), 1252c(A), 1324(c), and 1357(g). The public interest will
9 **not** be in any way undermined by preliminarily enjoining the Act; to the contrary, it will
10 be advanced.

11 **Conclusion:**

12 Sections 1103(a)(10), 1252c(a), 1324(c), and 1357(g) of Title 8 regulate the
13 enforcement of federal immigration law by state and local law enforcement officials.
14 The Sections combine to **limit** the enforcement of federal immigration law by state and
15 local law enforcement officials to **four** specific areas—(1) responding to “imminent”
16 immigration threats at the border under Section 1103(a)(10); (2) arresting felons
17 unlawfully in the United States under Section 1252(c); (3) the arrest of smugglers,
18 transporters, and harborers of undocumented immigrants under Section 1324(c); and
19 (4) the “arrest and detention of criminal aliens” within the express boundaries of
20 memorandum of agreements with the Department of Homeland Security under
21 Section 1357(g).

22 The Act breeches the limits of Sections 1103(a)(10), 1252c(a), 1324(c), and
23 1357(g) and unilaterally expands the scope of enforcement of federal immigration law
24 by state and local law enforcement agencies. Federal courts considering laws similar
25 in purpose--but far more narrow in scope--have uniformly concluded that they are

26
27 ²⁴ According to Office of Immigration Statistics of the Department of Homeland
28 Security, 88% of the 792,000 foreign nationals apprehended by the Department of
Homeland Security in 2008 were natives of Mexico. See Exhibit P.

1 preempted by the Immigration and Nationality Act. See, e.g., Hines v. Davidowitz, 312
2 U.S. 52, 60-62 (1941), League of United Latin American Citizens v. Wilson, 908 F.
3 Supp. 755, 771 (D. Cal.,1995), Lozano v. City of Hazelton, 496 F. Supp. 2d 477 (D.
4 Pa. 2007), and Villas at Parkside Partners v. The City of Farmers Branch, Texas, 2010
5 WL 1141398 (D. Tex. March 24, 2010).

6 States cannot transgress federal limits on the enforcement of immigration law
7 by the states. The Act is preempted by federal law.

8 Respectfully submitted this 3rd day of June 2010.

9 s/Richard M. Martinez, Esq.
10 RICHARD M. MARTINEZ, ESQ.

11 **MONTOYA JIMENEZ**
A Professional Association

12 s/ Stephen Montoya
13 STEPHEN MONTOYA
14 Augustine B. Jimenez III
3200 North Central Avenue, Suite 2550
Phoenix, Arizona 85012-2490

15 Counsel for Plaintiffs

16 //

17
18 //

19
20 Copy electronically transmitted
21 this 3rd day of June 2010
22 via the USDC Clerk of Court
using the CM/ECF System for
23 filing and transmittal to:

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

27 John J. Bouma
28 Robert A. Henry

1 Joseph G. Adams
2 SNELL & WILLMER, LLC
3 One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004-2202

4 Joseph A. Kanfield
5 Office of Governor Janice K. Brewer
6 1700 West Washington, 9th Floor
Phoenix, Arizona 85007

7 Attorneys for Defendant Governor Janice K. Brewer

8 Mary R. O'Grady,
9 Solicitor General
10 Christopher A. Munns,
11 Assistant Attorney General
12 1275 West Washington Street
13 Phoenix, Arizona 85007-2997

14 Attorneys for the State of Arizona

15 COPY of the foregoing e-mailed
16 this 3rd day of June 2010 to:

17 Barbara LaWall
18 County Attorney-Pima County
19 200 West Washington
20 Tucson, Arizona 85701

21 Defendant

22 s/Richard M. Martinez, Esq.

23

24

25

26

27

28