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**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH
 CENTRAL DIVISION**

Utah Coalition of La Raza, *et al.*,

Plaintiffs,

v.

Gary R. Herbert, *et al.*,

Defendants.

**DECLARATION OF LORENA
 FERNANDEZ**

Case No. 2:11-cv-00401-BCW

Judge: Brooke C. Wells

I, Lorena Fernandez, hereby declare:

1. I am paralegal for the American Civil Liberties Union Foundation Immigrants' Rights Project. Except where indicated, I make this Declaration based upon my personal knowledge.

2. Attached as Exhibit A is a true and correct copy of a News Release issued by the Governor of Utah entitled *Governor Herbert Signs Immigration Reform Legislation*, dated March 15, 2011. I obtained the document by visiting the official website for the State of Utah, http://www.utah.gov/governor/news_media/article.html?article=3368, on May 2, 2011.

3. Attached as Exhibit B is a true and correct copy of the Declaration of Bo Cooper, filed in *Friendly House et al. v. Whiting*, No. 2:10-cv-01061-MEA (D. Ariz., filed June 21, 2010). I obtained a copy of the declaration by downloading it from the federal courts' PACER website on May 4, 2011.

4. Attached as Exhibit C is a true and correct copy of the Declaration of David C. Palmatier, filed in *U.S. v. Arizona*, No. 2:10-cv-01413-SRB (D. Ariz., filed July 6, 2010). I obtained a copy of the declaration by downloading from the federal courts' PACER website on May 2, 2011.

5. Attached as Exhibit D is a true and correct copy of a News Release from the government of Utah website entitled, *Governor Herbert Issues Statement on Illegal Immigration Reform*, dated August 13, 2010. I obtained the document on May 2, 2011, by visiting the official website of the State of Utah at http://www.utah.gov/governor/news_media/article.html?article=4435.

6. Attached as Exhibit E is a true and correct copy of the Statement by the Embassy of Mexico on Lawsuit filed against HB 497 in Utah, dated May 3, 2011. I obtained a copy of the statement by visiting the website of the Mexican Embassy on May

4, 2011: <http://embamex.sre.gob.mx/usa/index.php/home/13-press-releases-2011/512-statement-by-the-embassy-of-mexico-on-lawsuit-filed-against-hb-497-in-utah->.

7. Attached as Exhibit F is a true and correct copy of the U.S. Immigration and Customs Enforcement, “Interim Policy Number 10074.1: Detainers” dated August 2, 2010. I obtained a copy of the policy by visiting the official website of U.S. Immigration and Customs Enforcement on May 3, 2011:

www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf.

8. Attached as Exhibit G is a true and correct copy of the U.S. Immigration and Customs Enforcement, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” dated March 2, 2011. I obtained a copy by visiting the official website of U.S. Immigration and Customs Enforcement on May 4, 2011: www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf.

9. Attached as Exhibit H is a true and correct copy of the Declaration of Daniel H. Ragsdale, filed in *U.S. v. Arizona*, No. 2:10-cv-01413-SRB (D. Ariz., filed July 7, 2010). I obtained a copy of the declaration by downloading it from the federal courts’ PACER website on May 2, 2011.

10. Attached as Exhibit I is a true and correct copy of the Declaration of Doris Meissner, filed in *Friendly House et al. v. Whiting*, No. 2:10-cv-01061-MEA (D. Ariz., filed June 14, 2010). I obtained a copy of the declaration by downloading it from the federal courts’ PACER website on May 2, 2011.

11. Attached as Exhibit J is a true and correct copy of a statistical data table entitled “FY1994 – FY2009 Number of defendants in cases filed (Results for Title 08 – Aliens and Nationality).” I obtained this table on May 5, 2011, from the Federal Justice Statistic Resource Center website (<http://fjsrc.urban.org/tsec.cfm>), a project of the Bureau of Justice Statistics (“BJS”). I generated the table by using an application on the

website that permits a user to obtain the numbers of federal criminal prosecutions brought under any given federal federal statute in any selected years between 1994 and 2009.

12. Attached as Exhibit K is a true and correct copy of the Declaration of Michael Aytes, filed in *U.S. v. Arizona*, No. 2:10-cv-01413-SRB (D. Ariz., filed July 6, 2010). I obtained a copy of the declaration by downloading it from the federal courts' PACER website on May 2, 2011.

13. Attached as Exhibit L is a true and correct copy of the Declaration of David V. Aguilar, filed in *U.S. v. Arizona*, No. 2:10-cv-01413-SRB (D. Ariz., filed July 6, 2010). I obtained a copy of the declaration by downloading it from the federal courts' PACER website on May 2, 2011.

14. Attached as Exhibit M is a true and correct copy of the Declaration of James B. Steinberg, filed in *U.S. v. Arizona*, No. 2:10-cv-01413-SRB (D. Ariz., filed July 6, 2010). I obtained a copy of the declaration by downloading it from the federal courts' PACER website on May 2, 2011.

15. Attached as Exhibit N is a true and correct copy of information from the Washington State Department of Licensing website regarding the proof of identity and residence required to obtain a driver's license in the State of Washington. I obtained a copy of this document from the official website for the Washington State Department of Licensing at <http://www.dol.wa.gov/driverslicense/idproof.html>.

16. Attached as Exhibit O is a true and correct copy of a letter dated April 29, 2010 from U.S. Senator Jeff Bingaman of New Mexico to U.S. Attorney General Holder. That letter was included as Exhibit 14 to the Declaration of Susan T. Boyd, filed in *Friendly House et al. v. Whiting*, No. 2:10-cv-01061-MEA (D. Ariz., filed June 14, 2010). I downloaded a copy of the letter from the federal courts' PACER website on May 2, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 5th day of May, 2011 in San Francisco, California.

/s/ Lorena Fernandez*
Lorena Fernandez

(* I certify that I have the signed original of this document which is available for inspection during normal business hours by the Court or a party to this action.)

Exhibit A

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[Governor Herbert Signs Immigration Reform Legislation](#)

Mar 15 2011

Salt Lake City - Late this morning, Utah Governor Gary R. Herbert signed four immigration reform bills, which combined, constitute what he calls "the Utah solution." He said, "Utah has taken a thoughtful, rational approach and found common ground."

Flanked by business, religious, and legislative leaders in the Gold Room of the Utah Capitol, the Governor touted the day as an historic one. "Utah did the right thing. We did the hard thing," he said. "Today I challenge our federal delegation and those who work alongside them in Washington, D.C.: It is time to get off the sidelines and have a meaningful dialogue about immigration in this country."

While most acknowledge immigration is primarily a federal issue, Governor Herbert said these bills provide him some leverage at the federal level to engage the federal government in addressing Utah's challenges.

After citing his six guiding principles for immigration reform, the Governor signed the following bills:

- **HB 116: Utah Immigration Accountability and Enforcement Amendments**
House sponsor, Representative Bill Wright
Senate floor sponsor, Senator Stuart Reid
- **HB 466: Migrant Workers and Related Commission Amendments**
House sponsor, Representative Stephen Sandstrom
Senate floor sponsor, Senator Curtis Bramble
- **HB 469: Immigration Related Amendments**
House sponsor, Representative John Dougall
Senate floor sponsor, Senator Wayne Niederhauser
- **HB 497, Utah Illegal Immigration Enforcement Act**
House sponsor, Representative Stephen Sandstrom

Senate floor sponsor, Senator Margaret Dayton

The Governor referred to the summit he convened last summer to lay the groundwork for finding legislative solutions to the challenges of illegal immigration. "Stakeholders from all sides of this complex issue came together to discuss options," he said, citing the process as one which has been "open, transparent, and civil."

"There are those who will say these bills may not be perfect, but they are a step in the right direction and they are better than what we had," said the Governor. "Thanks to the vision and determination of these local leaders, what we have begun today is a framework for a national conversation about immigration and a means to engage the federal government. Once again, Utah leads the nation in finding solutions and making tough choices."

