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14 Attorneys for Plaintiffs

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

17
18 David Salgado and Chicanos Por La
Causa, Inc.,

19 plaintiffs,

20 vs.

21 Jan Brewer, individually and in her
22 capacity as Governor of Arizona, and
the City of Phoenix, an Arizona
23 municipal corporation,

24 defendants.

No. CV 10-00951-PHX-ROS

**PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION,
BRIEFING SCHEDULE, AND
HEARING DATE**

25 Pursuant to Federal Rule of Civil Procedure 65(a), Plaintiffs hereby move for a
26 preliminary injunction against the enforcement of the "Support Our Law Enforcement
27 and Safe Neighborhoods Act" and respectfully request the Court to schedule both a
28 briefing schedule and a hearing date on Plaintiffs' Motion.

1 As the Court is aware, this is an action seeking declaratory and injunctive relief
2 against the enforcement of the “Support Our Law Enforcement and Safe Neighborhoods
3 Act” (the “Act”), Senate Bill 1070, as amended by House Bill 2162, because the Act
4 would violate Plaintiffs’ rights under the Fourteenth Amendment to the Constitution of
5 the United States and is also preempted under the supremacy clause of Article VI of the
6 Constitution of the United States by the Immigration and Nationality Act, as amended.
7 See, e.g., 8 U.S.C. §§1252c(a) and 1357(g). A copy of the Act (as amended) is
8 attached hereto as Exhibit A.

9 The Act compels any state law enforcement officer involved in “any lawful stop,
10 detention or arrest” in connection with the “enforcement of any other law or ordinance
11 of a county, city or town or this state” to “attempt . . . to determine the immigration status
12 of the person” when a “reasonable suspicion exists that the person is an alien and is
13 unlawfully present in the United States” A.R.S. §11-1051B (emphasis added).
14 The Act also authorizes all state law enforcement officers to arrest without a warrant
15 any person whom the officer has “probable cause to believe . . . has committed any
16 public offense that makes the person removable from the United States.” A.R.S. §13-
17 3883 A5.

18 The Act also mandates that “no official or agency of this state or county, city, town
19 or other political subdivision of this state may limit or restrict the enforcement of federal
20 immigration laws to less than the full extent permitted by federal law.” A.R.S. §11-
21 1051A. The Act also creates its own private enforcement mechanism by establishing
22 a private right of action by any “legal resident” of Arizona against any state or local
23 “official” or “agency” that “adopts or implements a policy that limits or restricts the
24 enforcement of federal immigration laws . . . to less than the full extent permitted by
25 federal law.” A.R.S. §11-1051 H.

26 Plaintiff David Salgado is employed as a full-time Patrol Officer for the Police
27 Department of the City of Phoenix. In his capacity as a Phoenix Police Officer, Officer
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1 Salgado regularly stops individuals of Mexican and Latin-American ancestry in the City
2 of Phoenix, many of these individuals are children and minors who do not have or carry
3 any form of state or federal identification. Officer Salgado reasonably suspects that
4 some of these children are not lawfully in the United States.

5 Plaintiff Chicanos Por La Causa, Inc. (“CPLC”) is headquartered in Phoenix,
6 Arizona and is the largest Hispanic Community Development Corporation in Arizona.
7 CPLC was incorporated in 1969 by a group of Latino and Latina civil rights activists in
8 Phoenix, Arizona in order to improve the quality of life for Arizona’s Mexican-American
9 population. After more than four decades since its incorporation, CPLC now has more
10 than 800 employees, offices in 11 out of 15 counties in Arizona, and annually renders
11 services to more than 125,000 people throughout the state of Arizona in the areas of
12 economic development, housing, social welfare, and education.

13 As part of its mission to educate economically disadvantaged children, CPLC
14 operates three high schools and twelve “Head Start” centers in Arizona which over the
15 years have helped to educate thousands of children of Mexican ancestry. CPLC is
16 currently providing educational services to more than twelve hundred children
17 throughout the state of Arizona, most of whom are of Mexican ancestry. CPLC is legally
18 obligated to work with state and local law enforcement agencies and officers—including
19 the City of Phoenix Police Department—to help insure the safety and welfare of its
20 students. See, e.g., A.R.S. §13-3620. CPLC reasonably suspects that some of its
21 students are undocumented immigrants.

22 The government of the United States of America, acting through the Secretary
23 of the Department of Homeland Security of the United States in accordance with the
24 Immigration and Nationality Act, 8 U.S.C. §1357(g), has not authorized all of the law
25 enforcement officers employed by the Police Department of the City of
26 Phoenix—including Officer Salgado—to enforce federal immigration law to the “full extent
27 permitted by federal law” as required by the Act.

