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APR 29 2010	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
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**UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA**

NATIONAL COALITION OF)
 LATINO CLERGY AND CHRISTIAN LEADERS)
 ("CONLAMIC"), PHOENIX, ARIZONA)
 LAURA MADERA,)
 CARMEN GALINDO,)
 FERMIN LEON,)
 MANUEL SIGUENZA,)
 MOISES HERRERA,)
 JOE RIVERA,)
 JANE DOE'S 1-3,)
 JOHN DOE'S 1-3,)
 INDIVIDUALLY AND)
 ON BEHALF OF ALL SIMILARY SITUATED.)

PLAINTIFFS)

v.)

STATE OF ARIZONA, GOVERNOR JAN BREWER)

DEFENDANTS)

CIV'100943PHX

**COMPLAINT FOR
 DECLARATORY,
 INJUNCTIVE AND
 FURTHER RELIEF**

CLASS ACTION

I. PRELIMINARY STATEMENT

1. This action is brought on behalf of U.S. citizens, a U.S. non-profit corporation, legal U.S. residents and aliens seeking judicial clarification of the jurisdiction, authority, and constitutional rights of the state of Arizona ("Arizona"), in adopting and enforcing a law known as "SB1070 Anti-Immigration Act ("Act")". If the law is found to be unconstitutional or in any other way illegal, we respectfully request injunctive and mandamus relief ordering Arizona to cease and desist enforcement of the law. The specific request is as follows:

(A). The plaintiffs have reason to believe that the underlying law, adopted and signed by Governor Jan Brewer , raises significant preemption concerns. Initially, the law clearly intends to govern many types of conduct already covered by federal immigration law. Congress and the Executive branch have historically occupied the field of immigration law. The new Arizona Act creates state-wide immigration regulations independent from the existing federal system and clearly conflicts with federal immigration law. Thus, judicial clarification is required on the jurisdiction and constitutional authority of the state of Arizona to adopt and enforce such a law.

(B). Arizona's law, as written, will lead to "national origin" and "race" discrimination, in violation of Title VII of the Civil Rights Act and the Fair Housing Act (FHA).

(C). The law, as written, also gives rise to 42 USC § 1981 violations as section 1981 prohibits alienage discrimination.

1
2 **(D).** Due to the constitutional and statutory violations set forth above, we require
3 injunctive and mandamus relief ordering the state of Arizona to cease and desist
4 enforcement of the “Act” until clarification is made by this court.
5

6 **2.** The Supremacy Clause of the U.S. Constitution provides that federal laws and
7 treaties are “the supreme law of the land.” While federal and state power to regulate
8 certain matters is concomitant, the Supreme Court has long recognized that the regulation
9 of immigration “is unquestionably exclusively a federal power,” *Delanas v. Bica*, 424
10 *U.S. 351, 354 (1976)*. In *Hines v. Davidowitz*, 312 *U.S. 52 (1941)*, the Supreme Court
11 ruled that enforcement of a Pennsylvania statute requiring the registration of aliens was
12 precluded by the Federal Alien Registration Act of 1940, which established a
13 comprehensive federal scheme for the registration of aliens.
14

15 **3.** INA § 274A generally prohibits the hiring, referring, recruiting for a fee, or
16 continued employment of illegal aliens. Violators may be subject to cease and desist
17 orders, civil monetary penalties, and (in the case of serial offenders) criminal fines and/or
18 imprisonment for up to 6 months. Notably, INA § 274A expressly preempts any state or
19 local law imposing civil or criminal sanctions upon those who employ, or recruit or refer
20 for a fee for employment, unauthorized aliens.
21

22 **4.** Under INA § 274B, employers are prohibited from discriminating against any
23 individual (other than an unauthorized alien) on account of that alien’s national origin or

1 citizenship status. Employers throughout the state will refrain from hiring individuals
2 who they have “reasonable suspicion” to believe are undocumented. This will lead to
3 discrimination.

4 5. Arizona’s law does not provide a mechanism to determine whether an
5 immigration violation has occurred.

6 6. Furthermore, the law allows for the arrest of an alien who has committed a
7 “public offense” but such term is not found in the INA. Arizona [§13-3883 (5).

8 7. The INA generally vests authority to the Attorney General and Secretary of
9 Homeland Security to administer and enforce all laws relating to immigration and
10 naturalization, including determinations regarding the immigration status of aliens. As
11 such, states and localities are preempted by federal law from making their own
12 independent assessment as to whether an alien has committed an immigration violation
13 and imposing penalties against such aliens (along with persons who have provided them
14 with assistance) on the basis of that assessment. Such authority is conferred exclusively
15 to designated federal authorities by the INA.

16 8. The actions of the state of Arizona deprive plaintiffs of their family and cause
17 injury by prolonging family separation. Countless plaintiffs have moved from Arizona
18 due to fear that local authorities will begin implementing this unconstitutional law. The
19 plaintiffs are being denied their constitutional rights as the law violates the preemption
20 clause, conflicts with Federal Housing Assistance regulations, will lead to National origin
21 and race discrimination, and on its face is vague and ambiguous. As such, we respectfully
22 request injunctive and mandamus relief ordering the state of Arizona to cease and desist
23 enforcement of the law.

1
2 (A) The Department of Justice 287 (g) is a federal program that allows certain state
3 and local law enforcement agencies to engage in federal immigration enforcement
4 activities. Several Arizona law enforcement agencies are allowed to participate in
5 the 287 (g) program, which, combined with the state's new law, creates a
6 disastrous interviewing of police with immigration enforcement in that state. The
7 287 (g) program, has led to illegal racial profiling and civil rights abuses while
8 diverting scarce resources from traditional local law enforcement functions and
9 distorting immigration enforcement priorities. A report released earlier this month
10 by the DHS Office of Inspector General (OIG) affirmed the concerns with the 287
11 (g) program. The DHS OIG report found a lack of oversight, training and other
12 failures in the 287 (g) program and made it clear that the program does not have
13 adequate safeguards against racial profiling and other civil rights abuses. Many
14 state and local agencies accepted for the program have a documented history of
15 serious allegations of constitutional violations.

16 17 **II. JURISDICTION AND VENUE**

18 9. This Court has jurisdiction under its general federal question jurisdiction 28
19 U.S.C. Section 1331, and specific jurisdiction over claims arising under the Immigration
20 and Nationality Act 8 U.S.C 1329. This court is the proper venue for the writ of
21 Mandamus pursuant to 28 U.S.C. Section 1361. Jurisdiction is also conferred pursuant to
22 Rules 57 and 65 of the Federal Rules of Civil Procedure which permit declaratory and
23 injunctive actions.

10. The District of Arizona is the proper venue for this action pursuant to 28 U.S.C. 1391 (e), as it is here where the Defendants' policies have been implemented.

III. STANDING

11. Plaintiffs have standing to commence this action as they are individuals and organizations which will suffer irreparable harm as a result of the state's unconstitutional actions.

12. The Defendants' policy also prolongs the separation of family members. Plaintiffs have a particular interest in preserving their family units. (See *Abourzek v. Reagan*, 785F. 2d 1043, 251 U.S App. D.C. 355 (1985); *Clark v. Securities (Indus) Ass'n*, 479 U.S. 388, 395-96, 107 S. Ct. 750, 754, 93 L.E.d. 2^d 757 (1987)). *H.R. Rep No. 1365,82d Cong., 2d Sess. (1952)* reprinted in 1952 U.S.C. C.A.N. 1653, 1680. Additionally, although there is indirect precedent, there is no controlling decision regarding such a law.

13. President Barak Obama recently mentioned that the Department of Justice is investigating potential civil rights violations in the new Arizona law. See Exhibit "A". In discretion to the Executive Branch in matters involving immigration, this court should enjoin the state from enacting the law until the Department of Justice has spoken.

IV. PARTIES

14. Joe Rivera ("Joe") owns a business that caters primarily to Latinos and his business will drop by at least 60% if this law goes into effect.

1 **15.** Moises Herrera ("Moises") is a Pastor that owns 3 Spanish language radio
2 stations. His listeners are all Hispanic and he will lose the large majority of his listeners.
3 Moises is also a well know Pastor with thousands of church members that are all
4 Hispanic. He will lose a great percentage of his church members and donations to the
5 church. His church will fail if this law goes into effect.

6 **16.** Manuel Siguenza ("Manuel") has owned a large car sales business for 16 years
7 that pays between \$200,000 and \$350,000 dollars a year in taxes to the state of Arizona.
8 His business is in a primarily Latino neighborhood and his clients are predominantly
9 Latinos. He will lose the majority of his business and he will have to close his business.
10 Manuel is an Immigrant from El Salvador who is now a U.S. Citizen. He has one son
11 who has graduated from Arizona State University and another currently attending high
12 school. Because I look Latino I could be stopped because of the color of my skin. I fear
13 that my rights may be violated.

14 **17.** Fermin Leon ("Fermin") is undocumented and so is his wife but he has U.S. born
15 children that are in school that are 16 and 18 years of age. Fermin has a very successful
16 bakery business that would suffer if this law goes into effect. Fermin fears that if he may
17 be stopped because of his Latino appearance. If he is stopped he could be deported and he
18 would lose his business and his children would have to go to a country that they do not
19 know.

20 **18.** Carmen Galindo ("Carmen") is a Permanent Resident and speaks English with an
21 accent. She appears to be Latina and is afraid that if she gets pulled over she will be
22 racially profiled and may be damaged by being asked if she has her permanent residence

1 card. If she forgets it she would be charged with a crime according with this law. She
2 would then not be eligible to get her U.S. Citizenship. She is also a business owner.

3 **19.** Laura Madera ("Laura") is a permanent resident who fears being racially profiled
4 and may be damaged by being asked if she has her permanent residence card. If she
5 forgets it she would be charged with a crime according with this law. She would then not
6 be eligible to get her U.S. Citizenship. Laura is pregnant and the Father of the child lives
7 with her and is currently her domestic partner. He is undocumented and is in process of
8 legalizing. Her pregnancy would be at risk if her common law husband were to be
9 arrested and deported as well.

10 **20.** Plaintiff Manuel Siguenza ("Siguenza") is a resident of Arizona. Plaintiff
11 Siguenza owns a car dealership. Plaintiff Siguenza already has lost much business due
12 to the now law, even though it has not been implemented until late summer. Upon
13 information and belief, Plaintiff Siguenza has lost prospective clients due to the law.
14 Plaintiff Siguenza does not know the immigration status of his present clients, nor of the
15 clients he lost.

16 **21.** Plaintiff Joe Rivera ("Rivera") is a resident of Mesa, Arizona. Plaintiff Rivera
17 has already lost clients due to the law. Upon information and belief, Plaintiff Rivera has
18 lost prospective clients due to the law. Plaintiff Rivera does not know the immigration
19 status of his present clients, nor of the clients he has lost.

20 **22.** It is difficult if not impossible for Plaintiffs Siguenza and Rivera to determine
21 whether each of their clients is or is not an "authorized alien" as defined by the law.
22 Plaintiffs Siguenza and Rivera have received no guidance or training from Arizona or
23 others regarding how to determine whether an individual is an "authorized alien."