Related Stories

[Governor Herbert to Host Roundtable Discussion on Immigration Reform](#)

[Governor Herbert Issues Statement on Illegal Immigration Reform in Utah](#)

[Governor Herbert Signs HB67, Responds to Passage of Federal Healthcare Reform](#)

[Governor Huntsman signs Health System Reform Legislation](#)

[Governor Herbert to lead Immigration Reform Summit](#)

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Exhibit B

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19 DISTRICT OF ARIZONA

20 Friendly House; *et al.*,
21 Plaintiffs,
22
23 v.
24 Michael B. Whiting; *et al.*,
25 Defendants.

CASE NO. CV-10-01061-PHX-JWS
**LODGED: PROPOSED
DECLARATION OF BO COOPER
ATTACHED**

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**Admitted pursuant to Ariz. Sup. Ct. R. 38(f)

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Friendly House., et al.,
Plaintiffs,
vs.
Whiting, et al.,
Defendants.

No. CV 10-1061-PHX-MEA

**DECLARATION OF
BO COOPER**

I, Bo Cooper, declare as follows:

I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows:

I. Qualifications

1. I served as the General Counsel of the Immigration and Naturalization Service (INS) from 1999 until 2003. As General Counsel, I directed a legal program of 700 attorneys in 56 offices around the country. I was responsible for advising the Commissioner of the INS, the Attorney General, the White House, other Executive

Branch agencies, and Congress on all aspects of U.S. immigration law. Before becoming General Counsel, I served in a number of other capacities in the Office of the General Counsel, beginning in 1991. I have also taught immigration courses at the University of Michigan Law School, the Georgetown Law Center, and the Washington College of Law at American University. My biographical information and CV are attached as Exhibit A.

2. During my tenure as General Counsel, I served under Presidents Bill Clinton and George W. Bush.

3. I am now a partner at Berry Appleman & Leiden LLP in Washington, D.C., where I specialize in immigration law and policy matters.

4. I am making this declaration to provide my considered opinions concerning certain aspects of the relationship between federal immigration law and Arizona Senate Bill 1070, as amended ("SB 1070"), which will take effect on July 29, 2010 if not enjoined.

II. Opinions

5. This declaration addresses what I consider to be three key deficiencies in SB 1070. First, as explained more fully below, SB 1070 conditions certain very serious state law consequences – including arrest, custody, and criminal punishment – on a variety of phrases and terms that either have no counterpart in federal immigration law, use terms for purposes inconsistent with their use in federal law, or are not amenable to prompt and accurate determination. Second, SB 1070 layers a different and

incompatible set of state criminal provisions onto what is already an extensive federal scheme for regulating alien employment. Third, SB 1070 seeks to resuscitate a federal registration provision that has long been obsolete, has long been regarded by federal immigration officials not to be enforceable as a practical matter, and has little value as an immigration enforcement tool.

6. The following provisions in SB 1070 condition state law consequences on phrases and terms that either have no counterpart in federal immigration law, use terms for purposes inconsistent with their use in federal law, or are not amenable to prompt and accurate determination:

- (a) Section 2(B)-(D) requires that law enforcement officials determine a person's "immigration status", and this obligation is triggered "where reasonable suspicion exists that the person is *an alien who is unlawfully present in the United States . . .*" A.R.S. § 11-1051(B)-(D) (emphasis added). This same "unlawfully present" formulation triggers obligations to report the person to federal immigration authorities in certain circumstances, and to transport a person to federal custody. *Id.* § 11-1051(C)-(D).
- (b) Section 3(F) creates an exemption from criminal liability with regard to registration documents for "a person *who maintains authorization from the federal government to remain in the United States.*" A.R.S. § 13-1509(F) (emphasis added).
- (c) Section 5(C) criminally proscribes the solicitation of, application for, and performance of work as an employee or independent contractor any "person who is *unlawfully present in the United States*" and who lacks federal work authorization. A.R.S. § 13-2928(C) (emphasis added).
- (d) Section 6(A)(5) subjects to warrantless arrest a person who "has committed any public offense that *makes the person removable from the United States.*" A.R.S. § 13-3883(A)(5) (emphasis added).

7. The Immigration and Nationality Act (INA) does not include a definition or category establishing when a person is “unlawfully present in the United States” that could be used in administering SB 1070.

8. First, “unlawful presence” – a formulation that under SB 1070 can variously trigger arrest, detention, or prosecution – does not equate under federal law to the line between being in or out of lawful “immigration status.” The two concepts have different meanings. The federal statute refers to “unlawful presence” as part of a complex ground of “inadmissibility” to the United States under 8 U.S.C. § 1182(a)(9)(B). But the concept of “unlawful presence” set forth in that section is explicitly limited to that specific context – the re-admission of certain aliens who were previously present in the United States and accrued certain and varying periods of “unlawful presence” before their departure. This inadmissibility provision reflects complex judgments by the U.S. Congress about precisely which categories of aliens should be subject to § 1182(a)(9)’s bars to readmission based on “unlawful presence,” and those judgments are not coterminous with whether a person was in or out of lawful “immigration status.” For example, time during which a person “has a bona fide application for asylum pending” is not considered a period of unlawful presence under federal law, *see* 8 U.S.C. § 1182(a)(9)(B)(iii)(II). This is true even though such a person is not in a lawful “immigration status.”

9. Second, the complex statutory scheme for determining “unlawful presence” – passed into law by Congress in 1996, nearly a decade and a half ago – has never been

defined by regulation. Instead, questions about how the “unlawful presence” bar operated had to be resolved, if they could be, by reference to a series of agency memos that followed over the years, some parts of which were incorporated into the agency’s “Adjudications Field Manual,” and some of which were not. This patchwork was ultimately collected into consolidated guidance to federal adjudicators in 2009, in a document totaling fifty-one pages in length. Determinations in federal law about whether a person is “unlawfully present in the United States” under 8 U.S.C. § 1182(a)(9)(B) are therefore difficult to make.

10. Nor does the Immigration and Nationality Act include any definition or category establishing what it means to “maintain[] authorization from the federal government to remain in the United States.” There are innumerable scenarios in which the meaning of the phrase under federal law would not be clear. For example, an individual who has a valid non-immigrant status and is within the period of time for which such status was approved would appear to “maintain authorization ... to remain in the United States.” But if he has not fulfilled all of the conditions of his nonimmigrant admission – for example, he has not maintained an adequate course load as a non-immigrant student, or worked outside the terms of his nonimmigrant status – then the answer to a critical question under Arizona law, whether there is an exemption from criminal liability, is thrown into flux. Does he immediately lose that authorization, or does it only disappear once there is a formal finding of a status violation, or is the

facial validity of the documentation all that matters under SB 1070? Each position may be arguable, but federal law does not tell us which one is correct.

11. Whether a particular offense “makes [a] person removable from the United States,” and thus subjects the person to warrantless arrest under SB 1070, is a legal determination that can often be simply too complex for a state or local law enforcement officer acting without a warrant to make promptly and accurately. Criminal grounds for removal are outlined in multiple parts of the immigration statute, *see* 8 U.S.C. §§ 1182(a)(2), 1227(a)(2), that interact in complex ways and contain terms of art, such as “crime involving moral turpitude” and “aggravated felony,” that either are complicated to apply as written or have been the subject of decades of litigation in the federal courts and administrative tribunals, and remain unsettled in many important respects.

12. The definition of a “crime involving moral turpitude,” for example, exists only in an extensive body of caselaw. For a person who is subject to the grounds of “inadmissibility,” either a “conviction” or an “admission” is sufficient. (Note that SB 1070 uses neither term, and instead uses yet another one, “committed.”) The law enforcement officer would also have to analyze whether an exception for youthful offenses or minor crimes was available. This would require access to information about the maximum possible penalty for the offense. If the person at issue was subject to the “deportability” grounds for removal rather than the “inadmissibility” grounds, then only a “conviction” for the crime involving moral turpitude would suffice under federal law to make the person removable. Even the meaning of “conviction” in the context of these

statutes is non-intuitive and has been extensively litigated. Moreover, the law enforcement officer in this situation would have to figure out whether the crime was committed within a certain period after “admission” depending on the person’s status, and the term “admission” in this context has been differently interpreted in different tribunals and jurisdictions for many years.’ These are only examples of the types of questions that often require extensive litigation in individual cases under federal law before they can be answered, yet under SB 1070 are wrapped into the immediate decision of a non-federal officer whether to make a warrantless arrest.

