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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 David Salgado,
15 plaintiff,
16 vs.

17 Jan Brewer, individually and in her
18 capacity as Governor of Arizona; and
19 the City of Phoenix, an Arizona
20 municipal corporation,
defendants.

No.

COMPLAINT

(Declaratory Relief)

21 For his Complaint against Defendants, Plaintiff alleges the following:

- 22 1. This is an action seeking a declaration that the enforcement of the "Support Our
23 Law Enforcement and Safe Neighborhoods Act," Arizona Senate Bill 1070,
24 violates Plaintiff's rights under the Fourteenth Amendment to the Constitution of
25 the United States and is preempted by, and conflicts with, the Immigration and
26 Nationality Act, 8 U.S.C. §1357(g), subsection 287(g).
- 27 2. Plaintiff asserts this action pursuant to the Civil Rights Act of 1871, 42 U.S.C.
28 §1983, and the Declaratory Judgment Act of 1934, 28 U.S.C. §2201.

- 1 3. This Court has jurisdiction over this case under 28 U.S.C. §1331.
- 2 4. Venue is proper in the United States District Court for the District of Arizona
3 under 28 U.S.C. §1391(b).
- 4 5. Plaintiff David Salgado is a native-born citizen of the United States of America.
- 5 6. Mr. Salgado is Mexican in ancestry and race.
- 6 7. Mr. Salgado resides in Maricopa County, Arizona.
- 7 8. Mr. Salgado is employed as a full-time Patrol Officer for the Police Department
8 of the City of Phoenix.
- 9 9. Mr. Salgado is certified to act as a law enforcement officer in the State of Arizona
10 by the Peace Officer Standards and Training Board of the State of Arizona.
- 11 10. Defendant Jan Brewer is the Governor of Arizona.
- 12 11. As Governor of Arizona, Governor Brewer has a legal obligation under the
13 Arizona Constitution to ensure that the laws of Arizona “shall . . . be faithfully
14 executed.” See Ariz. Const. Article 5, §4.
- 15 12. The City of Phoenix is an Arizona municipal corporation that operates the Police
16 Department of the City of Phoenix.
- 17 13. Acting in her official capacity as the Governor of Arizona, on April 23, 2010,
18 Governor Brewer elected to sign into law the “Support Our Law Enforcement and
19 Safe Neighborhoods Act” (“the Act”), Senate Bill 1070.
- 20 14. A true and correct copy of the Act is attached hereto as Exhibit A.
- 21 15. Had Governor Brewer exercised her right to veto the law, the Act would not have
22 been enacted into law.
- 23 16. The Act compels all state law enforcement officers—including Mr. Salgado—to
24 “attempt to determine the immigration status of any person” with whom the officer
25 makes “any lawful contact” when a “reasonable suspicion exists that the person
26 is an alien who is unlawfully present in the United States.” SB 1070, §2 B
27 (emphasis added).

- 1 17. The Act also authorizes all state law enforcement officers—including Officer
2 Salgado—to arrest without a warrant any person whom the officer has “probable
3 cause to believe . . . has committed any public offense that makes the person
4 removable from the United States.” SB 1070, §6A5 (emphasis added).
- 5 18. The Act also creates a private enforcement mechanism by establishing a private
6 right of action by any “legal resident” of Arizona against any law enforcement
7 officer or law enforcement agency “that adopts or implements a policy or practice
8 that limits or restricts the enforcement of federal immigration laws to less than the
9 full extent permitted by federal law.” SB 1070, §2, G.
- 10 19. Based on this language, the Act compels Arizona law enforcement
11 officers—including Officer Salgado—to stop, interrogate, and detain individuals
12 whom they “reasonably suspect” of being “unlawfully present in the United
13 States.”
- 14 20. In his capacity as a Phoenix Police Officer, Officer Salgado routinely interacts
15 with individuals of Mexican and Latin-American ancestry throughout the City of
16 Phoenix, many of these individuals are children and minors.
- 17 21. Many of the children and minors with whom Officer Salgado routinely interacts
18 in his capacity as a Phoenix Police Officer are Latino in race, Mexican or Latin
19 American in national origin, speak little or no English, and do not have any form
20 of state or federal identification.
- 21 22. In fact, most children in Arizona do not have any form of state or federal
22 identification regardless of their race, ethnicity, or national origin.
- 23 23. Officer Salgado routinely interacts with such children and minors in and around
24 public schools in the City of Phoenix.
- 25 24. Officer Salgado reasonably suspects that some of these children are not lawfully
26 in the United States.
- 27 25. The government of the United States of America, acting through the Secretary
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1 of the Department of Homeland Security of the United States in accordance with
2 8 U.S.C. §1357(g), subsection 287(g), has not authorized all of the law
3 enforcement officers employed by the Police Department of the City of Phoenix
4 to enforce federal immigration law to the “full extent permitted by federal law” as
5 required by the Act.