1 Plaintiffs Siguenza and Rivera have no expertise in applying immigration law or making
2 immigration status determinations. Plaintiffs Siguenza and Rivera have no expertise in
3 determining the authenticity of immigration-related documentation.

4 **23.** Because of the impossibility of fully complying with the law, it is likely that
5 Plaintiffs Siguenza and Rivera will sell goods to a person who is classified as an
6 "unauthorized alien" under the law.

7 **24.** Plaintiffs Siguenza and Rivera might be considered in violation of the law
8 because their clients often stay for an extended period of time in their business and they
9 often transport them to different locals. As a result they may be considered to be in
10 violation of the new law.

11 **25.** Since the law was signed, Plaintiffs has lost approximately 80% of his business.

12 **26.** Unless the law is permanently enjoined and declared invalid, Plaintiffs Siguenza
13 and Rivera are likely to incur significant monetary fines for violating the law. Even prior
14 to being fined they will have to close their businesses due to the negative impact brought
15 on by the law.

16 **27.** Plaintiff Pastor Moises Herrera ("Herrera") is a resident of Pheonix. Plaintiff
17 Herrera is a Pastor of a large church. Plaintiff Herrera is legally is the US and has
18 spent countless years building his church. He fears losing his church and there radio
19 stations if the law is implemented.

20 **28.** Plaintiff Carmen Galindo ("Galindo") is a lawful permanent resident. She speaks
21 English with an accent, she appears Latina and is scared of being racially profiled and
22 arrested if the new law goes into affect. Plaintiff Galindo does countless hours of

1 Christian community service every week. Unless the law is permanently enjoined and
2 declared invalid, Plaintiff Galindo expects to be arrested.

3 **29.** Plaintiff Jane Doe 1 is 26 years old. She resides in Phoenix, Arizona. Plaintiff
4 Jane Doe 1 is from Mexico. Plaintiff Jane Doe 1 entered the United States on a visitor's
5 visa. Her authorized period of stay was six months. Plaintiff Jane Doe did not depart from
6 the United States after six months. Since passage of the law, Plaintiff fears going outside
7 as she has already been intimidated by individuals yelling at her to "go back to your
8 country". Plaintiff Jane Doe is aware she is undocumented but is contributing to the U.S.
9 economy by paying her taxes, and spending over 10 hours a week volunteering at her
10 church.

11 **30.** Plaintiff Laura Madera ("Madera") is a lawful permanent resident and is currently
12 pregnant. Plaintiff Madera is very concerned about being profiled for appearing to be
13 Latina. Her husband is undocumented. If Plaintiff Madera is arrested she will likely not
14 be able to become a US citizen. Unless the law is permanently enjoined and declared
15 invalid, Plaintiff fears she and her husband will be arrested. Her family is likely to lose
16 their home, and her daughter will be unable to attend US schools, because they will be
17 forced to leave the area.

18 **31.** Plaintiff Miranda plans to become a naturalized citizen as soon as possible, but
19 anticipates that the required process will take at least several months. Once she becomes
20 a naturalized citizen, Plaintiff plans to sponsor her husband for lawful permanent
21 residency. He will be able to obtain lawful permanent residency if his wife is not arrested.

22 **32.** Plaintiff John Doe was approved refugee status last year. He was not required to
23 carry a lawful permanent resident card or work permit under federal regulations. He is

1 afraid of being arrested. He looks Latino but is not required to carry a work permit. His
2 children have the same status. Under the law is enjoined, he will not take his children to
3 school or go to work as he is afraid of being arrested.

4 **33.** Plaintiff John Doe 2 is an adult. He works in, and obtains goods and services in,
5 Phoenix, Arizona. Plaintiff John Doe 2 lost his Green Card. He has filed an application to
6 replace his Green Card. Plaintiff John Doe 2 has no other way to prove his immigration
7 status. Plaintiff John Doe 2 will be unable to prove that he is not an "unauthorized alien"
8 as that term is defined under the law until he receives his replacement Green Card. Unless
9 the law is permanently enjoined and declared invalid, Plaintiff John
10 Doe 2 will be unable to rent, work, or obtain goods and services in Phoenix because he
11 cannot prove his immigration status.

12 **34.** Plaintiff John Doe 3 is currently employed and is a US citizen. He lost his
13 passport. Plaintiff John Doe 3 was born in the United States. In accordance with the new
14 Arizona law, Plaintiff John Doe 3 is required to carry proof of his legal status in the US.
15 If he is stopped by police and asked for proof of residency, he can only show his driver's
16 license and birth certificate. He does not know whether he would have to notarize his
17 birth certificate in order to authenticate it. He is afraid of being arrested as he looks
18 Latino.

19 **35.** Plaintiff Jane Doe 2 is a citizen of the United States born in Puerto Rico. Her only
20 English-language form of identification is a Social Security card. Plaintiff Jane Doe 2
21 speaks very little English. Plaintiff Jane Doe 2 is afraid she will be arrested if she leaves
22 her home as she appears to be Latina. She requires constant visits to the doctor, but is
23 afraid of leaving her home. Unless the law is permanently enjoined and declared invalid,

1 Plaintiff. Jane Doe 3 will be unable to live, work, or obtain goods and services in
2 Phoenix, Arizona.

3 **36.** Plaintiff Fermin Leon and his wife are undocumented immigrants. They both have
4 US citizen children that are 16 and 18 years of age. Plaintiff Leon has a very
5 successful business. Although Plaintiff Leon is now eligible to apply for cancellation
6 of removal, the US department of Homeland Security has not called him in for an
7 interview. He is afraid of working, as he looks Latino and believes he will be arrested.
8 If he is arrested his children will have to leave the country also or will be forced to
9 live in Mexico.

10 **37.** Plaintiffs Siguenza, Rivera, Miranda, Herrera, Galindo, Madera, Leon and John
11 Does 1-3 and Jane Does 1-3 are collectively referred to herein as "Individual Plaintiffs."

12 **38.** All Individual Plaintiffs desire to continue to live and work in Arizona and the
13 new law will prevent them from doing so.

14 **39.** Plaintiff La Hermoza Church ("La Hermosa") is an Arizona non-profit
15 organization. La Hermoza's primary purpose is to promote Christian values and spread
16 the gospel of Jesus Christ. La Hermoza does not require its members to prove their
17 citizenship, residency or immigration status as a condition to membership. The law has
18 created great hostility towards the Latino community in Arizona and therefore adversely
19 affects the work. La Hermoza performs in Phoenix and for Phoenix residents. La
20 Hermoza's membership and constituency (herein, collectively "members") includes
21 individuals - many but not all of whom are Latino - who reside and who are employed in
22 and around Phoenix, some of whom have school-aged children. The membership

1 includes persons who have Spanish as their native tongue with a limited proficiency in
2 English. The interests La Hermoza seeks to protect through this action are germane to
3 its purpose, and neither the claims asserted nor the relief requested herein require the
4 personal participation of La Hermoza's members.

5 **40.** Plaintiff Conlamic Arizona is an Arizona non-profit organization. Plaintiff
6 Conlamic is a non-profit organization doing business in Arizona and they have over
7 30,000 affiliated churches throughout the United States.

8 **41.** Conlamic Arizona's purpose is to promote the interests of its members. Conlamic
9 does not require its individual members to prove their citizenship, residency or
10 immigration status as a condition to membership. The law has generated great hostility
11 towards the Latino community in Arizona and therefore adversely affects the work
12 Conlamic performs in Arizona and for Arizona businesses and residents.

13 **42.** Conlamic's membership and constituency (herein, collectively "members")
14 includes individuals – many, but not all, are Latino or who service Latino and other
15 customers -who reside or operate businesses in and around Arizona, some of whom have
16 school-aged children. The membership includes over 300 Arizona Pastors.

17 **43.** Conlamic's membership includes individuals who have Spanish as their native
18 tongue with a limited proficiency in English.

19 **44.** The interests Conlamic seeks to protect through this action are germane to its
20 purpose, and neither the claims asserted nor the relief requested herein require the
21 personal participation of Conlamic's members.

1 45. At all relevant times described herein, Arizona acted through its duly authorized
2 agent Governor Jan Brewer, and any other state employees she may designate in
3 accordance with Arizona law.

4 46. At all times alleged herein, Arizona's officials, employees and agents were acting
5 under color of state law.

6 47. Defendant Arizona is a state of the USA.

7 48. Defendant Jan Brewer is the governor of Arizona and is being sued in his official
8 capacity.

9 **V. FACTS**

10 49. On or about April 23, 2010, the state of Arizona passed a law, known as the
11 "Anti-Immigration Act." Attached hereto and made a part hereof as Exhibit "B" is a copy
12 of the law.

13 50. As a result of the passing of the amended law, plaintiffs have suffered.
14 Specifically, many members of the class are afraid to go to work and countless others
15 have fled the area.

16 **CLASS ALLEGATIONS**

17 Plaintiffs reallege and incorporate Paragraphs 1 through 50 inclusive and file this
18 as a Class Action for Declaratory and Injunctive Relief and allege:
19

20 51. Plaintiffs bring this action pursuant to Rule 23 (a) and (b)(1)(2) on behalf of
21 themselves and all others similarly situated. The class consists of the following
22 ascertainable members: all persons who currently reside in Arizona and find themselves
23 to be negatively affected by the proposed unconstitutional law.

1
2 **52.** Defendants have acted, and will continue to act on grounds generally applicable
3 to each member of the class, making appropriate final declaratory, injunctive and
4 mandamus relief to the class as a whole.

5 **53.** Plaintiffs in the class are entitled to representation.

6 **54.** There exists a community of interest between Plaintiffs and members of their
7 class in that there are questions of law and fact which are common to all. The Plaintiffs
8 seek a determination of whether or not the amended ordinance is unconstitutional and as
9 such should not be enforced.

10 **55.** Individual suits by each member of the class would be impractical because:

11 **(A)** There exist common and identical issues of law and fact for all members of the class.

12 **(B)** The number of individual suits would impose an undue burden of the Courts as there
13 appear to be a voluminous amount of members;

14 **(C)** Many members of the class are unaware of their right and/or are intimidated due to
15 their status.

16 **56.** A class action is superior to other available methods for the fair and efficient
17 adjudication of this controversy.

18 **57.** Upon information and belief no independent litigation has been brought by any
19 members of the respective class against Defendants as to the issues raised in this
20 complaint.

21 **58.** Plaintiffs' counsels are experienced in class actions litigation and can
22 adequately represent the interest of class members as well as the named Plaintiffs.
23

1 **59.** As a result of the defendant's law, plaintiffs and the members of the class will
2 continue to suffer.

3 **60.** There exists no adequate remedy at law if the law is not overturned.
4
5

6 **DECLARATORY AND INJUNCTION RELIEF ALLEGATIONS**

7 Plaintiffs reallege and incorporate paragraphs 1 through 50 inclusive and file this
8 Declaratory Relief Action and allege:
9

10 **61.** There exists confusion as to Arizona's authority to pass and enforce such a law.