13. The phrase “immigration status” is generally understood in federal immigration practice to refer to a specific set of federal immigration classifications – those admitted as “non-immigrants,” or temporarily for certain purposes set out by statute; those admitted as “immigrants,” or permanent residents; and other limited classifications established by federal law, like temporary protected status.

No Federal Classification Encompasses All Persons Who May Remain in the United States

14. The determination of whether a particular person may remain in the United States can be a complicated legal question that is subject to intricate federal statutory and regulatory provisions. In the federal immigration system, people may be entitled to or permitted to stay in this country even though they are not in a recognized immigration status or classification. Moreover, federal immigration officials exercise broad discretion in administering the immigration laws.

15. Thus, individuals who are not in a recognized immigration status or classification are routinely permitted to remain and work in the United States, and there is no federal immigration classification or set of classifications that encompasses all persons who the federal government, in properly administering the immigration laws, allows to remain in the United States. Although this fact is frequently surprising to those unfamiliar with immigration law, it is fundamental to the proper functioning of the federal immigration system. Indeed, the federal government accommodates important constitutional and treaty obligations in part by allowing the continued presence of some persons who have no formal status under federal immigration law.

16. For example, individuals released from indefinite detention in accordance with *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Clark v. Martinez*, 543 U.S. 371 (2005), have no formal status under federal immigration law, but are entitled as a matter of constitutional right to remain in the United States. Similarly, individuals may obtain deferral of removal in accordance with the Convention Against Torture, but such deferral does not confer a formal immigration status under federal immigration law.

17. Other individuals who are allowed to remain in the United States although they lack formal immigration status include many (but not all) individuals with pending applications for asylum or adjustment of status or other forms of agency action. For example, certain victims of domestic violence who have filed petitions under the Violence Against Women Act are allowed to remain in the United States although they lack status. Another example involves persons who come to the United States on a non-

immigrant visa, are admitted to the United States for a limited period of time, and may apply for an extension of his stay. During the pendency of the request for an extension of stay for certain statuses, the individual is permitted to remain in the United States for an additional period of time even though the request has not been adjudicated, even though the period of the person's initial admission (and the date on the person's I-94 arrival/departure form) has expired.

18. In addition, the Director of each U.S. Immigration and Customs Enforcement (ICE) field office may, in his or her discretion: (i) decline to commence removal proceedings against a person despite their lack of status; or (ii) allow an individual to stay in the country after a final order of deportation has been issued. Such a person may qualify for a work permit if he or she can demonstrate economic necessity. 8 C.F.R. § 274a.12(c)(14).

19. Likewise, DHS can parole noncitizens into the United States for the purposes of emergency or humanitarian reasons or on the ground that it is in the public interest. 8 C.F.R. § 212.5. Such parolees lack a formal visa and do not have formal classification.

20. Therefore, SB 1070 cannot (and does not) simply adopt an existing federal classification to identify individuals who lack federal permission to remain in the United States.

21. It also bears noting that persons who lack formal status but are nonetheless entitled to remain in the United States may or may not have documentary evidence of that fact. Moreover, any documents they do have may not appear to establish a right to

remain in the eyes of an untrained observer, or even worse, may appear to indicate that they are in fact removable. For example, an individual lawfully released from indefinite detention may have only a letter of release from the immigration agency or a brief and technical order from a court, and the person with a pending request for an extension of stay may have only an expired I-94, which must be read together with the regulations to indicate that the extension request will automatically provide the person with an additional period of authorized stay.

Alien Employment and Federal Law

22. The federal government has legislated extensively and comprehensively in the area of alien employment. *See* 8 U.S.C. §§ 1324a-1324b. This legislation, and the complex regulations that have been promulgated to implement it, reflects Congress's intention that *employers* bear the major burden of ensuring that only those who are authorized to be employed in the United States may work here. Moreover, federal law does not require employers to verify the employment eligibility of every worker. Certain types of worker, such as independent contractors and casual domestic workers, are not subject to verification requirements. 8 C.F.R. § 274a.1(f), (h), (j).

23. Even more important, SB 1070 would superimpose a dramatic new state law scheme for managing employment authorization over the comprehensive scheme established under federal law. In particular, Congress has already made determinations about the penalties to workers for working without authorization. Under federal law, for example, a person who works without authorization faces restrictions on the ability to

“adjust status” to permanent residence. See 8 U.S.C. § 1255(c)(2), (8). Such a person cannot avail himself or herself of certain exceptions to the “unlawful presence” ground of inadmissibility that governs when the person might re-enter the United States after departure, 8 U.S.C. § 1182(a)(9)(B)(iii)(II), (B)(iv)(III). And unauthorized employment can, of course, subject a person to deportation. No provision criminalizes the *performance* of unauthorized work, nor does federal law impose civil fines on unauthorized workers for the performance of, solicitation of, or application for work. This is particularly significant since Congress did, in many other parts of the immigration statute – including in the parts regulating the employment of aliens – make decisions to impose criminal and civil penalties for selected types of violations.

24. SB 1070 takes a radically different and incompatible approach to alien employment. It establishes a system that (a) criminally punishes workers, and (b) extends to all workers, including those not subject to verification under federal law.

SB 1070’s Registration Provision

25. SB 1070 conflicts with federal immigration enforcement priorities through its attempt to resuscitate a federal registration provision that has long been obsolete and widely regarded by the federal authorities, at the very highest levels, to be practically impossible to enforce and of extremely limited value as an immigration enforcement tool.

26. Specifically, Section 3(A) of SB 1070 creates a state criminal violation for “willful failure to complete or carry an alien registration document” where an individual

is in violation of 8 U.S.C. §§ 1304(e) or 1306(a). A.R.S. § 13-1509(A). Exempt from this provision is any person “who maintains authorization from the federal government to remain in the United States.” *Id.* § 13-1509(F). Section 3 also provides that immigration status can be determined for purposes of enforcing the section by checking with law enforcement officers authorized by the federal government to verify status, including ICE or Customs and Border Protection (“CBP”) pursuant to 8 U.S.C. § 1373(c). *Id.* § 13-1509(B)(1)-(2).

27. Critically, Arizona is creating a ground of state criminal liability based purely on a violation of two provisions of federal law—8 U.S.C. §§ 1304(e) and 1306(a)—that have become practically and effectively obsolete and unenforceable. Years before I joined the INS, the federal registration system had fallen out of use and the agency had ceased trying to routinely enforce these provisions because other enforcement efforts had greater priority. For instance, identifying and removing aliens who had been convicted of serious criminal offenses and were a danger to the public had become a major priority. For that matter, identifying deportable aliens had become a higher priority than determining whether an alien had willfully failed to register, or than proceeding with a misdemeanor criminal charge against an alien, who might be in legal immigration status, for not carrying an original registration document on his person. Pursuing such charges served little purpose from an immigration enforcement perspective and would also burden U.S. Attorney offices and the federal courts with low-value prosecutions.

28. The effective obsolescence of §§ 1304(e) and 1306(a) is reflected by the fact that the regulations implementing the statutory registration requirements (*see* 8 C.F.R. § 264.1) are woefully out-of-date. Although the Alien Registration Act of 1940 requiring registration and specific documents still exists, the document list in the applicable regulations has not been updated for years (some provisions dating back to 1960) and does not reflect current immigration law. The regulations include a list of forms that aliens can complete and submit to the government to accomplish registration (*see* 8 C.F.R. § 264.1(a)), as well as a list of forms and documents that an alien can present to show that the alien has complied with his or her registration obligations (*see* 8 C.F.R. § 264.1(b)). There are critical gaps in both lists that may make it impossible for significant groups of aliens either to register at all, because there is no registration form on the list, or to demonstrate that they have registered, because a number of documents on the list are no longer issued by federal immigration authorities. For example, there is no registration form in the regulations for aliens who have applied for Temporary Protected Status or who have applied affirmatively for asylum. Documents in the regulations that are no longer issued include the Order to Show Cause, which was the document used to initiate deportation proceedings prior to April 1997, as well as the I-186 Nonresident Alien Mexican Border Crossing Card, which has been discontinued.

