

CASE NO. 10-16645

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

United States of America,

Plaintiff-Appellee,

V.

State of Arizona and Janice K. Brewer, Governor of the State Of Arizona,
in her Official Capacity,

Defendants-Appellants.

On Appeal From The United States District Court
for The District Of Arizona, Case No. 2:10-Cv-01413-SRB,
Honorable Susan R. Bolton, District Judge

**AMICUS CURIAE BRIEF SUBMITTED BY
THE CENTER ON THE ADMINISTRATION OF CRIMINAL LAW
IN SUPPORT OF APPELLEE-PLAINTIFF THE UNITED STATES OF AMERICA**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amici Curiae The Center on the Administration of Criminal Law ("the Center") states that it is a nonprofit organization at New York University School of Law. No parent corporation or publicly-held entity owns an interest of more than ten percent in the Center.

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STATEMENT OF INTEREST

The Center on the Administration of Criminal Law (the “Center”) respectfully submits this brief in support of Plaintiff-Appellee the United States of America. The Center, based at New York University School of Law, is dedicated to defining and promoting good government practices in the criminal justice system through academic research, litigation, and participation in the formulation of public policy. The Center’s litigation practice aims to use the Center’s empirical research and experience to assist courts in important criminal justice cases. As the Center’s name suggests, it is devoted to improving the quality of the administration of criminal justice and advocating the adoption of best practices through its scholarship, litigation, and public policy work.

The Center’s Executive Director, Anthony S. Barkow, was a federal prosecutor for 12 years and worked in two United States Attorney’s Offices—the United States Attorney’s Office for the Southern District of New York, where he prosecuted terrorism cases, and the United States Attorney’s Office for the District of Columbia—and in the United States Department of Justice in Washington, D.C. The Center’s Senior Fellow, Anne Milgram, was the Attorney General of the State of New Jersey from 2007 to 2010, where she spearheaded investigations into gang violence,

public corruption, and mortgage foreclosure and debt reduction schemes.

Before that, she was a prosecutor in the Manhattan District Attorney's Office and in the United States Department of Justice's Civil Rights Division, Criminal Section, where she prosecuted human trafficking crimes.

The Center wishes to bring to the Court's attention factual and legal arguments concerning the deleterious impact that Arizona Senate Bill 1070, as amended by Arizona House Bill 2162 (the "Arizona immigration law"), will have on the ability of police officers to effectively serve their communities. The Arizona immigration law is counterproductive to good government practices in the criminal justice system and the law enforcement community overall. In particular, the Center is concerned that the law, by placing local police officers in the position of acting as immigration officials, will drive a wedge between police officers and the immigrant communities they serve.

The principal mission of local law enforcement officers is to enforce State, County, and local criminal laws and to protect the communities they serve. A critical component of achieving success in that mission is having the cooperation and trust of the members of those communities. Maintaining a strong, positive relationship between police officers and the community promotes public safety because individuals feel

more comfortable coming forward to report suspicious activity and to cooperate with law enforcement working to solve or prosecute a crime. The Arizona immigration law threatens to undermine those relationships with a large segment of the community—in particular, immigrant members—by making them fearful that interacting with police officers will result in deportation for themselves or someone they know. Public safety and national security will suffer as police officers lose valuable information that allows them to prevent and solve crime locally and to prevent terrorist acts against our nation.

The District Court correctly issued a preliminary injunction enjoining the enforcement of several provisions of the Arizona immigration law. For the reasons set forth in Plaintiff-Appellee’s brief along with the legal and policy arguments set forth below, the Center respectfully requests that this Court affirm the District Court’s decision.

ARGUMENT

THE ARIZONA IMMIGRATION LAW THREATENS PUBLIC SAFETY BY UNDERMINING LAW ENFORCEMENT EFFORTS TO MAINTAIN POSITIVE RELATIONSHIPS AND OPEN LINES OF COMMUNICATION WITH THE COMMUNITIES THEY SERVE

The Arizona immigration law “will actually increase crime, not decrease” it. Los Angeles Police Chief Charlie Beck, quoted in *Who Do You*