11 **62.** WHEREFORE, Plaintiffs seek judicial clarification of the Arizona law. An actual
12 and substantial controversy exists between Plaintiffs and Defendants as to their respective
13 legal rights and duties. Plaintiffs contend that Defendants' actions violate the
14 constitutional rights of Plaintiffs and the proposed class. In violating Plaintiffs' rights
15 under the U.S. Constitution and federal statutes, Defendants are acting under color of law.
16 The Arizona law, and Defendants' policies, practices and procedures implementing them,
17 have caused and will continue to cause irreparable injury to Plaintiffs and the proposed
18 class. Plaintiffs and the proposed class have no plain, speedy and adequate remedy at law
19 against the Arizona law and Defendants' policies, practices and procedures implementing
20 them.
21
22

COUNT I. VIOLATION OF SUBSTANTICE DUE PROCESS 14TH

AMENDEMENT

63. The foregoing allegations are repeated and incorporated as though fully set forth herein.

64. Plaintiffs and the proposed class have a liberty interest in being free from detention absent a criminal conviction. Specifically, Plaintiffs and the proposed class have a liberty interest in being eligible for release on bond pending resolution of the criminal charges against them. The Arizona law and Defendants' policies, practices and procedures implementing them violate substantive due process because they are not narrowly tailored and do not serve a compelling governmental interest. The Arizona law and Defendants' policies, practices and procedures implementing them result in an impermissibly punitive regime of arrests and racial profiling in violation of substantive due process.

65. A.R.S §11-1051 grants Arizona police officers authority to conduct warrantless arrests of persons for whom the officer has probable cause to believe have committed any public offense that makes those persons deportable. This appears to be an attempt to create a completely independent state arrest authority for administrative violations of federal law. In essence, it is the "criminalization" of certain portions of immigration law, which, in and of itself, is civil. The issue was previously addressed in *Gonzales v. City of Phoenix*, 722 F2d 468, (9th Cir.). The ninth circuit held that while Arizona could authorize Peoria to enforce the criminal provisions of the immigration law, "the court firmly emphasize that this authorization is limited to criminal violations. This portion of the law attempts to enforce civil administrative violations of the law. It will lead to

1 countless arrests of individuals who are undocumented but have not violated criminal
 2 provisions of the immigration law. This would allow for unlawful arrests.” The Peoria
 3 Police Department obscured the difference between civil administrative violations and
 4 criminal violations of immigration law. If it was not allowed in *Gonzales*, it should not be
 5 allowed in the case at bar.

8 **COUNT II. VIOLATION OF SUPREMACY CLAUSE**

9 **66.** The foregoing allegations sections are repeated and incorporated as though fully
 10 set herein.

11 **67.** Section A.R.S §13-1509 will establish a separate state offense for any person to
 12 violate provisions of the federal immigration law regarding registration and carrying
 13 registration documents . 8 U.S.C. §§ 1304 (e), 1306 (a). The offenses vary from class one
 14 misdemeanors with six month jail time and \$500 fine to a class four (4) felony charge for
 15 those found in the U.S. after having accepted voluntary removal or had been deported in
 16 the last 5 years.

17 The Supremacy Clause of the US Constitution grants the federal government
 18 exclusive power to regulate our borders, and states do not have the right to create their
 19 own. For this reason alone, the law should be found unconstitutional.

21 **COUNT III. VIOLATION OF FIRST AMENDMENT**

22 **68.** The forgoing allegations sections are repeated and incorporated as though fully
 23 set herein.

1 69. The Act would add a new section, A.R.S. § 13-2928, that makes it a class 1
2 misdemeanor to attempt to hire or pick up day laborers to work at a different location if
3 the driver is impeding the normal flow of traffic. It also makes it a misdemeanor for a
4 worker to get into a car if it is impeding traffic. Finally, this Section would criminalize
5 the solicitation of work (by a gesture or nod) by undocumented immigrants in any public
6 place. In order to be subject to the first or second parts of this Section, the vehicle in
7 question has to be obstructing traffic. This provision adds no value insofar as there are
8 already laws established that address traffic hazards. It is also likely to be found
9 unconstitutional by the courts because the third part singles out the speech of immigrant
10 day laborers for criminalization. The solicitation of work has been found by courts across
11 the country to be protected speech under the First Amendment. *Lopez et al v. Town of*
12 *Cave Creek*.

13
14 **COUNT IV. VIOLATIONS OF SUPREMACY CLAUSE**

15 70. The foregoing allegations sections are repeated and incorporated as though fully
16 set forth herein.

17 71. The Act would add a new section, A.R.S. § 13-2929, that makes it unlawful for
18 any person who is “in violation of a criminal offense” to transport, move, conceal, harbor,
19 shield from detection, or attempt to do any of the above, for any undocumented
20 immigrant if the person knows or recklessly disregards the fact that the immigrant has
21 entered or remained in the United States illegally. It also makes it a state crime to
22 encourage or induce any immigrant to come, enter, or reside in the country illegally.

1 72. A person who violates this law would be subject to a class 1 misdemeanor and a
2 fine of at least \$1,000, with additional penalties where the offense involves ten or more
3 immigrants. Any means of transportation used in connection with the crime will be
4 impounded. This provision is unnecessary because the exact same actions (transporting,
5 moving, concealing, harboring, and shielding undocumented immigrants) are already
6 prohibited under federal law where the person commits those acts with the intent to
7 further the immigrant's violation of the law. 8 U.S.C. § 1324(a)(1)(a).

8 73. Furthermore, Arizona peace officers have explicit authority to arrest anyone who
9 violates the federal harboring law, 8 U.S.C. § 1324(c), and vehicles used to commit the
10 offense may be seized. 8 U.S.C. § 1324(b). Courts have not permitted prosecutions under
11 the federal statute where a person offers a ride or shelter to another person out of
12 humanitarian concern rather than with the intent to further the violation, such as for a
13 profit motive. There is also a specific provision in the federal statute exempting churches
14 who provide room and board to members of their congregation serving as ministers or
15 missionaries. To the extent that the state law will be applied differently than the federal
16 law, it should be invalidated as violating the Supremacy Clause of the U.S. Constitution.

17
18 **COUNT V.**

19 **VIOLATIONS OF SUBSTANTIVE DUE PROCESS – FOURTEENTH AMENDMENT**

20 74. The foregoing allegations sections are repeated and incorporated as though fully
21 set forth herein.

22 75. Plaintiffs and the proposed class have a liberty interest in being free from
23 detention absent a criminal conviction. Specifically, Plaintiffs and the proposed class

1 have a liberty interest in being eligible for release on bond pending resolution of the
2 criminal charges against them.

3 **76.** The Arizona law and Defendants' policies, practices and procedures
4 implementing them violate substantive due process because they are not narrowly
5 tailored and do not serve a compelling governmental interest.

6 **77.** The Arizona law and Defendants' policies, practices and procedures
7 implementing them result in an impermissibly punitive regime of arrests and racial
8 profiling in violation of substantive due process.

9
10 **COUNT VI.**
11 **FOURTEENTH AMENDMENT**
12 **USE OF PROBABLE CAUSE STANDARD**
13 **VIOLATION OF PROCEDURAL DUE PROCESS**
14

15 **78.** The foregoing allegations sections are repeated and incorporated as though fully
16 set forth herein.

17 **79.** Defendants' policies, practices, and procedures in implementing the new anti-
18 immigration law, results in no-bond decisions against Plaintiffs and the proposed class
19 based solely on police officers' finding that there is probable cause to believe that they
20 have "entered or remained in the United States illegally." Use of the "probable cause"
21 standard in this context violates the Due Process Clause of the United States Constitution.

22
23 **PRAYER FOR RELIEF**

24 WHEREFORE, in light of the foregoing facts and arguments, Plaintiffs reallege and
25 incorporate paragraphs 1 through 40 inclusive and file this and request that this court:

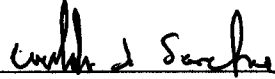
26 a. Assume jurisdiction over this matter;

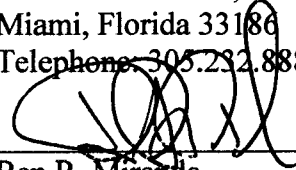
- 1 b. Certify a class as described above, pursuant to Plaintiffs' forthcoming motion
2 for class certification;
- 3 c. Declare that the Arizona law is unconstitutional under the Supremacy clause,
4 the due process clause of the Fourteenth Amendment, and the First
5 Amendment's right to free speech;
- 6 d. Declare that the law is preempted by federal law and the plenary power of
7 Congress to regulate immigration;
- 8 e. Enjoin Defendants from enforcing the law;
- 9 f. Grant Plaintiffs' reasonable attorneys' fees, costs, and other expenses pursuant
10 to 42 U.S.C. Sec. 1988; and
- 11 g. Grant such other relief as the Court may deem appropriate.
- 12

13 Dated: April 28, 2010

14 **NATIONAL COALITION OF LATINO**
15 **CLERGY AND CHRISTIAN LEADERS**
16 **("CONLAMIC") PHOENIX, ARIZONA,**

17 By: _____

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EXHIBIT A

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For Immediate Release

April 23, 2010

Remarks by the President at Naturalization Ceremony for Active-Duty Service Members

Rose Garden

10:15 A.M. EDT

THE PRESIDENT: Good morning, everybody. Thank you, Secretary Napolitano, for being here to administer the oath—for making it official. Thank you, also, for leading our efforts to achieve comprehensive immigration reform so that America keeps faith with our heritage as both a nation of immigrants and a nation of laws.

To Director Mayorkas and all the dedicated folks at U.S. Citizenship and Immigration Services, thank you for your help to these men and women, and so many of our troops, to realize their dreams of citizenship.

We are joined by Congresswoman Susan Davis, Deputy Secretary of Defense Bill Lynn and the Vice Chairman of the Joint Chiefs of Staff, General Jim "Hoss" Cartwright.

Most of all, to America's newest citizens — it is a great honor to serve as your Commander-in-Chief, and it is my greatest pleasure to be among the first to greet you as a "fellow American." To you and your families, welcome to the White House.

Today is your day — a celebration of 24 inspiring men and women and the remarkable journeys that have brought you together on this beautiful spring morning to our nation's capitol. The paths that led you here began in more than a dozen countries, from Peru to Poland, from Kenya to the Philippines.

Some of you came to America as children, holding tight to your parents' hands as you arrived in a new world. Some of you came as adults, leaving everything you knew behind in pursuit of a new life. And while your stories are your own, today we celebrate the common spirit that lives within each of you — a spirit that has renewed and strengthened America for more than two centuries.

We celebrate the love of family — your moms and dads who were willing to say good-bye to their own families, their own countries, so they could have an opportunity to give you the opportunity you [sic] never had. Like generations of immigrants before them, they worked hard. They scrimped and they saved. They deferred their own dreams so that you could realize yours. So today is a tribute to their sacrifices as well. And I would ask that you join me in honoring your moms and dads and the families that helped bring you to this day. (Applause.)

We celebrate the spirit of possibility — an ethic that says if you're willing to put your shoulder to the wheel and apply your God-given talents, if you believe in yourself and you play by the rules, then there is a place for you in the United States of America — no matter where you come from and no matter what you look like.

It's the spirit that brought a young woman from the People's Republic of China and inspired her to enlist in the United States Air Force, where she excels as a material management specialist. So today we congratulate our fellow citizen, Yu Yuan. (Applause.)