29. Moreover, the list omits many documents that individuals who have permission to be present in the United States or are otherwise known to the immigration authorities may have. For example, it does not include the Notice to Appear, Form I-

862, given to all noncitizens placed in removal proceedings on or after April 1, 1997. Rather, it mentions the antiquated Order to Show Cause, Form I-221, which, as noted above, has not been used to initiate new proceedings since March 1997. The list does not include I-797 Notices of Action that may be the only document that some categories of immigrants, including self-petitioners under the Violence Against Women Act (“VAWA”), may receive indicating that their case has been approved. It does not include orders by federal judges or other courts granting humanitarian statuses such as asylum, withholding of deportation or removal, or granting relief under the Convention Against Torture (“CAT”). It does not include documents that an immigrant victim of trafficking may have obtained from the Attorney General granting “continued presence” in the United States. It does not include an I-918 petition for U visa status filed by survivors of serious crimes who are cooperating with law enforcement authorities in prosecuting the perpetrators. Nor does it include Orders of Supervision, which are given to immigrants with final orders who cannot be removed when they are released from custody.

30. Moreover, Arizona’s effort to enforce Section 3 will suffer from certain practical impediments that not only divert federal resources away from current enforcement priorities, but also render the law unworkable. Verification of whether an individual is in lawful status with federal authorities is a wholly separate determination from whether the individual has completed and is carrying registration documents. For instance, if a state officer calls the Law Enforcement Support Center (“LESC”), LESC –

according to its natural role and the terms of SB 1070 – provides information about a person’s immigration status. To the best of my knowledge, the LESC cannot and will not answer the questions necessary to establish a violation under Section 3—namely, whether that individual was required to register with the government, whether that individual was issued a certificate of alien registration or alien registration receipt card, whether the individual has appropriate registration documents, and whether the individual willfully failed to register. Further, the LESC officer may not be aware of what the applicable registration documents are, given that the registration provisions have become so obsolete. There may also be a question whether the LESC or DHS can provide registration (as opposed to immigration status) information to state and local law enforcement in many cases, as the registration provisions in the Immigration and Nationality Act include confidentiality requirements that prohibit the release of registration records except in limited circumstances (8 U.S.C. § 1305(b)). The substantial disconnect in Section 3 between the information needed to establish a violation and the information that state law enforcement officers will seek and could obtain from federal authorities demonstrates that Section 3 is unworkable, conflicts with federal decisions on the registration scheme, and will drain federal resources.

31. I reserve the right to amend or supplement this report as appropriate upon receipt of additional information or documents.

I declare under penalty of perjury under the laws of the United States and the State of Arizona that the foregoing is my true and correct declaration.

Executed this 4th day of June 2010, at Washington, D.C.



A handwritten signature in black ink, appearing to read 'Bo Cooper', is written over a horizontal line.

Bo Cooper

Exhibit A (attached): Biographical Information & Curriculum Vitae.

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing, and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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16 I hereby certify that on June 14, 2010, I served the attached document by U.S. Mail
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/s/Robyn E. Bird
Robyn E. Bird

**INDEX OF THE ATTACHED EXHIBIT
TO THE DECLARATION OF BO COOPER**

Exhibit No.	Exhibit Description
A	Bo Cooper, Biographical Information and <i>Curriculum Vitae</i>

EXHIBIT A

Biographical Information for Bo Cooper*

Bo Cooper serves as a Partner in Berry Appleman & Leiden's Washington, D.C. office. He provides strategic business immigration advice to companies, hospitals, research institutions, schools and universities. Mr. Cooper specializes in representing clients before the United States Congress and the executive branch agencies.

Mr. Cooper served as General Counsel of the Immigration and Naturalization Service (INS) from 1999 until February 2003, when he became responsible for the transition of immigration services to the Department of Homeland Security (DHS). He was responsible, as the Federal Government's top immigration law specialist, for advising the Commissioner of the INS, the Attorney General of the United States, the White House, other Executive Branch agencies, and the Congress on all aspects of U.S. immigration law. Mr. Cooper was principal legal advisor to the INS during two Administrations, at a time when immigration ranked among the most sensitive issues on the national public policy agenda.

As General Counsel, Mr. Cooper directed a legal program of 700 attorneys in 56 offices around the nation who provided legal and policy advice to the agency and litigated on behalf of the U.S. Government. He was twice the recipient of the Commissioner's Exceptional Service Award, the agency's most prestigious award. Mr. Cooper has testified frequently before Congress and has made many television, radio, and print media appearances, including the *Newshour with Jim Lehrer*, *Sixty Minutes*, *Nightline*, *the Today Show*, *Good Morning America*, CNN, BBC Radio, CBC Radio, and National Public Radio's *All Things Considered*. On behalf of the U.S., Mr. Cooper was involved in negotiating immigration-related agreements with other governments and was frequently a U.S. delegate to international organizations.

Mr. Cooper taught immigration law at the University of Michigan Law School, where he was a Public Interest/Public Service Faculty Fellow. He also taught at the Georgetown Law Center and at the Washington College of Law at American University, where he was a Fellow in Law and Government. Mr. Cooper is the Washington representative of the Global Personnel Alliance and serves on the Executive Committee of Compete America. He served on the Board of Directors of the Tahiri Justice Center, and on the Refugee Law Commission of the International Institute for Humanitarian Law. Since leaving the government, Mr. Cooper has had an extensive pro bono practice, addressing asylum, Convention Against Torture, and a wide range of other immigration issues for clients in need of donated legal services.

Education & Admissions

Juris Doctorate, Tulane University Law School
Bachelor of Arts, English, Tulane University
Admitted to: State Bar of Louisiana

Memberships & Professional Accomplishments

Global Personnel Alliance
Executive Committee of Compete America
Clerked for the Chief Justice of the High Court of American Samoa

*Information available at http://www.usabal.com/team_bio.asp?11=Professionals&p=109

BO COOPER

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Experience

Partner, Berry, Appleman & Leiden LLP, 2009 to present

Provides strategic business immigration advice to companies, hospitals, research institutions, schools and universities. Specializes in representing clients before the United States Congress and the executive branch agencies.

Of Counsel and Partner-elect, Paul, Hastings, Janofsky & Walker, 2003 to 2009

Provided strategic business immigration advice to companies, hospitals, research institutions, schools and universities. Specialized in representing clients before the United States Congress and the executive branch agencies.

General Counsel, United States Immigration and Naturalization Service, 1999 to 2003

Responsible, as the Federal Government's top immigration law specialist, for advising the Commissioner of the INS, the Attorney General of the United States, the White House, other Executive Branch agencies, and the Congress on all aspects of U.S. immigration law. Principal legal advisor to the INS, a 34,500-employee agency with an annual budget of over six billion dollars. Director of a legal program of 650 attorneys in 56 offices around the nation who litigate on behalf of the U.S. Government in immigration removal proceedings. Two-time recipient of Commissioner's Exceptional Service Award, the agency's most prestigious annual award.

Agency representation has included congressional testimony; negotiations with other national governments; participation as a U.S. delegate to United Nations and other international meetings; presentations in academic and other non-governmental settings; and television, radio, and print media appearances, including *the Newshour with Jim Lehrer*, *Sixty Minutes*, *Nightline*, *the Today Show*, *Good Morning America*, CNN, BBC Radio, CBC Radio, and National Public Radio's *All Things Considered*.

Previous positions: Deputy General Counsel, 1997-1999; Associate General Counsel and Chief of the Refugee and Asylum Law Division, 1993 to 1997; Assistant General Counsel, 1991 to 1993.