6 26. Nor will every member of the City of Phoenix Police Department—including Officer
7 Salgado—receive training regarding the enforcement of federal immigration law
8 or obtain written certification of their receipt of such training as expressly required
9 by the Immigration and Nationality Act, 8 U.S.C. §1357(g), subsection 287(g),
10 before the local law enforcement officer purports to enforce federal immigration
11 law.

12 27. Nor will all of the members of the City of Phoenix Police Department—including
13 Officer Salgado—be subject to the supervision of United States Immigration and
14 Customs Enforcement officers when engaged in the conduct mandated by the
15 Act, which violates the express requirements of the Immigration and Nationality
16 Act, 8 U.S.C. §1357(g), subsection 287(g).

17 28. Notwithstanding the fact that the Police Department of the City of Phoenix lacks
18 the requisite authorization from the Department of Homeland Security of the
19 United States to enforce federal immigration law to the “full extent permitted by
20 federal law,” the Phoenix Police Department is already planning to prepare its
21 officers—including Officer Salgado—to enforce federal immigration law under the
22 Act.

23 29. The Act is unlawful because it is preempted by, and conflicts with, 8 U.S.C.
24 §1357(g), subsection 287(g).

25 30. Absent a judicial declaration that the Act is lawful, Officer Salgado does not
26 intend to enforce the Act because he believes that he lacks the authority to do so
27 under the Immigration and Nationality Act, 8 U.S.C. §1357(g), subsection 287(g).

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1 31. Correspondingly, absent a judicial declaration that the Act is lawful, Officer
2 Salgado does not intend to enforce the Act because he believes that in so doing
3 he would violate the rights of Latinos under the due process and equal protection
4 clauses of the Fourteenth Amendment of the Constitution of the United States
5 because the Act will require him to use race as a primary factor in enforcing the
6 various provisions of the Act.

7 32. Similarly, absent a judicial declaration that the Act is lawful, Officer Salgado does
8 not intend to enforce the Act as to school children and other minors because he
9 believes that in so doing he would violate the Supreme Court of the United
10 States' ruling in Plyler v. Doe, 457 U.S. 202 (1982).

11 33. If Officer Salgado does not enforce the Act to "the fullest extent permitted by
12 federal immigration law," he will be subject to discipline by Defendant City of
13 Phoenix.

14 34. Similarly, if Officer Salgado does not enforce the Act to "the fullest extent
15 permitted by federal law," he will be subject to costly lawsuits by private parties
16 under Section 2, G of the Act.

17 35. In order to be prepared to comply with the Act, Officer Salgado will be forced to
18 expend his scarce time and resources in order to thoroughly familiarize himself
19 with the Act's requirements and the Act's complex interaction with federal
20 immigration law.

21 36. Officer Salgado is suffering increasing pressure from both individuals within the
22 Phoenix Police Department and from various political entities within and outside
23 the State of Arizona to enforce the Act.

24 37. This pressure is chilling Officer Salgado from exercising his First Amendment
25 right to speak out against the Act as unlawful and discriminatory.

26 38. But for Governor Brewer's signing the Act into law, Officer Salgado would not be
27 chilled from exercising his First Amendment rights and subject to the private
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1 enforcement actions created by the Act.

2 39. Under these circumstances, Officer Salgado finds himself in a dilemma: if he
3 refuses to enforce the Act, he can be disciplined by his employer or subjected to
4 costly private enforcement actions under the Act; conversely, if he enforces the
5 Act, he can be subjected to costly civil actions alleging the deprivation of the civil
6 rights of the individual against whom he enforces the Act.

7 40. Accordingly, Officer Salgado requires this Court's prompt declaratory relief.

8 **WHEREFORE**, Plaintiff respectfully requests the Court to:

9 A. Issue a judgment declaring that the enforcement of the Act would violate
10 his rights under the laws of the United States, including the Civil Rights Act of 1871, 42
11 U.S.C. §1983;

12 B. Issue a judgment declaring that the Act is preempted by the Immigration
13 and Nationality Act, 8 U.S.C. §1357(g), subsection 287(g);

14 C. Issue a judgment declaring that the Act unlawfully conflicts with the
15 Immigration and Nationality Act, 8 U.S.C. §1357(g), subsection 287(g);

16 D. Issue a judgment awarding Plaintiff his reasonable attorney fees against
17 Defendants, jointly and severally, pursuant to 42 U.S.C. §1988 and any other applicable
18 law; and

19 E. Issue a judgment awarding Plaintiff all other relief that is just and proper
20 under the circumstances.

21 Respectfully submitted this 29th day of April 2010.

22 **MONTOYA JIMENEZ**
23 A Professional Association

24 s/ Stephen Montoya
25 Stephen G. Montoya
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Attorneys for Plaintiff

1 I hereby certify that on April 29, 2010, I electronically transmitted the foregoing
2 document to the Clerk of Court using the CM/ECF System for filing and transmittal of
3 a Notice of Electronic Filing.

4 s/ Stephen Montoya _____

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