It's the spirit that brought a refugee from Ethiopia and led him to enlist in the U.S. Army because, he said, he wanted to give back to the country that "has given me the opportunity to be all that I can be." And today we congratulate Berhan Teferi. (Applause.)

We celebrate the true meaning of patriotism — the love of a country that's so strong that these men and women were willing to risk their lives to defend our country even before they could call it their own.

It's a patriotism of a daughter of Mexico, who came to America in those first terrible days after 9/11, joined the U.S. Navy and says, "I take pride in our flag and the history that forged this great nation and the history we write day by day." So today we congratulate Perla Ramos. (Applause.)

And it's the patriotism of a young man from Papua New Guinea, who joined the United States Marine Corps and

HEALTH CARE
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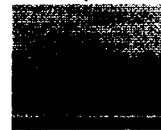
April 23, 2010

Naturalization Ceremony for U.S. Service Members

BLOG POSTS ON THIS ISSUE

April 23, 2010 5:24 PM EDT

Navy's Green Initiatives Take Flight on Earth Day



On Earth Day the Navy conducted a test flight of the Green Hornet, an F/A-18 Super Hornet multirole fighter jet powered by a biofuel blend.

April 19, 2010 3:59 PM EDT

"An Extremely Important Development in Iraq"



The Vice President announces that the two most senior officials of al Qaeda Iraq were killed earlier this morning.

April 13, 2010 1:53 PM EDT

"An Opportunity -- Not Simply to Talk, But to Act"

The President addresses the First Plenary Session of the Nuclear Security Summit, where delegations from 47 nations work to address the most dire threat of our time: nuclear terrorism

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deployed to Iraq – not once, not twice, but three times. Asked why he would choose to become an American citizen, he said simply, “I might as well. I love this country already.” And so we congratulate Granger Michael. (Applause.)

The four of you can sit down. You represent not only the branch of the Armed Services that you are a part of, but also the other members who are your fellow citizens here today, and we thank you very much. We’re grateful to you. (Applause.)

In short, today we celebrate the very essence of the country that we all love – an America where so many of our forerunners came from someplace else; a society that’s been enriched by traditions and cultures from every corner of the world; a dynamic economy that’s constantly renewed by the talents and energies of each new citizen; and a people who understand that citizenship is not just a collection of rights, but it’s also a set of responsibilities.

Like so many others, these men and women met their responsibilities. They played by the rules. They have earned their citizenship. And so on a day like this, we are also reminded of how we must remain both a nation of immigrants and a nation of laws. This includes fixing America’s broken immigration system.

Over the years, many have attempted to confront this challenge, but passions are great and disagreements run deep. Yet surely we can all agree that when 11 million people in our country are living here illegally, outside the system, that’s unacceptable. The American people demand and deserve a solution. And they deserve common-sense, comprehensive immigration reform grounded in the principles of responsibility and accountability.

Government has a responsibility to enforce the law and secure our borders and set clear rules and priorities for future immigration. And under Secretary Napolitano’s leadership at the Department of Homeland Security, that’s exactly what we’re doing. We’ve strengthened security at our borders, ports and airports and we will continue to do so, because America’s borders must be secure. That’s part of what these young people here today stand for.

Businesses have a responsibility to obey the law and not undermine American workers, especially when so many Americans are out of work. Many businesses work to comply with the law every day. But for those that don’t – those that ignore the law and exploit and abuse vulnerable workers and try to gain an unfair advantage over all the businesses that do follow the law – we will hold them accountable.

And people who are in America illegally have a responsibility – to pay their back taxes and admit responsibility for breaking the law, pay a penalty, learn English, pass criminal background checks, and get right with the law – or face removal – before they can get in line and eventually earn their citizenship.

So responsibility. Accountability. Common-sense, comprehensive immigration reform. I thank Secretary Napolitano for helping to lead our efforts, both on and off Capitol Hill. And I thank Senators Schumer and Graham for working with us to forge a bipartisan consensus on a framework for moving forward, and I welcome the commitment of House and Senate Democratic leaders to take action.

I’ll continue to consult with Democrats and Republicans in Congress, and I would note that 11 current Republican Senators voted to pass immigration reform four years ago. I’m hopeful that they will join with Democrats in doing so again so we can make the progress the American people deserve.

Indeed, our failure to act responsibly at the federal level will only open the door to irresponsibility by others. And that includes, for example, the recent efforts in Arizona, which threatened to undermine basic notions of fairness that we cherish as Americans, as well as the trust between police and their communities that is so crucial to keeping us safe.

In fact, I’ve instructed members of my administration to closely monitor the situation and examine the civil rights and other implications of this legislation. But if we continue to fail to act at a federal level, we will continue to see misguided efforts opening up around the country.

As a nation, as a people, we can choose a different future – a future that keeps faith with our history, with our heritage, and with the hope that America has always inspired in the hearts of people all over the world. For just as each of these 24 new citizens once cast their eyes upon our country from afar, so too, somewhere in the world today is a young boy or a young girl wondering if they, too, might someday share in America’s promise.

In the example of these new citizens, and in the actions we take as a nation, let us offer our answer, with confidence and optimism. Yes, there is a place called America that still welcomes those “yearning to breathe free.” A country where if you work hard and meet your responsibilities, you can pursue your dreams. A society where out of many, we are one – “one nation under God, indivisible, with liberty and justice for all.”

That’s the promise of America. That is the spirit that all of you are renewing here today. We are incredibly proud of you, God bless you, and may God bless the United States of America. (Applause.)

Now, we have one other piece of business. Would Sergeant Ledum Ndaanee please come forward. There he is.

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How are you, sir?

SERGEANT NDAANEE: Hello, sir.

THE PRESIDENT: Growing up in Nigeria, Ledum probably never imagined he'd be standing on this stage today.

SERGEANT NDAANEE: That's right, sir.

THE PRESIDENT: Neither did I. (Laughter.) But thanks to the generosity of churches in Virginia, he and his parents found a home in the United States. And Ledum, who says "I always wanted to be in the military," found his calling in the United States Marine Corps.

He deployed to Iraq, and was serving his second tour when his unit was struck by an improvised explosive device. In the weeks and months that followed, he battled to recover from traumatic brain injury. At a VA medical center, with his parents at his side, he was presented a Purple Heart. And a few moments later, he was sworn in as an American citizen.

This Marine was not only determined to recover, he was determined to help others. He has been a leader and mentor to his fellow wounded warriors. In fact, I hear he's quite an athlete --

SERGEANT NDAANEE: Yes, sir.

THE PRESIDENT: -- he agrees. (Laughter.) He will compete next month in the first Warrior Games at the U.S. Olympic training center in Colorado.

So for his distinguished service to country, and for inspiring us all with his example of what citizenship truly means, I am proud to join the U.S. Citizenship and Immigration Services in presenting this recognition -- the "Outstanding American by Choice" award -- to Sergeant Ledum Ndaanee. Do we have the award? (Applause.)

(The award is presented.)

With that, I'd ask Sergeant Ndaanee to conclude our ceremony by leading us all in the Pledge of Allegiance.

(The Pledge of Allegiance is recited.)

Thank you, everybody. (Applause.)

END

10:27 A.M. EDT

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EXHIBIT B

House Engrossed Senate Bill

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SENATE BILL 1070

AN ACT

AMENDING TITLE 11, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING TITLE 13, CHAPTER 15, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1509; AMENDING SECTION 13-2319, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-2928 AND 13-2929; AMENDING SECTIONS 13-3883, 23-212, 23-212.01, 23-214 AND 28-3511, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 12, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1724; RELATING TO UNLAWFULLY PRESENT ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

S.B. 1070

1 ~~Be it enacted by the Legislature of the State of Arizona:~~

2 Section 1. Intent

3 The legislature finds that there is a compelling interest in the
4 cooperative enforcement of federal immigration laws throughout all of
5 Arizona. The legislature declares that the intent of this act is to make
6 attrition through enforcement the public policy of all state and local
7 government agencies in Arizona. The provisions of this act are intended to
8 work together to discourage and deter the unlawful entry and presence of
9 aliens and economic activity by persons unlawfully present in the United
10 States.

11 Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by
12 adding article 8, to read:

13 ARTICLE 8. ENFORCEMENT OF IMMIGRATION LAWS

14 11-1051. Cooperation and assistance in enforcement of
15 immigration laws; indemnification

16 A. NO OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR
17 OTHER POLITICAL SUBDIVISION OF THIS STATE MAY LIMIT OR RESTRICT THE
18 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL EXTENT
19 PERMITTED BY FEDERAL LAW.

20 B. FOR ANY LAWFUL CONTACT MADE BY A LAW ENFORCEMENT OFFICIAL OR A LAW
21 ENFORCEMENT AGENCY OF THIS STATE OR A LAW ENFORCEMENT OFFICIAL OR A LAW
22 ENFORCEMENT AGENCY OF A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF
23 THIS STATE WHERE REASONABLE SUSPICION EXISTS THAT THE PERSON IS AN ALIEN WHO
24 IS UNLAWFULLY PRESENT IN THE UNITED STATES, A REASONABLE ATTEMPT SHALL BE
25 MADE, WHEN PRACTICABLE, TO DETERMINE THE IMMIGRATION STATUS OF THE PERSON,
26 EXCEPT IF THE DETERMINATION MAY HINDER OR OBSTRUCT AN INVESTIGATION. ANY
27 PERSON WHO IS ARRESTED SHALL HAVE THE PERSON'S IMMIGRATION STATUS DETERMINED
28 BEFORE THE PERSON IS RELEASED. THE PERSON'S IMMIGRATION STATUS SHALL BE
29 VERIFIED WITH THE FEDERAL GOVERNMENT PURSUANT TO 8 UNITED STATES CODE SECTION
30 1373(c). A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY,
31 CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT SOLELY
32 CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN IMPLEMENTING THE REQUIREMENTS OF
33 THIS SUBSECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR
34 ARIZONA CONSTITUTION. A PERSON IS PRESUMED TO NOT BE AN ALIEN WHO IS
35 UNLAWFULLY PRESENT IN THE UNITED STATES IF THE PERSON PROVIDES TO THE LAW
36 ENFORCEMENT OFFICER OR AGENCY ANY OF THE FOLLOWING:

- 37 1. A VALID ARIZONA DRIVER LICENSE.
38 2. A VALID ARIZONA NONOPERATING IDENTIFICATION LICENSE.
39 3. A VALID TRIBAL ENROLLMENT CARD OR OTHER FORM OF TRIBAL
40 IDENTIFICATION.
41 4. IF THE ENTITY REQUIRES PROOF OF LEGAL PRESENCE IN THE UNITED STATES
42 BEFORE ISSUANCE, ANY VALID UNITED STATES FEDERAL, STATE OR LOCAL GOVERNMENT
43 ISSUED IDENTIFICATION.

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1 C. IF AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES IS
2 CONVICTED OF A VIOLATION OF STATE OR LOCAL LAW, ON DISCHARGE FROM
3 IMPRISONMENT OR ON THE ASSESSMENT OF ANY MONETARY OBLIGATION THAT IS IMPOSED,
4 THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES
5 CUSTOMS AND BORDER PROTECTION SHALL BE IMMEDIATELY NOTIFIED.