Trial Attorney, United States Department of Justice, Civil Division, Federal Programs Branch, 1988 to 1991

Defense of the United States and its agencies against constitutional and Administrative Procedures Act challenges to federal programs and policies across the Executive Branch. Litigation in federal courts nationwide, including lead counsel at evidentiary hearings, depositions, and trial and appellate level arguments.

Adjunct Faculty, Fellow in Law and Government, Washington College of Law, American University, 2004 to 2005

Adjunct Faculty, Public Interest Fellow, University of Michigan Law School, 2003 to 2004

Adjunct Faculty, Georgetown University Law Center, 2002

Adjunct Faculty, Washington College of Law, American University, 1995 to 1999

Law Clerk to the Chief Justice, High Court of American Samoa, 1987 to 1988

Education

Tulane University School of Law

Juris Doctor, *cum laude*, May 1987. Senior Notes and Comments Editor, Tulane Law Review; Order of the Barristers; American Jurisprudence Book Awards in Advanced Constitutional Law and Complex Litigation.

University of Paris, Sorbonne

Superior Level Certificate, French Language and Civilization, May 1985.

Tulane University

Bachelor of Arts, *cum laude* with departmental honors in English Literature, May 1983.

Publications

“A New Approach to Law Enforcement and Protection Under the Victims of Trafficking and Violence Protection Act”, 51 Emory L. J. 1041, 1047 (2002).

“Procedures for Expedited Removal and Asylum Screening under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996”, 29 Conn. L. Rev. 1501 (1997).

Note, “Fair Use of Copyrighted Work Under Harper & Row Publishers, Inc. v. Nation Enterprises”, 61 Tul. L. Rev. 415 (1986).

Testimony before the United States Congress and other Government or Intergovernmental Bodies

U.S. House of Representatives Committee on the Judiciary, Subcommittee on Immigration and Claims, testimony on (1) United States implementation of protection articles of the United Nations Convention Against Torture and on (2) legislative proposal to enhance legal authorities to remove serious violators of human rights and of humanitarian law from the United States (September 28, 2000).

U.S. House of Representatives Committee on the Judiciary, testimony on legislative proposal to alter authority to present classified information in immigration proceedings (May 23, 2000).

U.S. House of Representatives Committee on the Judiciary, Subcommittee on Immigration and Claims, testimony on legislative proposal to alter authority to present classified information in immigration proceedings (February 10, 2000).

U.S. Senate Committee on Energy and Natural Resources, testimony on legislative proposal to address immigration and worker abuse problems in the Commonwealth of the Northern Mariana Islands (September 14, 1999).

U.S. House of Representatives Committee on the Judiciary, Subcommittee on Immigration and Claims, testimony on legislative proposals to revise the counterterrorism-related grounds of removal, sentencing for alien smuggling and harboring, and access to U.S. asylum system from Guam (May 19, 1999).

U.S. Commission on Civil Rights, "Briefing on Boundaries of Justice: Immigration Policies Post September 11th" (October 12, 2001).

Organization of American States, Inter-American Commission on Human Rights, testimony on asylum seekers, expedited removal, and detention (October 8, 1997).

Selected Speaking Engagements at Academic and Public Policy Symposia

Center for Migration Studies Annual Conference, Keynote Speaker (March 2002).

Emory University School of Law, 2002 Randolph W. Thrower Symposium, *Immigration Law: Assessing New Immigration Enforcement Strategies and the Criminalization of Migration*, "New Protections for Victims of Trafficking under the Victims of Trafficking and Violence Protection Act of 2000" (February 2002).

Stetson University College of Law, 2000 Nichols Foundation *Prominent Speaker Series* Lecture (April 2000).

St. John's University, Latin American and Caribbean Studies Symposium, *Immigrants from Latin America and the Caribbean: Coping in New York City*, Keynote Speaker (October 2000).

German Marshall Fund of the United States of America Symposium, Potsdam, Germany, *Refugees, Human Rights, Nationality: Challenges of the 21st Century*, "Current Problems Related to Termination of Residence" (October 2000).

Center for International and European Law on Immigration and Asylum, Ninth Migration Policy Forum, Berlin, Germany, *Residence Rights of Students*, "A Perspective from United States Immigration Law" (June 2000).

Harvard Law School Criminal Justice Institute, *U.S. Immigration Policy at the Millennium*, "Human Rights Implications of U.S. Immigration Policy" (December 1999).

Center for International and European Law on Immigration and Asylum, Second Migration Policy Forum, Bonn, Germany, *Control of Illegal Immigration and Rules Governing Jurisdiction for Asylum Determination after the Schengen and Dublin Conventions*, "Safe Third Country Considerations in the United States" (March 1998).

United Nations High Commissioner for Refugees, Global Consultations on International Protection, Expert Roundtable (Consultations on interpretive developments in international refugee law: Membership of a Particular Social Group, Gender-Related Persecution, and Internal Relocation), San Remo, Italy (September 2001).

Selected International Negotiations and Other Meetings

Co-leader of United States Delegation negotiating with the Government of Canada a "Safe Third Country" agreement relating to allocation of asylum caseloads (Washington, D.C., 2002).

Member of United States Delegation negotiating agreements with the Governments of Laos, Cambodia, and Vietnam to permit immigration removals from the United States (Vientiane, Phnom Penh, and Hanoi, 2001-2002).

Member of United States Delegation to United Nations High Commissioner for Refugees Global Consultations Ministerial Meeting on the 1951 U.N. Convention relating to the Status of Refugees (Geneva, 2001).

Member of United States Delegation to the Four-Country Conference, a meeting among the Governments of Australia, Canada, the United Kingdom, and the United States to consider multilateral approaches to common migration issues (San Francisco, 1999, London, 2001, Sydney, 2002).

Member of United States Delegation to the Full Round of the Inter-Governmental Consultations on Asylum, Refugee, and Migration Policies in Europe, North America, and Australia (Washington D.C., 1996, Katoomba, 2001, Oxford, 2002).

Member of United States Delegation to the Inaugural Joint Session of the Inter-Governmental Consultations and the Asia-Pacific Consultations (Bangkok, 2001).

Member of United States Delegation to the European Union's Center for Information, Reflection, and Exchange on Asylum, including as lead representative at first session in which the United States was invited to participate (Brussels, 1996-1999).

Member of United States Delegation negotiating with the Government of Canada a "Safe Third Country" agreement relating to allocation of asylum caseloads (Washington D.C. and Ottawa, 1995).

Personal

Born 28 January 1962.

United States Citizen.

Fluent in English, sound working knowledge of French (written and oral).

Exhibit C

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

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF ARIZONA, et al.,

Defendants.

Civil Action No.

DECLARATION OF DAVID C. PALMATIER

Pursuant to 28 U.S.C. § 1746, I, David C. Palmatier, declare and state as follows:

1. I am the Unit Chief for the Law Enforcement Support Center (LESC) within U.S. Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). I have served in this position since March 16, 2008. Prior to my current position, I served as the Assistant Special Agent in Charge in Boston, Massachusetts, from December 2005 to March 2008. Prior to that, I served as the Director of the Office of Investigations Training Division from November 2000 to December 2005. I make this declaration based on personal knowledge of the subject matter acquired by me in the course of the performance of my official duties. I am aware that the State of Arizona has enacted new immigration legislation, known as Senate Bill 1070 (SB 1070), and I have read and reviewed SB 1070 as amended.

2. The purpose of my declaration is to describe the adverse effects of Arizona SB 1070 on the LESC's ability to respond, supervise, and monitor requests from law enforcement

partners in an effort to provide accurate and timely alien status determinations for subjects arrested or under investigation.

3. As the LESC Unit Chief, I have direct managerial and supervisory authority over all sections that comprise the LESC, including three Operations Sections, the National Crime Information Center (NCIC) Section, the Communications Center Section, the Tip-line Section, the Training Section, and the Administration Section. The Operations Sections respond to requests for alien status determinations sent to the LESC via computer. The NCIC Section enters and validates all ICE lookout records in the NCIC computer system for immigration absconders (those who have been ordered removed but have absconded), previously deported aggravated felons, and fugitives sought for criminal violations of customs and immigration laws investigated by ICE. The Communications Center Section responds to phone requests for information and assistance by our state, local, and federal law enforcement partners. The Tip-line Section handles phone tips from the public relating to the full range of crimes enforced by DHS. The Training Section provides basic and advanced training to LESC employees. The Administration Section provides personnel, budget, and logistical support for the LESC.