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1 Nor will every member of the City of Phoenix Police Department—including Officer
2 Salgado—receive federally approved training regarding the enforcement of federal
3 immigration law or obtain written certification of their receipt of such training as
4 expressly required by the Immigration and Nationality Act, 8 U.S.C. §1357(g), before
5 the local law enforcement officer purports to enforce federal immigration law. Nor will
6 all of the members of the City of Phoenix Police Department—including Officer
7 Salgado—be subject to the supervision of United States Immigration and Customs
8 Enforcement officers when engaged in the conduct mandated by the Act, which violates
9 the express requirements of the Immigration and Nationality Act, 8 U.S.C. §1357(g).

10 Notwithstanding the fact that the Police Department of the City of Phoenix lacks
11 the requisite authorization from the Department of Homeland Security of the United
12 States to enforce federal immigration law to the “full extent permitted by federal law,”
13 the Phoenix Police Department is already planning to prepare its officers—including
14 Officer Salgado—to enforce federal immigration law as required by the Act.

15 The Act is unlawful because (among other things) it is preempted by the
16 Immigration and Nationality Act, as amended. See, e.g., 8 U.S.C. §§1252c(a) and
17 1357(g).

18 For example, the Act is preempted by 8 U.S.C. §1252c(a) because Section
19 1252c(a) expressly limits the authority of state and local law enforcement officers to
20 detain and arrest only those undocumented immigrants who have already been
21 convicted of a felony in the United States, have left or been deported from the United
22 States after their conviction, and have unlawfully reentered the United States. The Act
23 is also preempted by 8 U.S.C. §1357(g) because—except as provided by 8 U.S.C.
24 §1252c(a)—state and local law enforcement officials can enforce federal immigration law
25 only after executing a “memorandum of agreement” with the Secretary of Homeland
26 Security in accordance with all of the specific requirements of Section 1357(g).

27 The Act is also preempted by 8 U.S.C. §1304(e) because the Act requires “any
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1 person”—irrespective of age—lawfully stopped, detained, or arrested by local law
2 enforcement officials whom the officer “reasonably suspects” to be unlawfully in the
3 United States to prove that they are lawfully in the United States, when no such
4 requirement exists under federal law for individuals under eighteen years of age. See
5 8 U.S.C. §1304(e). The Act is also preempted by the supremacy clause of Article VI
6 of the United States Constitution because it purports to give the courts of Arizona
7 jurisdiction to adjudicate violations of federal immigration law.

8 Lastly, when enforced in the context of publically funded schools, the Act would
9 violate the Supreme Court of the United States’ ruling in Plyler v. Doe, 457 U.S. 202
10 (1982).

11 If Defendants are allowed to enforce the Act, Plaintiffs will suffer irreparable
12 injuries consisting of the violation of their rights to due process and equal protection of
13 laws under the Fourteenth Amendment to the Constitution of the United States.

14 Although the Act is unique in its breadth and punitive nature, other federal courts
15 considering similar laws have concluded that they are preempted by the Immigration
16 and Nationality Act. See, e.g., Hines v. Davidowitz, 312 U.S. 52, 60-62 (1941), Lozano
17 v. City of Hazelton, 496 F. Supp. 2d 477 (M.D. P.A. 2007), and Villas at Parkside
18 Partners v. The City of Farmers Branch, Texas, 2010 WL 1141398 (N.D. Tex. March
19 24, 2010).

20 As indicated above, the Act becomes effective July 29, 2010. See Ariz. Const.
21 Art. 4, Part 1 §1(3). Plaintiffs desire to brief, argue, and obtain a preliminary ruling from
22 the Court regarding the enforcability of the Act before it becomes effective.

23 Accordingly, Plaintiffs propose the following briefing and hearing schedule.

- 24 • June 4, 2010 Plaintiffs file their Memorandum of
25 Points and Authorities in Support of
26 this Motion for a Preliminary
27 Injunction;
- 28 • June 25, 2010 Defendants file their Response to
Plaintiffs’ Memorandum of Points

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and Authorities in Support of its
Motion for Preliminary Injunction;

- July 2, 2010 Plaintiffs file their Reply in Support of their Motion for Preliminary Injunction;
- July 16, 2010 Evidentiary Hearing on Plaintiffs' Motion for Preliminary Injunction.

Accordingly, Plaintiffs ask the Court to enter an order adopting this (or a similar) schedule in order to allow the parties a reasonable opportunity to be heard before the Act becomes effective on July 29, 2010.

Respectfully submitted this 17th day of May 2010.

MONTOYA JIMENEZ
A Professional Association

s/ Stephen Montoya

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Attorneys for Plaintiffs

1 I hereby certify that on May 17, 2010, I electronically transmitted the foregoing
2 document to the Clerk of Court using the CM/ECF System for filing and transmittal of
a Notice of Electronic Filing.

3
4 COPY of the foregoing hand-delivered
this 17th day of May 2010 to:

5 The Honorable Jan Brewer
6 Governor of Arizona
7 1700 West Washington
Phoenix, Arizona 85007
Defendant

8 City of Phoenix
9 200 West Washington
Phoenix, Arizona
10 Defendant

11 s/ Stephen Montoya

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