6 D. NOTWITHSTANDING ANY OTHER LAW, A LAW ENFORCEMENT AGENCY MAY
7 SECURELY TRANSPORT AN ALIEN WHO THE AGENCY HAS RECEIVED VERIFICATION IS
8 UNLAWFULLY PRESENT IN THE UNITED STATES AND WHO IS IN THE AGENCY'S CUSTODY TO
9 A FEDERAL FACILITY IN THIS STATE OR TO ANY OTHER POINT OF TRANSFER INTO
10 FEDERAL CUSTODY THAT IS OUTSIDE THE JURISDICTION OF THE LAW ENFORCEMENT
11 AGENCY. A LAW ENFORCEMENT AGENCY SHALL OBTAIN JUDICIAL AUTHORIZATION BEFORE
12 SECURELY TRANSPORTING AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES
13 TO A POINT OF TRANSFER THAT IS OUTSIDE OF THIS STATE.

14 E. EXCEPT AS PROVIDED IN FEDERAL LAW, OFFICIALS OR AGENCIES OF THIS
15 STATE AND COUNTIES, CITIES, TOWNS AND OTHER POLITICAL SUBDIVISIONS OF THIS
16 STATE MAY NOT BE PROHIBITED OR IN ANY WAY BE RESTRICTED FROM SENDING,
17 RECEIVING OR MAINTAINING INFORMATION RELATING TO THE IMMIGRATION STATUS,
18 LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL OR EXCHANGING THAT INFORMATION WITH ANY
19 OTHER FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITY FOR THE FOLLOWING OFFICIAL
20 PURPOSES:

21 1. DETERMINING ELIGIBILITY FOR ANY PUBLIC BENEFIT, SERVICE OR LICENSE
22 PROVIDED BY ANY FEDERAL, STATE, LOCAL OR OTHER POLITICAL SUBDIVISION OF THIS
23 STATE.

24 2. VERIFYING ANY CLAIM OF RESIDENCE OR DOMICILE IF DETERMINATION OF
25 RESIDENCE OR DOMICILE IS REQUIRED UNDER THE LAWS OF THIS STATE OR A JUDICIAL
26 ORDER ISSUED PURSUANT TO A CIVIL OR CRIMINAL PROCEEDING IN THIS STATE.

27 3. IF THE PERSON IS AN ALIEN, DETERMINING WHETHER THE PERSON IS IN
28 COMPLIANCE WITH THE FEDERAL REGISTRATION LAWS PRESCRIBED BY TITLE II, CHAPTER
29 7 OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT.

30 4. PURSUANT TO 8 UNITED STATES CODE SECTION 1373 AND 8 UNITED STATES
31 CODE SECTION 1644.

32 F. THIS SECTION DOES NOT IMPLEMENT, AUTHORIZE OR ESTABLISH AND SHALL
33 NOT BE CONSTRUED TO IMPLEMENT, AUTHORIZE OR ESTABLISH THE REAL ID ACT OF 2005
34 (P.L. 109-13, DIVISION B; 119 STAT. 302), INCLUDING THE USE OF A RADIO
35 FREQUENCY IDENTIFICATION CHIP.

36 G. A PERSON WHO IS A LEGAL RESIDENT OF THIS STATE MAY BRING AN ACTION
37 IN SUPERIOR COURT TO CHALLENGE ANY OFFICIAL OR AGENCY OF THIS STATE OR A
38 COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT ADOPTS
39 OR IMPLEMENTS A POLICY OR PRACTICE THAT LIMITS OR RESTRICTS THE ENFORCEMENT
40 OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL EXTENT PERMITTED BY FEDERAL
41 LAW. IF THERE IS A JUDICIAL FINDING THAT AN ENTITY HAS VIOLATED THIS
42 SECTION, THE COURT SHALL ORDER THAT THE ENTITY PAY A CIVIL PENALTY OF NOT
43 LESS THAN ONE THOUSAND DOLLARS AND NOT MORE THAN FIVE THOUSAND DOLLARS FOR
44 EACH DAY THAT THE POLICY HAS REMAINED IN EFFECT AFTER THE FILING OF AN ACTION
45 PURSUANT TO THIS SUBSECTION.

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1 H. A COURT SHALL COLLECT THE CIVIL PENALTY PRESCRIBED IN SUBSECTION G
2 OF THIS SECTION AND REMIT THE CIVIL PENALTY TO THE STATE TREASURER FOR
3 DEPOSIT IN THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION
4 FUND ESTABLISHED BY SECTION 41-1724.

5 I. THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO ANY
6 PERSON OR ANY OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR
7 OTHER POLITICAL SUBDIVISION OF THIS STATE THAT PREVAILS BY AN ADJUDICATION ON
8 THE MERITS IN A PROCEEDING BROUGHT PURSUANT TO THIS SECTION.

9 J. EXCEPT IN RELATION TO MATTERS IN WHICH THE OFFICER IS ADJUDGED TO
10 HAVE ACTED IN BAD FAITH, A LAW ENFORCEMENT OFFICER IS INDEMNIFIED BY THE LAW
11 ENFORCEMENT OFFICER'S AGENCY AGAINST REASONABLE COSTS AND EXPENSES, INCLUDING
12 ATTORNEY FEES, INCURRED BY THE OFFICER IN CONNECTION WITH ANY ACTION, SUIT OR
13 PROCEEDING BROUGHT PURSUANT TO THIS SECTION IN WHICH THE OFFICER MAY BE A
14 DEFENDANT BY REASON OF THE OFFICER BEING OR HAVING BEEN A MEMBER OF THE LAW
15 ENFORCEMENT AGENCY.

16 K. THIS SECTION SHALL BE IMPLEMENTED IN A MANNER CONSISTENT WITH
17 FEDERAL LAWS REGULATING IMMIGRATION, PROTECTING THE CIVIL RIGHTS OF ALL
18 PERSONS AND RESPECTING THE PRIVILEGES AND IMMUNITIES OF UNITED STATES
19 CITIZENS.

20 Sec. 3. Title 13, chapter 15, Arizona Revised Statutes, is amended by
21 adding section 13-1509, to read:

22 13-1509. Willful failure to complete or carry an alien
23 registration document; assessment; exception;
24 authenticated records; classification

25 A. IN ADDITION TO ANY VIOLATION OF FEDERAL LAW, A PERSON IS GUILTY OF
26 WILLFUL FAILURE TO COMPLETE OR CARRY AN ALIEN REGISTRATION DOCUMENT IF THE
27 PERSON IS IN VIOLATION OF 8 UNITED STATES CODE SECTION 1304(e) OR 1306(a).

28 B. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS
29 MAY BE DETERMINED BY:

30 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL
31 GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

32 2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED
33 STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION
34 1373(c).

35 C. A PERSON WHO IS SENTENCED PURSUANT TO THIS SECTION IS NOT ELIGIBLE
36 FOR SUSPENSION OF SENTENCE, PROBATION, PARDON, COMMUTATION OF SENTENCE, OR
37 RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS AUTHORIZED BY SECTION 31-233,
38 SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR
39 THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07.

40 D. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE COURT SHALL
41 ORDER THE PERSON TO PAY JAIL COSTS AND AN ADDITIONAL ASSESSMENT IN THE
42 FOLLOWING AMOUNTS:

43 1. AT LEAST FIVE HUNDRED DOLLARS FOR A FIRST VIOLATION.

44 2. TWICE THE AMOUNT SPECIFIED IN PARAGRAPH 1 OF THIS SUBSECTION IF THE
45 PERSON WAS PREVIOUSLY SUBJECT TO AN ASSESSMENT PURSUANT TO THIS SUBSECTION.

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1 E. A COURT SHALL COLLECT THE ASSESSMENTS PRESCRIBED IN SUBSECTION D OF
2 THIS SECTION AND REMIT THE ASSESSMENTS TO THE DEPARTMENT OF PUBLIC SAFETY,
3 WHICH SHALL ESTABLISH A SPECIAL SUBACCOUNT FOR THE MONIES IN THE ACCOUNT
4 ESTABLISHED FOR THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT
5 MISSION APPROPRIATION. MONIES IN THE SPECIAL SUBACCOUNT ARE SUBJECT TO
6 LEGISLATIVE APPROPRIATION FOR DISTRIBUTION FOR GANG AND IMMIGRATION
7 ENFORCEMENT AND FOR COUNTY JAIL REIMBURSEMENT COSTS RELATING TO ILLEGAL
8 IMMIGRATION.

9 F. THIS SECTION DOES NOT APPLY TO A PERSON WHO MAINTAINS AUTHORIZATION
10 FROM THE FEDERAL GOVERNMENT TO REMAIN IN THE UNITED STATES.

11 G. ANY RECORD THAT RELATES TO THE IMMIGRATION STATUS OF A PERSON IS
12 ADMISSIBLE IN ANY COURT WITHOUT FURTHER FOUNDATION OR TESTIMONY FROM A
13 CUSTODIAN OF RECORDS IF THE RECORD IS CERTIFIED AS AUTHENTIC BY THE
14 GOVERNMENT AGENCY THAT IS RESPONSIBLE FOR MAINTAINING THE RECORD.

15 H. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR, EXCEPT THAT A
16 VIOLATION OF THIS SECTION IS:

17 1. A CLASS 3 FELONY IF THE PERSON VIOLATES THIS SECTION WHILE IN
18 POSSESSION OF ANY OF THE FOLLOWING:

19 (a) A DANGEROUS DRUG AS DEFINED IN SECTION 13-3401.

20 (b) PRECURSOR CHEMICALS THAT ARE USED IN THE MANUFACTURING OF
21 METHAMPHETAMINE IN VIOLATION OF SECTION 13-3404.01.

22 (c) A DEADLY WEAPON OR A DANGEROUS INSTRUMENT, AS DEFINED IN SECTION
23 13-105.

24 (d) PROPERTY THAT IS USED FOR THE PURPOSE OF COMMITTING AN ACT OF
25 TERRORISM AS PRESCRIBED IN SECTION 13-2308.01.

26 2. A CLASS 4 FELONY IF THE PERSON EITHER:

27 (a) IS CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION OF THIS SECTION.

28 (b) WITHIN SIXTY MONTHS BEFORE THE VIOLATION, HAS BEEN REMOVED FROM
29 THE UNITED STATES PURSUANT TO 8 UNITED STATES CODE SECTION 1229a OR HAS
30 ACCEPTED A VOLUNTARY REMOVAL FROM THE UNITED STATES PURSUANT TO 8 UNITED
31 STATES CODE SECTION 1229c.

32 Sec. 4. Section 13-2319, Arizona Revised Statutes, is amended to read:
33 13-2319. Smuggling; classification; definitions

34 A. It is unlawful for a person to intentionally engage in the
35 smuggling of human beings for profit or commercial purpose.

36 B. A violation of this section is a class 4 felony.

37 C. Notwithstanding subsection B of this section, a violation of this
38 section:

39 1. Is a class 2 felony if the human being who is smuggled is under
40 eighteen years of age and is not accompanied by a family member over eighteen
41 years of age or the offense involved the use of a deadly weapon or dangerous
42 instrument.