4. The LESC also responds to FBI requests for alien status determinations on non-U.S. citizens seeking to purchase firearms; responds to U.S. Secret Service alien status determinations for aliens seeking access to a protected area (*e.g.*, the White House Complex); and responds to alien status determinations related to employment issues at national security related locations that could be vulnerable to sabotage, attack, or exploitation.

5. Congress established the LESC to provide alien status determination support to federal, state, and local law enforcement on a 24-hours-a-day, seven-days-a-week basis. The enabling legislation is codified in 8 U.S.C. §§ 1226(d)(1)(A) & 1252 Note.

6. The core mission of the LESC is to receive and respond to Immigration Alien Queries (IAQ) from law enforcement partners in an effort to provide accurate and timely alien status determinations for subjects arrested or under investigation. Biographic queries are routed to the LESC via the International Justice and Public Safety Information Sharing Network (NLETS). Biometric queries are routed to the LESC via state information bureaus and the FBI Criminal Justice Information Services (CJIS). Both biographic and biometric queries are sent and received via computer systems. Queries contain basic information such as name, date of birth, place of birth, sex, and other identifying information. LESC Law Enforcement Specialists query as many as ten DHS, FBI, and Interpol databases in order to produce a written alien status determination for the requesting agency.

7. Like other components within DHS, the LESC prioritizes its efforts in order to focus on criminal aliens and those most likely to pose a potential threat to their communities. For example, criminal violations of the Immigration and Nationality Act (INA) are given priority over administrative violations. The goal is to invest our finite resources on the criminals who pose the largest threat to public safety or national security risks. In addition, LESC supervisors monitor incoming requests for information and prioritize those that are time sensitive, such as roadside traffic stops and subjects that are about to be released from police custody. The LESC also conducts "enhanced responses" for IAQs that are associated with crimes such as murder, sexual assault, terrorism, gang-related crimes, and other serious crimes. As a general practice, IAQs are processed in the order they are received at the LESC. Older queries are generally completed before work is completed on new queries. However, there are exceptions made in an effort to respond to time-sensitive queries and those queries that involve serious offenders; one example, listed above, would be traffic stops, where a highway patrolman has a limited amount

of time to detain a suspected illegal alien. Likewise, illegal aliens arrested for serious crimes such as homicide are made a priority in the queue if the subject will be released on bail or bond. This prioritization ensures that aliens arrested for particularly serious or violent crimes are not released into the general public if LESC's verification allows for the further detention of the alien. But the two priorities (responding on illegal aliens arrested for particularly serious crimes and responding to time sensitive inquiries, such as traffic stops) compete with each other, meaning that a surge in time-sensitive inquiries from the enforcement of the Arizona law will adversely affect responses regarding aliens arrested for particularly serious crimes. Additionally, the LESC has several queues that allow for the prioritization of queries based upon originating agency. Examples of unique queues include interoperability queries based upon fingerprints, biographical queries sent via NLETS, and Brady Act queries for firearms purchasers. The LESC does not currently have the ability to separate queries from Arizona as they arrive. Furthermore, creating an Arizona queue would not prioritize queries based upon the risk posed by the violator or the seriousness of the charge. Separating data in that manner is not currently possible using the data fields provided in the current IAQ formatted messages

8. Currently, the average query waits for approximately 70 minutes before a Law Enforcement Specialist is available to work on the request. On average, it takes an additional 11 minutes per query to research DHS data systems and to provide the written alien status determination.

9. Over the years, the LESC has experienced continuous and dramatic increases in alien status determination queries. IAQs from fiscal year (FY) 2007 to date were:

FY 2007	727,903
FY 2008	807,106
FY 2009	1,064,261
FY 2010	726,275 (through May 31, 2010)

10. From FY 08 to FY 09, the LESC had a 20% increase in the number of IAQs. Although FY 10 is not over yet, LESC personnel project there will be at least a 10% increase in IAQs from FY 09 to FY 10.

11. The internal LESC computer system (ACRIME) is dynamically updated as records are added or deleted. ACRIME alien status determination records are retained for 75 years. Law Enforcement Specialists also access approximately six to ten other federal databases, depending on the circumstances regarding the subject, in order to determine alien status. The ACRIME computer system randomly selects approximately 5% of all alien status determination responses for quality assurance. Quality assurance reviews determine if the search protocols were followed and if the correct status determination was made. LESC employees do not typically review alien files in order to provide alien status determinations. If an alien file review is required, that review will have to be completed by the ICE field office, and depending on the physical location of the alien file, the review may take two days or more.

12. Many U.S. citizens, if queried through the LESC, result in a “no match” response to the requesting agency, meaning that the Law Enforcement Specialist was unable to locate any records or prior encounters in the DHS databases queried. However, to arrive at the no match response for U.S. citizens requires the same level of investment in staffing resources to determine the subject is a no match. And, notably, a “no match” response would not guarantee that the subject of the search was an American citizen—it would simply reflect an absence of records in the LESC system.

13. The LESC has 153 Law Enforcement Specialists (LES) assigned to respond to IAQs from all partner agencies. If queries come to the LESC in a consistent and steady manner,

a fully trained and experienced LES can process approximately 10,000 IAQs per year. Based on current LES staffing, the LESC theoretically has the capacity to handle approximately 1.5 million IAQs per year. However, the number of queries that come to the LESC at any given time is not consistent. This makes it difficult to predict and staff in a manner that accounts for temporary spikes in activity. On a weekly basis, the LESC experiences activity spikes that require the use of overtime in order to handle the incoming IAQs from LESC partners. In addition, personnel from other LESC sections are routinely diverted from other critical missions to deal with IAQ activity spikes.

14. The LESC also performs a significant role in supporting the ICE Secure Communities Program by producing alien status determinations based on biometric (fingerprint) booking information. Secure Communities was created to improve, modernize, and prioritize ICE's efforts to identify and remove criminal aliens from the United States. Secure Communities arranges for willing jurisdictions to access biometric technology so they can simultaneously check a person's criminal and immigration history when the person is charged criminally. Once illegal aliens are identified, ICE must then determine how to proceed and whether to lodge a detainer or otherwise pursue the alien's detention and removal from the United States upon the alien's release from criminal custody. ICE first deployed the technology in October of 2008, and as of June 8, 2010, has deployed it to 281 jurisdictions. ICE plans to deploy the technology nationwide to more than 3,000 jurisdictions by the end of FY 2013. The LESC has already experienced an increase in processing times since the establishment of the Secure Communities Program due to the receipt of extensive criminal records and previous DHS encounters with more serious criminal aliens. As our support for Secure Communities continues to grow, we anticipate an increased workload due to the need for more complex queries that will

further increase LESC response times. Thus, the expansion of the Secure Communities Program alone will likely utilize much of the capacity of the LESC.

15. In my professional judgment, Arizona SB 1070 will inevitably result in a significant increase in the number of IAQs. The LESC processed just over 1,000,000 IAQs in FY 09. According to the FBI Criminal Justice Information Services (CJIS), in FY 09 criminal justice agencies in Arizona submitted 563,474 arrest records to CJIS, but just over 80,000 IAQs originated from all agencies within the state of Arizona in FY 09. Thus, Arizona SB 1070's requirement that "[a]ny person who is arrested shall have the person's immigration status determined before the person is released" could, by itself, dramatically increase the LESC's workload. Moreover, because Arizona's law calls for status verifications for lawful stops—whether or not such stops result in an arrest—the number of IAQ's will increase dramatically. If even a small percentage of these stops, detentions, and arrests lead to new IAQs, the LESC will be forced to process thousands of additional IAQs annually. Moreover, Arizona's new law will result in an increase in the number of U.S. citizens and lawful permanent residents being queried through the LESC, reducing our ability to provide timely responses to law enforcement on serious criminal aliens.