43 2. Is a class 3 felony if the offense involves the use or threatened
44 use of deadly physical force and the person is not eligible for suspension of
45 sentence, probation, pardon or release from confinement on any other basis

S.B. 1070

1 except pursuant to section 31-233, subsection A or B until the sentence
2 imposed by the court is served, the person is eligible for release pursuant
3 to section 41-1604.07 or the sentence is commuted.

4 D. Chapter 10 of this title does not apply to a violation of
5 subsection C, paragraph 1 of this section.

6 E. NOTWITHSTANDING ANY OTHER LAW, IN THE ENFORCEMENT OF THIS SECTION A
7 PEACE OFFICER MAY LAWFULLY STOP ANY PERSON WHO IS OPERATING A MOTOR VEHICLE
8 IF THE OFFICER HAS REASONABLE SUSPICION TO BELIEVE THE PERSON IS IN VIOLATION
9 OF ANY CIVIL TRAFFIC LAW.

10 F. For the purposes of this section:

11 1. "Family member" means the person's parent, grandparent, sibling or
12 any other person who is related to the person by consanguinity or affinity to
13 the second degree.

14 2. "Procurement of transportation" means any participation in or
15 facilitation of transportation and includes:

16 (a) Providing services that facilitate transportation including travel
17 arrangement services or money transmission services.

18 (b) Providing property that facilitates transportation, including a
19 weapon, a vehicle or other means of transportation or false identification,
20 or selling, leasing, renting or otherwise making available a drop house as
21 defined in section 13-2322.

22 3. "Smuggling of human beings" means the transportation, procurement
23 of transportation or use of property or real property by a person or an
24 entity that knows or has reason to know that the person or persons
25 transported or to be transported are not United States citizens, permanent
26 resident aliens or persons otherwise lawfully in this state or have attempted
27 to enter, entered or remained in the United States in violation of law.

28 Sec. 5. Title 13, chapter 29, Arizona Revised Statutes, is amended by
29 adding sections 13-2928 and 13-2929, to read:

30 13-2928. Unlawful stopping to hire and pick up passengers for
31 work; unlawful application, solicitation or
32 employment; classification; definitions

33 A. IT IS UNLAWFUL FOR AN OCCUPANT OF A MOTOR VEHICLE THAT IS STOPPED
34 ON A STREET, ROADWAY OR HIGHWAY TO ATTEMPT TO HIRE OR HIRE AND PICK UP
35 PASSENGERS FOR WORK AT A DIFFERENT LOCATION IF THE MOTOR VEHICLE BLOCKS OR
36 IMPEDES THE NORMAL MOVEMENT OF TRAFFIC.

37 B. IT IS UNLAWFUL FOR A PERSON TO ENTER A MOTOR VEHICLE THAT IS
38 STOPPED ON A STREET, ROADWAY OR HIGHWAY IN ORDER TO BE HIRED BY AN OCCUPANT
39 OF THE MOTOR VEHICLE AND TO BE TRANSPORTED TO WORK AT A DIFFERENT LOCATION IF
40 THE MOTOR VEHICLE BLOCKS OR IMPEDES THE NORMAL MOVEMENT OF TRAFFIC.

41 C. IT IS UNLAWFUL FOR A PERSON WHO IS UNLAWFULLY PRESENT IN THE UNITED
42 STATES AND WHO IS AN UNAUTHORIZED ALIEN TO KNOWINGLY APPLY FOR WORK, SOLICIT
43 WORK IN A PUBLIC PLACE OR PERFORM WORK AS AN EMPLOYEE OR INDEPENDENT
44 CONTRACTOR IN THIS STATE.

45 D. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

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1 E. FOR THE PURPOSES OF THIS SECTION:

2 1. "SOLICIT" MEANS VERBAL OR NONVERBAL COMMUNICATION BY A GESTURE OR A
3 NOD THAT WOULD INDICATE TO A REASONABLE PERSON THAT A PERSON IS WILLING TO BE
4 EMPLOYED.

5 2. "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE THE LEGAL
6 RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS
7 DESCRIBED IN 8 UNITED STATES CODE SECTION 1324a(h)(3).

8 13-2929. Unlawful transporting, moving, concealing, harboring
9 or shielding of unlawful aliens; vehicle
10 impoundment; exception; classification

11 A. IT IS UNLAWFUL FOR A PERSON WHO IS IN VIOLATION OF A CRIMINAL
12 OFFENSE TO:

13 1. TRANSPORT OR MOVE OR ATTEMPT TO TRANSPORT OR MOVE AN ALIEN IN THIS
14 STATE, IN FURTHERANCE OF THE ILLEGAL PRESENCE OF THE ALIEN IN THE UNITED
15 STATES, IN A MEANS OF TRANSPORTATION IF THE PERSON KNOWS OR RECKLESSLY
16 DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE
17 UNITED STATES IN VIOLATION OF LAW.

18 2. CONCEAL, HARBOR OR SHIELD OR ATTEMPT TO CONCEAL, HARBOR OR SHIELD
19 AN ALIEN FROM DETECTION IN ANY PLACE IN THIS STATE, INCLUDING ANY BUILDING OR
20 ANY MEANS OF TRANSPORTATION, IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE
21 FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED STATES
22 IN VIOLATION OF LAW.

23 3. ENCOURAGE OR INDUCE AN ALIEN TO COME TO OR RESIDE IN THIS STATE IF
24 THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT SUCH COMING TO,
25 ENTERING OR RESIDING IN THIS STATE IS OR WILL BE IN VIOLATION OF LAW.

26 B. A MEANS OF TRANSPORTATION THAT IS USED IN THE COMMISSION OF A
27 VIOLATION OF THIS SECTION IS SUBJECT TO MANDATORY VEHICLE IMMOBILIZATION OR
28 IMPOUNDMENT PURSUANT TO SECTION 28-3511.

29 C. THIS SECTION DOES NOT APPLY TO A CHILD PROTECTIVE SERVICES WORKER
30 ACTING IN THE WORKER'S OFFICIAL CAPACITY OR A PERSON WHO IS ACTING IN THE
31 CAPACITY OF A FIRST RESPONDER, AN AMBULANCE ATTENDANT OR AN EMERGENCY MEDICAL
32 TECHNICIAN AND WHO IS TRANSPORTING OR MOVING AN ALIEN IN THIS STATE PURSUANT
33 TO TITLE 36, CHAPTER 21.1.

34 D. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1
35 MISDEMEANOR AND IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND DOLLARS, EXCEPT
36 THAT A VIOLATION OF THIS SECTION THAT INVOLVES TEN OR MORE ILLEGAL ALIENS IS
37 A CLASS 6 FELONY AND THE PERSON IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND
38 DOLLARS FOR EACH ALIEN WHO IS INVOLVED.

39 Sec. 6. Section 13-3883, Arizona Revised Statutes, is amended to read:
40 13-3883. Arrest by officer without warrant

41 A. A peace officer may, without a warrant, MAY arrest a person if he
42 THE OFFICER has probable cause to believe:

43 1. A felony has been committed and probable cause to believe the
44 person to be arrested has committed the felony.

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2. A misdemeanor has been committed in ~~his~~ THE OFFICER'S presence and probable cause to believe the person to be arrested has committed the offense.

3. The person to be arrested has been involved in a traffic accident and violated any criminal section of title 28, and that such violation occurred prior to or immediately following such traffic accident.

4. A misdemeanor or a petty offense has been committed and probable cause to believe the person to be arrested has committed the offense. A person arrested under this paragraph is eligible for release under section 13-3903.

5. THE PERSON TO BE ARRESTED HAS COMMITTED ANY "PUBLIC OFFENSE" THAT MAKES THE PERSON REMOVABLE FROM THE UNITED STATES.

B. A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation. A peace officer who serves a copy of the traffic complaint shall do so within a reasonable time of the alleged criminal or civil traffic violation.

Sec. 7. Section 23-212, Arizona Revised Statutes, is amended to read:

23-212. Knowingly employing unauthorized aliens; prohibition;
false and frivolous complaints; violation;
classification; license suspension and revocation;
affirmative defense

A. An employer shall not knowingly employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer knowingly contracts with an unauthorized alien or with a person who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.

B. The attorney general shall prescribe a complaint form for a person to allege a violation of subsection A of this section. The complainant shall not be required to list the complainant's social security number on the complaint form or to have the complaint form notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly knowingly employs an unauthorized alien, the attorney general or county attorney shall investigate whether the employer has violated subsection A of this section. If a complaint is received but is not submitted on a prescribed complaint form, the attorney general or county attorney may investigate whether the employer has violated subsection A of this section. This subsection shall not be construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form. The attorney general or county attorney shall not investigate complaints that are based solely on race, color or national origin. A complaint that is submitted to a county attorney shall be submitted to the county attorney in the county in which the alleged unauthorized alien is or was employed by the employer. The county sheriff or

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1 any other local law enforcement agency may assist in investigating a
2 complaint. When investigating a complaint, the attorney general or county
3 attorney shall verify the work authorization of the alleged unauthorized
4 alien with the federal government pursuant to 8 United States Code section
5 1373(c). A state, county or local official shall not attempt to
6 independently make a final determination on whether an alien is authorized to
7 work in the United States. An alien's immigration status or work
8 authorization status shall be verified with the federal government pursuant
9 to 8 United States Code section 1373(c). A person who knowingly files a
10 false and frivolous complaint under this subsection is guilty of a class 3
11 misdemeanor.

12 C. If, after an investigation, the attorney general or county attorney
13 determines that the complaint is not false and frivolous:

14 1. The attorney general or county attorney shall notify the United
15 States immigration and customs enforcement of the unauthorized alien.

16 2. The attorney general or county attorney shall notify the local law
17 enforcement agency of the unauthorized alien.

18 3. The attorney general shall notify the appropriate county attorney
19 to bring an action pursuant to subsection D of this section if the complaint
20 was originally filed with the attorney general.

21 D. An action for a violation of subsection A of this section shall be
22 brought against the employer by the county attorney in the county where the
23 unauthorized alien employee is or was employed by the employer. The county
24 attorney shall not bring an action against any employer for any violation of
25 subsection A of this section that occurs before January 1, 2008. A second
26 violation of this section shall be based only on an unauthorized alien who is
27 or was employed by the employer after an action has been brought for a
28 violation of subsection A of this section or section 23-212.01, subsection A.

29 E. For any action in superior court under this section, the court
30 shall expedite the action, including assigning the hearing at the earliest
31 practicable date.

32 F. On a finding of a violation of subsection A of this section:

33 1. For a first violation, as described in paragraph 3 of this
34 subsection, the court:

35 (a) Shall order the employer to terminate the employment of all
36 unauthorized aliens.

37 (b) Shall order the employer to be subject to a three year
38 probationary period for the business location where the unauthorized alien
39 performed work. During the probationary period the employer shall file
40 quarterly reports in the form provided in section 23-722.01 with the county
41 attorney of each new employee who is hired by the employer at the business
42 location where the unauthorized alien performed work.

43 (c) Shall order the employer to file a signed sworn affidavit with the
44 county attorney within three business days after the order is issued. The
45 affidavit shall state that the employer has terminated the employment of all

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1 unauthorized aliens in this state and that the employer will not
 2 intentionally or knowingly employ an unauthorized alien in this state. The
 3 court shall order the appropriate agencies to suspend all licenses subject to
 4 this subdivision that are held by the employer if the employer fails to file
 5 a signed sworn affidavit with the county attorney within three business days
 6 after the order is issued. All licenses that are suspended under this
 7 subdivision shall remain suspended until the employer files a signed sworn
 8 affidavit with the county attorney. Notwithstanding any other law, on filing
 9 of the affidavit the suspended licenses shall be reinstated immediately by
 10 the appropriate agencies. For the purposes of this subdivision, the licenses
 11 that are subject to suspension under this subdivision are all licenses that
 12 are held by the employer specific to the business location where the
 13 unauthorized alien performed work. If the employer does not hold a license
 14 specific to the business location where the unauthorized alien performed
 15 work, but a license is necessary to operate the employer's business in
 16 general, the licenses that are subject to suspension under this subdivision
 17 are all licenses that are held by the employer at the employer's primary
 18 place of business. On receipt of the court's order and notwithstanding any
 19 other law, the appropriate agencies shall suspend the licenses according to
 20 the court's order. The court shall send a copy of the court's order to the
 21 attorney general and the attorney general shall maintain the copy pursuant to
 22 subsection G of this section.

23 (d) May order the appropriate agencies to suspend all licenses
 24 described in subdivision (c) of this paragraph that are held by the employer
 25 for not to exceed ten business days. The court shall base its decision to
 26 suspend under this subdivision on any evidence or information submitted to it
 27 during the action for a violation of this subsection and shall consider the
 28 following factors, if relevant:

- 29 (i) The number of unauthorized aliens employed by the employer.
- 30 (ii) Any prior misconduct by the employer.
- 31 (iii) The degree of harm resulting from the violation.
- 32 (iv) Whether the employer made good faith efforts to comply with any
 33 applicable requirements.
- 34 (v) The duration of the violation.
- 35 (vi) The role of the directors, officers or principals of the employer
 36 in the violation.
- 37 (vii) Any other factors the court deems appropriate.

38 2. For a second violation, as described in paragraph 3 of this
 39 subsection, the court shall order the appropriate agencies to permanently
 40 revoke all licenses that are held by the employer specific to the business
 41 location where the unauthorized alien performed work. If the employer does
 42 not hold a license specific to the business location where the unauthorized
 43 alien performed work, but a license is necessary to operate the employer's
 44 business in general, the court shall order the appropriate agencies to
 45 permanently revoke all licenses that are held by the employer at the

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1 employer's primary place of business. On receipt of the order and
2 notwithstanding any other law, the appropriate agencies shall immediately
3 revoke the licenses.

4 3. The violation shall be considered:

5 (a) A first violation by an employer at a business location if the
6 violation did not occur during a probationary period ordered by the court
7 under this subsection or section 23-212.01, subsection F for that employer's
8 business location.

9 (b) A second violation by an employer at a business location if the
10 violation occurred during a probationary period ordered by the court under
11 this subsection or section 23-212.01, subsection F for that employer's
12 business location.

13 G. The attorney general shall maintain copies of court orders that are
14 received pursuant to subsection F of this section and shall maintain a
15 database of the employers and business locations that have a first violation
16 of subsection A of this section and make the court orders available on the
17 attorney general's website.

18 H. On determining whether an employee is an unauthorized alien, the
19 court shall consider only the federal government's determination pursuant to
20 8 United States Code section 1373(c). The federal government's determination
21 creates a rebuttable presumption of the employee's lawful status. The court
22 may take judicial notice of the federal government's determination and may
23 request the federal government to provide automated or testimonial
24 verification pursuant to 8 United States Code section 1373(c).

25 I. For the purposes of this section, proof of verifying the employment
26 authorization of an employee through the e-verify program creates a
27 rebuttable presumption that an employer did not knowingly employ an
28 unauthorized alien.

29 J. For the purposes of this section, an employer that establishes that
30 it has complied in good faith with the requirements of 8 United States Code
31 section 1324a(b) establishes an affirmative defense that the employer did not
32 knowingly employ an unauthorized alien. An employer is considered to have
33 complied with the requirements of 8 United States Code section 1324a(b),
34 notwithstanding an isolated, sporadic or accidental technical or procedural
35 failure to meet the requirements, if there is a good faith attempt to comply
36 with the requirements.

37 K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF THIS
38 SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE EMPLOYER
39 MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE SUBSTANTIAL
40 ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN ENTRAPMENT DEFENSE HAS
41 THE BURDEN OF PROVING THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

42 1. THE IDEA OF COMMITTING THE VIOLATION STARTED WITH LAW ENFORCEMENT
43 OFFICERS OR THEIR AGENTS RATHER THAN WITH THE EMPLOYER.

44 2. THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE
45 EMPLOYER TO COMMIT THE VIOLATION.

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1 3. THE EMPLOYER WAS NOT PREDISPOSED TO COMMIT THE VIOLATION BEFORE THE
2 LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE EMPLOYER TO
3 COMMIT THE VIOLATION.

4 L. AN EMPLOYER DOES NOT ESTABLISH ENTRAPMENT IF THE EMPLOYER WAS
5 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND THE LAW ENFORCEMENT
6 OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO
7 COMMIT THE VIOLATION. IT IS NOT ENTRAPMENT FOR LAW ENFORCEMENT OFFICERS OR
8 THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR IDENTITY. THE CONDUCT
9 OF LAW ENFORCEMENT OFFICERS AND THEIR AGENTS MAY BE CONSIDERED IN DETERMINING
10 IF AN EMPLOYER HAS PROVEN ENTRAPMENT.

11 Sec. 8. Section 23-212.01, Arizona Revised Statutes, is amended to
12 read:

13 23-212.01. Intentionally employing unauthorized aliens;
14 prohibition; false and frivolous complaints;
15 violation; classification; license suspension and
16 revocation; affirmative defense

17 A. An employer shall not intentionally employ an unauthorized alien.
18 If, in the case when an employer uses a contract, subcontract or other
19 independent contractor agreement to obtain the labor of an alien in this
20 state, the employer intentionally contracts with an unauthorized alien or
21 with a person who employs or contracts with an unauthorized alien to perform
22 the labor, the employer violates this subsection.

23 B. The attorney general shall prescribe a complaint form for a person
24 to allege a violation of subsection A of this section. The complainant shall
25 not be required to list the complainant's social security number on the
26 complaint form or to have the complaint form notarized. On receipt of a
27 complaint on a prescribed complaint form that an employer allegedly
28 intentionally employs an unauthorized alien, the attorney general or county
29 attorney shall investigate whether the employer has violated subsection A of
30 this section. If a complaint is received but is not submitted on a
31 prescribed complaint form, the attorney general or county attorney may
32 investigate whether the employer has violated subsection A of this section.
33 This subsection shall not be construed to prohibit the filing of anonymous
34 complaints that are not submitted on a prescribed complaint form. The
35 attorney general or county attorney shall not investigate complaints that are
36 based solely on race, color or national origin. A complaint that is
37 submitted to a county attorney shall be submitted to the county attorney in
38 the county in which the alleged unauthorized alien is or was employed by the
39 employer. The county sheriff or any other local law enforcement agency may
40 assist in investigating a complaint. When investigating a complaint, the
41 attorney general or county attorney shall verify the work authorization of
42 the alleged unauthorized alien with the federal government pursuant to
43 8 United States Code section 1373(c). A state, county or local official
44 shall not attempt to independently make a final determination on whether an
45 alien is authorized to work in the United States. An alien's immigration

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1 status or work authorization status shall be verified with the federal
2 government pursuant to 8 United States Code section 1373(c). A person who
3 knowingly files a false and frivolous complaint under this subsection is
4 guilty of a class 3 misdemeanor.

5 C. If, after an investigation, the attorney general or county attorney
6 determines that the complaint is not false and frivolous:

7 1. The attorney general or county attorney shall notify the United
8 States immigration and customs enforcement of the unauthorized alien.

9 2. The attorney general or county attorney shall notify the local law
10 enforcement agency of the unauthorized alien.

11 3. The attorney general shall notify the appropriate county attorney
12 to bring an action pursuant to subsection D of this section if the complaint
13 was originally filed with the attorney general.

14 D. An action for a violation of subsection A of this section shall be
15 brought against the employer by the county attorney in the county where the
16 unauthorized alien employee is or was employed by the employer. The county
17 attorney shall not bring an action against any employer for any violation of
18 subsection A of this section that occurs before January 1, 2008. A second
19 violation of this section shall be based only on an unauthorized alien who is
20 or was employed by the employer after an action has been brought for a
21 violation of subsection A of this section or section 23-212, subsection A.

22 E. For any action in superior court under this section, the court
23 shall expedite the action, including assigning the hearing at the earliest
24 practicable date.

25 F. On a finding of a violation of subsection A of this section:

26 1. For a first violation, as described in paragraph 3 of this
27 subsection, the court shall:

28 (a) Order the employer to terminate the employment of all unauthorized
29 aliens.

30 (b) Order the employer to be subject to a five year probationary
31 period for the business location where the unauthorized alien performed work.
32 During the probationary period the employer shall file quarterly reports in
33 the form provided in section 23-722.01 with the county attorney of each new
34 employee who is hired by the employer at the business location where the
35 unauthorized alien performed work.

36 (c) Order the appropriate agencies to suspend all licenses described
37 in subdivision (d) of this paragraph that are held by the employer for a
38 minimum of ten days. The court shall base its decision on the length of the
39 suspension under this subdivision on any evidence or information submitted to
40 it during the action for a violation of this subsection and shall consider
41 the following factors, if relevant:

42 (i) The number of unauthorized aliens employed by the employer.

43 (ii) Any prior misconduct by the employer.

44 (iii) The degree of harm resulting from the violation.

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1 (iv) Whether the employer made good faith efforts to comply with any
2 applicable requirements.

3 (v) The duration of the violation.

4 (vi) The role of the directors, officers or principals of the employer
5 in the violation.

6 (vii) Any other factors the court deems appropriate.

7 (d) Order the employer to file a signed sworn affidavit with the
8 county attorney. The affidavit shall state that the employer has terminated
9 the employment of all unauthorized aliens in this state and that the employer
10 will not intentionally or knowingly employ an unauthorized alien in this
11 state. The court shall order the appropriate agencies to suspend all
12 licenses subject to this subdivision that are held by the employer if the
13 employer fails to file a signed sworn affidavit with the county attorney
14 within three business days after the order is issued. All licenses that are
15 suspended under this subdivision for failing to file a signed sworn affidavit
16 shall remain suspended until the employer files a signed sworn affidavit with
17 the county attorney. For the purposes of this subdivision, the licenses that
18 are subject to suspension under this subdivision are all licenses that are
19 held by the employer specific to the business location where the unauthorized
20 alien performed work. If the employer does not hold a license specific to
21 the business location where the unauthorized alien performed work, but a
22 license is necessary to operate the employer's business in general, the
23 licenses that are subject to suspension under this subdivision are all
24 licenses that are held by the employer at the employer's primary place of
25 business. On receipt of the court's order and notwithstanding any other law,
26 the appropriate agencies shall suspend the licenses according to the court's
27 order. The court shall send a copy of the court's order to the attorney
28 general and the attorney general shall maintain the copy pursuant to
29 subsection G of this section.