16. This increase in queries from Arizona will delay response times for all IAQs and risks exceeding the capacity of the LESC to respond to higher priority requests for criminal alien status determinations from law enforcement partners nationwide. Furthermore, the potential increase in queries by Arizona along with the possibility of other states adopting similar legislation could overwhelm the system.

17. If the LESC's capacity to respond to requests for assistance is exceeded, the initial impact would be delays in responding to time-sensitive inquiries from state, local, and federal

law enforcement, meaning that very serious violators may well escape scrutiny and be released before the LESC can respond to police and inform them of the serious nature of the illegal alien they have encountered. If delays continue to increase at the LESC, ICE might have to divert personnel from other critical missions to serve the needs of our law enforcement partners. The LESC directly supports both the public safety and national security missions of DHS. These are critical missions which cannot be allowed to fail.

18. I expect no increase in LESC resources in terms of personnel. As such, I anticipate an increase in inquiries will slow response times for inquiries without respect to the priority level of the subject in question. Based on my professional experience, slower response times result in an increased likelihood that the subject of an inquiry, including subjects who are high-priority, will be released, potentially resulting in the commission of additional violent crimes, greater difficulty in locating the alien to initiate removal proceedings, and further impediments to ICE's ability to efficiently obtain removal orders and remove criminal aliens from the United States.

19. It is important to note that LESC's responses to IAQs do not always provide a definitive answer as to an alien's immigration status. Indeed, almost 10,000 of the 80,000 IAQs the LESC processed from Arizona in FY 2009 resulted in an indeterminate answer (for comparison, just over 15,000 of the IAQs from Arizona in FY 2009 resulted in a response of lawful presence). Moreover, a U.S. citizen, when queried through the LESC, would likely be returned with a "no match" response. Many—if not most—U.S. citizens have no records contained in the databases available to the LESC. Experience has demonstrated that some police officers are confused in these types of situations and sometimes want to detain the suspected

illegal alien (actually a U.S. citizen) until they can call the LESC or their local ICE field office to confirm the subject's immigration status.

20. This declaration has focused on the impact of SB 1070 on the LESC system. If other populous states adopted similar laws, the LESC would be unable to respond to inquiries in a time frame which would be useful to law enforcement needs.

21. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed the 28th day of June, 2010 in Williston, Vermont.


David C. Palmatier
Unit Chief
Law Enforcement Support Center

Exhibit D

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[Governor Herbert Issues Statement on Illegal Immigration Reform in Utah](#)

Aug 13 2010

SALT LAKE CITY - Governor Gary R. Herbert has issued the following statement regarding the illegal immigration reform legislation released by Rep. Stephen Sandstrom:

"In Utah, we will have strong and meaningful illegal immigration reform - a 'Utah solution' that focuses on security, public safety and protecting taxpayer interests, while also recognizing the very real human side of this issue. Absent any meaningful leadership from the federal government on this issue, individual states are being forced to take up the charge.

The bill released today by Rep. Sandstrom is a good starting point to further public discussion on the issue of illegal immigration reform in Utah. I look forward to other proposals that I expect to come forward leading up to the 2011 legislative session.

I have outlined six guiding principles that should be inherent in Utah's efforts. Simply, these are: respect for the law; the federal government must take responsibility; private sector accountability; respect for the humanity of all people; efforts must be fair, colorblind and race-neutral; law enforcement must have appropriate tools; and relieve the burden on taxpayers."

The full text of Governor Herbert's immigration reform guiding principles, as well as comments from his July 20, 2010, roundtable discussion on immigration is available online at http://www.utah.gov/governor/news_media/article.html?article=3318.

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Exhibit E

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STATEMENT BY THE EMBASSY OF MEXICO ON LAWSUIT FILED AGAINST HB 497 IN UTAH 

Martes, 03 de Mayo de 2011 18:59

Washington D.C.
 May 3rd, 2011

STATEMENT BY THE EMBASSY OF MEXICO ON LAWSUIT FILED AGAINST HB 497 IN UTAH

The Embassy of Mexico welcomes the lawsuit filed in District Court today by several civil society organizations against HB 497, a bill recently passed in the state of Utah. On March 16th the Embassy expressed its concern regarding certain provisions of this law that could adversely affect the civil rights of Mexican nationals living in Utah, further criminalize immigrants and may lead for the selective application of the law.

The Embassy reiterates that Utah's actions on this specific issue are detrimental to the robust relationship that Mexico and the United States have built as partners and neighbors in such important issues as enhancing economic competitiveness and trade, cooperating against transnational organized crime, promoting clean energy and combating climate change, and creating a more modern and efficient border. As has unfortunately been the case in other states in this country, where similar bills have been enacted, the Government of Mexico is concerned about the adverse impact initiatives such as Utah's HB 497 may have on the breadth and scope of our bilateral relationship.

Therefore, the Embassy of Mexico and its consular network in the United States will continue to promote a clear understanding of the positive contributions our nationals make to the communities they live in this country and will spare no effort to protect their fundamental rights regardless of their immigration status.

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Exhibit F

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

INTERIM Policy Number 10074.1: Detainers

Issue Date: 08/02/2010

Effective Date: 08/02/2010

Superseded: LESC LOP 005-09 (September 23, 2009)

Federal Enterprise Architecture Number: 111-601-001-a

1. **Purpose/Background.** This directive establishes the interim policy of U.S. Immigration and Customs Enforcement (ICE) regarding the issuance of civil immigration detainers.
2. **Definitions.** The following definitions apply for purposes of this directive only.
 - 2.1. A **detainer** (Form I-247) is a notice that ICE issues to Federal, State, and local law enforcement agencies (LEAs) to inform the LEA that ICE intends to assume custody of an individual in the LEA's custody. An immigration detainer may serve three key functions—
 - notify an LEA that ICE intends to arrest or remove an alien in the LEA's custody once the alien is no longer subject to the LEA's detention;
 - request information from an LEA about an alien's impending release so ICE may assume custody before the alien is released from the LEA's custody; and
 - request that the LEA maintain custody of an alien who would otherwise be released for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) to provide ICE time to assume custody.
 - 2.2. An **Immigration officer** includes an officer or an agent who is authorized to issue detainers pursuant to 8 C.F.R. § 287.7(b), or who a state, local, or tribal officer or agent who is delegated such authority pursuant to § 287(g) of the Immigration and Nationality Act.
3. **Policy.**
 - 3.1. Only immigration officers may issue detainers.
 - 3.2. Immigration officers shall issue detainers only after an LEA has exercised its independent authority to arrest the alien for a criminal violation.
4. **Procedures.**
 - 4.1. Immigration officers shall not issue a detainer unless an LEA has exercised its independent authority to arrest the alien. Immigration officers shall not issue detainers for aliens who have been temporarily detained by the LEA (i.e., roadside or *Terry* stops)

but not arrested. This policy, however, does not preclude temporary detention of an alien by the LEA while ICE responds to the scene.

- 4.2. If an immigration officer has reason to believe that an individual arrested by an LEA is subject to ICE detention for removal or removal proceedings, and issuance of the detainer otherwise comports with this policy and appears to advance the priorities of the agency, the immigration officer may issue a detainer (Form I-247) to the LEA.
- 4.3. If the alien is the subject of an administrative arrest warrant, warrant of removal, or removal order, the immigration officer who issues the detainer should attach the warrant or order to the detainer, unless impracticable.
- 4.4. Immigration officers are expected to make arrangements to assume custody of an alien who is the subject of a detainer in a timely manner and without unnecessary delay. Although a detainer serves to request that an LEA temporarily detain an alien for a period not to exceed 48 hours from the time the LEA otherwise would have released the alien (excluding Saturdays, Sundays, and holidays) to permit ICE to assume custody of the alien, immigration officers should avoid relying on that hold period. If at any time after a detainer is issued, ICE determines it will not assume custody of the alien, the detainer should be withdrawn or rescinded and the LEA notified.
- 4.5. ICE shall timely assume custody of the alien if ICE has opted to lodge a detainer against an alien in any of the following categories—
 - aliens who are subject to removal based upon certain criminal or security-related grounds set forth in INA § 236(c);
 - aliens who are within the “removal period,” as defined in INA § 241(a)(2); and
 - aliens who have been arrested for controlled substance offenses under INA § 287(d).
- 4.6. Immigration officers shall take particular care when issuing a detainer against a lawful permanent resident (LPR) as some grounds of removability hinge on a conviction, while others do not [eg. removability pursuant to INA § 237(a)(4) and INA § 237(a)(1)(E).] Although in certain instances ICE may hold LPRs for up to 48 hours to make charging determinations, immigration officers should exercise such authority judiciously and seek advice of counsel for guidance if the LPR has not been convicted of a removable offense.
- 4.7. Immigration officers should consult their supervisors or local chief counsel office with all inquiries, questions, or concerns regarding this policy.