30 2. For a second violation, as described in paragraph 3 of this
31 subsection, the court shall order the appropriate agencies to permanently
32 revoke all licenses that are held by the employer specific to the business
33 location where the unauthorized alien performed work. If the employer does
34 not hold a license specific to the business location where the unauthorized
35 alien performed work, but a license is necessary to operate the employer's
36 business in general, the court shall order the appropriate agencies to
37 permanently revoke all licenses that are held by the employer at the
38 employer's primary place of business. On receipt of the order and
39 notwithstanding any other law, the appropriate agencies shall immediately
40 revoke the licenses.

41 3. The violation shall be considered:

42 (a) A first violation by an employer at a business location if the
43 violation did not occur during a probationary period ordered by the court
44 under this subsection or section 23-212, subsection F for that employer's
45 business location.

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1 (b) A second violation by an employer at a business location if the
2 violation occurred during a probationary period ordered by the court under
3 this subsection or section 23-212, subsection F for that employer's business
4 location.

5 G. The attorney general shall maintain copies of court orders that are
6 received pursuant to subsection F of this section and shall maintain a
7 database of the employers and business locations that have a first violation
8 of subsection A of this section and make the court orders available on the
9 attorney general's website.

10 H. On determining whether an employee is an unauthorized alien, the
11 court shall consider only the federal government's determination pursuant to
12 8 United States Code section 1373(c). The federal government's determination
13 creates a rebuttable presumption of the employee's lawful status. The court
14 may take judicial notice of the federal government's determination and may
15 request the federal government to provide automated or testimonial
16 verification pursuant to 8 United States Code section 1373(c).

17 I. For the purposes of this section, proof of verifying the employment
18 authorization of an employee through the e-verify program creates a
19 rebuttable presumption that an employer did not intentionally employ an
20 unauthorized alien.

21 J. For the purposes of this section, an employer that establishes that
22 it has complied in good faith with the requirements of 8 United States Code
23 section 1324a(b) establishes an affirmative defense that the employer did not
24 intentionally employ an unauthorized alien. An employer is considered to
25 have complied with the requirements of 8 United States Code section 1324a(b),
26 notwithstanding an isolated, sporadic or accidental technical or procedural
27 failure to meet the requirements, if there is a good faith attempt to comply
28 with the requirements.

29 K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF THIS
30 SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE EMPLOYER
31 MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE SUBSTANTIAL
32 ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN ENTRAPMENT DEFENSE HAS
33 THE BURDEN OF PROVING THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

34 1. THE IDEA OF COMMITTING THE VIOLATION STARTED WITH LAW ENFORCEMENT
35 OFFICERS OR THEIR AGENTS RATHER THAN WITH THE EMPLOYER.

36 2. THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE
37 EMPLOYER TO COMMIT THE VIOLATION.

38 3. THE EMPLOYER WAS NOT PREDISPOSED TO COMMIT THE VIOLATION BEFORE THE
39 LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE EMPLOYER TO
40 COMMIT THE VIOLATION.

41 L. AN EMPLOYER DOES NOT ESTABLISH ENTRAPMENT IF THE EMPLOYER WAS
42 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND THE LAW ENFORCEMENT
43 OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO
44 COMMIT THE VIOLATION. IT IS NOT ENTRAPMENT FOR LAW ENFORCEMENT OFFICERS OR
45 THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR IDENTITY. THE CONDUCT

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1 OF LAW ENFORCEMENT OFFICERS AND THEIR AGENTS MAY BE CONSIDERED IN DETERMINING
2 IF AN EMPLOYER HAS PROVEN ENTRAPMENT.

3 Sec. 9. Section 23-214, Arizona Revised Statutes, is amended to read:

4 23-214. Verification of employment eligibility: e-verify
5 program; economic development incentives; list of
6 registered employers

7 A. After December 31, 2007, every employer, after hiring an employee,
8 shall verify the employment eligibility of the employee through the e-verify
9 program AND SHALL KEEP A RECORD OF THE VERIFICATION FOR THE DURATION OF THE
10 EMPLOYEE'S EMPLOYMENT OR AT LEAST THREE YEARS, WHICHEVER IS LONGER.

11 B. In addition to any other requirement for an employer to receive an
12 economic development incentive from a government entity, the employer shall
13 register with and participate in the e-verify program. Before receiving the
14 economic development incentive, the employer shall provide proof to the
15 government entity that the employer is registered with and is participating
16 in the e-verify program. If the government entity determines that the
17 employer is not complying with this subsection, the government entity shall
18 notify the employer by certified mail of the government entity's
19 determination of noncompliance and the employer's right to appeal the
20 determination. On a final determination of noncompliance, the employer shall
21 repay all monies received as an economic development incentive to the
22 government entity within thirty days of the final determination. For the
23 purposes of this subsection:

24 1. "Economic development incentive" means any grant, loan or
25 performance-based incentive from any government entity that is awarded after
26 September 30, 2008. Economic development incentive does not include any tax
27 provision under title 42 or 43.

28 2. "Government entity" means this state and any political subdivision
29 of this state that receives and uses tax revenues.

30 C. Every three months the attorney general shall request from the
31 United States department of homeland security a list of employers from this
32 state that are registered with the e-verify program. On receipt of the list
33 of employers, the attorney general shall make the list available on the
34 attorney general's website.

35 Sec. 10. Section 28-3511, Arizona Revised Statutes, is amended to
36 read:

37 28-3511. Removal and immobilization or impoundment of vehicle

38 A. A peace officer shall cause the removal and either immobilization
39 or impoundment of a vehicle if the peace officer determines that a person is
40 driving the vehicle while any of the following applies:

41 1. The person's driving privilege is suspended or revoked for any
42 reason.

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1 2. The person has not ever been issued a valid driver license or
2 permit by this state and the person does not produce evidence of ever having
3 a valid driver license or permit issued by another jurisdiction. This
4 paragraph does not apply to the operation of an implement of husbandry.

5 3. The person is subject to an ignition interlock device requirement
6 pursuant to chapter 4 of this title and the person is operating a vehicle
7 without a functioning certified ignition interlock device. This paragraph
8 does not apply to a person operating an employer's vehicle or the operation
9 of a vehicle due to a substantial emergency as defined in section 28-1464.

10 4. IN FURTHERANCE OF THE ILLEGAL PRESENCE OF AN ALIEN IN THE UNITED
11 STATES AND IN VIOLATION OF A CRIMINAL OFFENSE, THE PERSON IS TRANSPORTING OR
12 MOVING OR ATTEMPTING TO TRANSPORT OR MOVE AN ALIEN IN THIS STATE IN A VEHICLE
13 IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE ALIEN HAS COME
14 TO, HAS ENTERED OR REMAINS IN THE UNITED STATES IN VIOLATION OF LAW.

15 5. THE PERSON IS CONCEALING, HARBORING OR SHIELDING OR ATTEMPTING TO
16 CONCEAL, HARBOR OR SHIELD FROM DETECTION AN ALIEN IN THIS STATE IN A VEHICLE
17 IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE ALIEN HAS COME
18 TO, ENTERED OR REMAINS IN THE UNITED STATES IN VIOLATION OF LAW.

19 B. A peace officer shall cause the removal and impoundment of a
20 vehicle if the peace officer determines that a person is driving the vehicle
21 and if all of the following apply:

22 1. The person's driving privilege is canceled, suspended or revoked
23 for any reason or the person has not ever been issued a driver license or
24 permit by this state and the person does not produce evidence of ever having
25 a driver license or permit issued by another jurisdiction.

26 2. The person is not in compliance with the financial responsibility
27 requirements of chapter 9, article 4 of this title.

28 3. The person is driving a vehicle that is involved in an accident
29 that results in either property damage or injury to or death of another
30 person.

31 C. Except as provided in subsection D of this section, while a peace
32 officer has control of the vehicle the peace officer shall cause the removal
33 and either immobilization or impoundment of the vehicle if the peace officer
34 has probable cause to arrest the driver of the vehicle for a violation of
35 section 4-244, paragraph 34 or section 28-1382 or 28-1383.

36 D. A peace officer shall not cause the removal and either the
37 immobilization or impoundment of a vehicle pursuant to subsection C of this
38 section if all of the following apply:

39 1. The peace officer determines that the vehicle is currently
40 registered and that the driver or the vehicle is in compliance with the
41 financial responsibility requirements of chapter 9, article 4 of this title.

42 2. The spouse of the driver is with the driver at the time of the
43 arrest.

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1 3. The peace officer has reasonable grounds to believe that the spouse
2 of the driver:

3 (a) Has a valid driver license.

4 (b) Is not impaired by intoxicating liquor, any drug, a vapor
5 releasing substance containing a toxic substance or any combination of
6 liquor, drugs or vapor releasing substances.

7 (c) Does not have any spirituous liquor in the spouse's body if the
8 spouse is under twenty-one years of age.

9 4. The spouse notifies the peace officer that the spouse will drive
10 the vehicle from the place of arrest to the driver's home or other place of
11 safety.

12 5. The spouse drives the vehicle as prescribed by paragraph 4 of this
13 subsection.

14 E. Except as otherwise provided in this article, a vehicle that is
15 removed and either immobilized or impounded pursuant to subsection A, B or C
16 of this section shall be immobilized or impounded for thirty days. An
17 insurance company does not have a duty to pay any benefits for charges or
18 fees for immobilization or impoundment.

19 F. The owner of a vehicle that is removed and either immobilized or
20 impounded pursuant to subsection A, B or C of this section, the spouse of the
21 owner and each person identified on the department's record with an interest
22 in the vehicle shall be provided with an opportunity for an immobilization or
23 poststorage hearing pursuant to section 28-3514.

24 Sec. 11. Title 41, chapter 12, article 2, Arizona Revised Statutes, is
25 amended by adding section 41-1724, to read:

26 41-1724. Gang and immigration intelligence team enforcement
27 mission fund

28 THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION FUND IS
29 ESTABLISHED CONSISTING OF MONIES DEPOSITED PURSUANT TO SECTION 11-1051 AND
30 MONIES APPROPRIATED BY THE LEGISLATURE. THE DEPARTMENT SHALL ADMINISTER THE
31 FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION AND SHALL
32 BE USED FOR GANG AND IMMIGRATION ENFORCEMENT AND FOR COUNTY JAIL
33 REIMBURSEMENT COSTS RELATING TO ILLEGAL IMMIGRATION.

34 Sec. 12. Severability, implementation and construction

35 A. If a provision of this act or its application to any person or
36 circumstance is held invalid, the invalidity does not affect other provisions
37 or applications of the act that can be given effect without the invalid
38 provision or application, and to this end the provisions of this act are
39 severable.

40 B. The terms of this act regarding immigration shall be construed to
41 have the meanings given to them under federal immigration law.

42 C. This act shall be implemented in a manner consistent with federal
43 laws regulating immigration, protecting the civil rights of all persons and
44 respecting the privileges and immunities of United States citizens.