5. Authorities/References.

- 5.1. INA §§ 103(a)(3), 236, 241, 287.
- 5.2. 8 C.F.R. §§ 236.1, 287.3, 287.5, 287.7, 287.8, 1236.1.

6. Attachments.

6.1. Form I-247: Immigration Detainer - Notice of Action.

7. No Private Right Statement. This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; contractors or any other person.

A handwritten signature in black ink, appearing to read "John Morton", written over a horizontal line.

**John Morton
Director**

U.S. Immigration and Customs Enforcement

Exhibit G



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: John Morton
Assistant Secretary

SUBJECT: Civil Immigration Enforcement: Priorities for the Apprehension,
Detention, and Removal of Aliens

Purpose

This memorandum outlines the civil immigration enforcement priorities of U.S. Immigration and Customs Enforcement (ICE) as they relate to the apprehension, detention, and removal of aliens. These priorities shall apply across all ICE programs and shall inform enforcement activity, detention decisions, budget requests and execution, and strategic planning.

A. Priorities for the apprehension, detention, and removal of aliens

In addition to our important criminal investigative responsibilities, ICE is charged with enforcing the nation's civil immigration laws. This is a critical mission and one with direct significance for our national security, public safety, and the integrity of our border and immigration controls. ICE, however, only has resources to remove approximately 400,000 aliens per year, less than 4 percent of the estimated illegal alien population in the United States. In light of the large number of administrative violations the agency is charged with addressing and the limited enforcement resources the agency has available, ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency's highest enforcement priorities, namely national security, public safety, and border security.

To that end, the following shall constitute ICE's civil enforcement priorities, with the first being the highest priority and the second and third constituting equal, but lower, priorities.

Priority 1. Aliens who pose a danger to national security or a risk to public safety

The removal of aliens who pose a danger to national security or a risk to public safety shall be ICE's highest immigration enforcement priority. These aliens include, but are not limited to:

Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

Page 2

- aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
- aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders;
- aliens not younger than 16 years of age who participated in organized criminal gangs;
- aliens subject to outstanding criminal warrants; and
- aliens who otherwise pose a serious risk to public safety.¹

For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel should refer to the following new offense levels defined by the Secure Communities Program, with Level 1 and Level 2 offenders receiving principal attention. These new Secure Communities levels are given in rank order and shall replace the existing Secure Communities levels of offenses.²

- Level 1 offenders: aliens convicted of “aggravated felonies,” as defined in § 101(a)(43) of the Immigration and Nationality Act,³ or two or more crimes each punishable by more than one year, commonly referred to as “felonies”;
- Level 2 offenders: aliens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as “misdemeanors”; and
- Level 3 offenders: aliens convicted of crimes punishable by less than one year.⁴

Priority 2. Recent illegal entrants

In order to maintain control at the border and at ports of entry, and to avoid a return to the prior practice commonly and historically referred to as “catch and release,” the removal of aliens who have recently violated immigration controls at the border, at ports of entry, or through the knowing abuse of the visa and visa waiver programs shall be a priority.

Priority 3. Aliens who are fugitives or otherwise obstruct immigration controls

In order to ensure the integrity of the removal and immigration adjudication processes, the removal of aliens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls, shall be a priority. These aliens include:

¹ This provision is not intended to be read broadly, and officers, agents, and attorneys should rely on this provision only when serious and articulable public safety issues exist.

² The new levels should be used immediately for purposes of enforcement operations. DRO will work with Secure Communities and the Office of the Chief Information Officer to revise the related computer coding by October 1, 2010.

³ As the definition of “aggravated felony” includes serious, violent offenses and less serious, non-violent offenses, agents, officers, and attorneys should focus particular attention on the most serious of the aggravated felonies when prioritizing among level one offenses.

⁴ Some misdemeanors are relatively minor and do not warrant the same degree of focus as others. ICE agents and officers should exercise particular discretion when dealing with minor traffic offenses such as driving without a license.

- fugitive aliens, in descending priority as follows:⁵
 - fugitive aliens who pose a danger to national security;
 - fugitives aliens convicted of violent crimes or who otherwise pose a threat to the community;
 - fugitive aliens with criminal convictions other than a violent crime;
 - fugitive aliens who have not been convicted of a crime;
- aliens who reenter the country illegally after removal, in descending priority as follows:
 - previously removed aliens who pose a danger to national security;
 - previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community;
 - previously removed aliens with criminal convictions other than a violent crime;
 - previously removed aliens who have not been convicted of a crime; and
- aliens who obtain admission or status by visa, identification, or immigration benefit fraud.⁶

The guidance to the National Fugitive Operations Program: Priorities, Goals and Expectations, issued on December 8, 2009, remains in effect and shall continue to apply for all purposes, including how Fugitive Operation Teams allocate resources among fugitive aliens, previously removed aliens, and criminal aliens.

B. Apprehension, detention, and removal of other aliens unlawfully in the United States

Nothing in this memorandum should be construed to prohibit or discourage the apprehension, detention, or removal of other aliens unlawfully in the United States. ICE special agents, officers, and attorneys may pursue the removal of any alien unlawfully in the United States, although attention to these aliens should not displace or disrupt the resources needed to remove aliens who are a higher priority. Resources should be committed primarily to advancing the priorities set forth above in order to best protect national security and public safety and to secure the border.

C. Detention

As a general rule, ICE detention resources should be used to support the enforcement priorities noted above or for aliens subject to mandatory detention by law. Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are

⁵ Some fugitives may fall into both this priority and priority 1.

⁶ ICE officers and special agents should proceed cautiously when encountering aliens who may have engaged in fraud in an attempt to enter but present themselves without delay to the authorities and indicate a fear of persecution or torture. See Convention relating to the Status of Refugees, art. 31, *opened for signature* July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137. In such instances, officers and agents should contact their local Office of the Chief Counsel.

primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest. To detain aliens in those categories who are not subject to mandatory detention, ICE officers or special agents must obtain approval from the field office director. If an alien falls within the above categories and is subject to mandatory detention, field office directors are encouraged to contact their local Office of Chief Counsel for guidance.

D. Prosecutorial discretion

The rapidly increasing number of criminal aliens who may come to ICE's attention heightens the need for ICE employees to exercise sound judgment and discretion consistent with these priorities when conducting enforcement operations, making detention decisions, making decisions about release on supervision pursuant to the Alternatives to Detention Program, and litigating cases. Particular care should be given when dealing with lawful permanent residents, juveniles, and the immediate family members of U.S. citizens. Additional guidance on prosecutorial discretion is forthcoming. In the meantime, ICE officers and attorneys should continue to be guided by the November 17, 2000 prosecutorial discretion memorandum from then-INS Commissioner Doris Meissner; the October 24, 2005 Memorandum from Principal Legal Advisor William Howard; and the November 7, 2007 Memorandum from then-Assistant Secretary Julie Myers.

E. Implementation

ICE personnel shall follow the priorities set forth in this memorandum immediately. Further, ICE programs shall develop appropriate measures and methods for recording and evaluating their effectiveness in implementing the priorities. As this may require updates to data tracking systems and methods, ICE will ensure that reporting capabilities for these priorities allow for such reporting as soon as practicable, but not later than October 1, 2010.