Trust on Immigration—Police Chiefs or Politicians?, AMERICA’S VOICE, May 27, 2010, http://americasvoiceonline.org/press_releases/entry/who_do_you_trust_on_immigration_police_chiefs_or_politicians/ [hereinafter, “*Police Chiefs or Politicians*”]. The reason is simple: “[p]eople will be more hesitant to report crimes, and that will create some very, very tough circumstances for local police in dealing with crime issues in areas heavily visited by people here from other countries.” George Gascón, former Mesa, Arizona Police Chief and current San Francisco Police Department Chief, quoted in Alia Beard Rau & JJ Hensley, *Police Weighing Bill’s Impact*, THE ARIZONA REPUBLIC, Apr. 22, 2010 at A1; see also Philadelphia Police Commissioner Charles Ramsey, quoted in *Police Chiefs or Politicians*, *supra* (“Enforcing immigration laws will cause us many problems in terms of [members of minority communities] feeling they can talk to us about crime issues and report crimes.”). Furthermore, as criminal activity goes unreported, it “will embolden the criminal element because they will have less reason to be concerned about being reported by victims or witnesses in immigrant communities, and less reason to fear any consequences for criminal conduct.” Proposed Declaration of George Gascón, dated May 28, 2010, *Friendly House, et al. v. Whiting*, No. 10-cv-1061 (D. Az. filed June 14,

2010) (Dkt. No. 112) (“Gascón Decl.”) ¶ 12. The end result is increased crime that will affect immigrant communities—indeed, communities as a whole—due to the creation of “a vacuum in law enforcement.” *Id.*

A. **Law Enforcement Officials Are Concerned Over the Damaging Impact the Arizona Immigration Law May Have on Public Safety and Their Relationship With Large Segments of the Community**

Over the past two decades, law enforcement officers have placed great emphasis on a method of policing known as community policing.¹ Under the community policing model, police officers look to build positive relationships with the communities they serve and, as a result of those relationships, “obtain valuable information from neighbors and rely on local residents to monitor suspicious activities.” Sylvia R. Lazos Vargas, *Missouri, the “War on Terrorism,” and Immigrants: Legal Challenges Post*

¹ See *State and Local Authority to Enforce Immigration Law: Evaluating a Unified Approach for Stopping Terrorists: Hearing Before the Subcomm. on Immigration Border Security and Citizenship of the S. Comm. on the Judiciary*, 108th Cong. at 16 (2004) [hereinafter “CLEAR Hearings”] (statement of Prof. David A. Harris) (“There is probably no single innovation or program in policing that has been more successful or more widely adopted than community policing.”); Daniel B. Wood, *Arizona Immigration Law Puts Police In ‘Impossible Situation,’* THE CHRISTIAN SCIENCE MONITOR, Apr. 26, 2010 (“The biggest trend in policing in the past two decades has been community policing in which cops walk the local beat and spend much time gaining the trust of the people.”); see also Philadelphia Police Commissioner Charles Ramsey, quoted in *Police Chiefs or Politicians*, *supra* (“Over the last 25 years we’ve worked hard to build relationships with minority communities.”)

9/11, 67 MO. L. REV. 775, 795 (2002). The underlying rationale is that, simply put, “law enforcement is more effective when police efforts are supported by the community.” *Id.*²

Efforts to maintain public safety through community policing, however, are only effective if the *entire* community is engaged in the process, including members of the community who are immigrants. In Arizona, according to the 2000 census, over twelve percent of Arizona’s population was foreign born and over forty percent of the population was minority, including one-third of Hispanic or Latino origin. *See State & County Quick Facts*, U.S. Census Bureau, 2008 Statistics, *available at*

² *See also* Laura Sullivan, Comment, *Enforcing Nonenforcement: Countering the Threat Posed to Sanctuary Laws by the Inclusion of Immigration Records in the National Crime Information Center Database*, 97 CAL. L. REV. 567, 580 (2009) (citing David A. Harris, *The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America*, 38 RUTGERS L.J. 1, 44 (2006)) (noting that “victim and witness reporting increased” and “crime levels in Austin[, Texas] fell” as a result of a marketing campaign by the Austin Police Department to “work[] with immigrant communities” and “emphasize[to them] that the police would not ask victims or witnesses any immigration-related questions”); *see also* CLEAR Hearings at 159 (Michele Waslin, *Immigration Enforcement by Local Police: The Impact on the Civil Rights of Latinos*, NATIONAL COUNCIL OF LA RAZA ISSUE BRIEF) (noting that “[a]n historically crime-ridden neighborhood of Los Angeles” saw a 30% decrease in the crime rate from 1996 to 1997 under a program called *Los Amigos* that “provided Spanish-speaking dispatchers to answer calls” to the police and had “patrolling officers [] assur[ing] residents that they are not *la migra* (the INS)”).

<http://quickfacts.census.gov/qfd/states/04000.html>. In addition, the most recent statistics indicate that approximately 460,000 unauthorized immigrants reside in Arizona (approximately four percent of the current state population). See Michael Hoefer, Nancy Rytina, & Bryan C. Baker, *Estimates of the Unauthorized Immigrant Population Residing in the United States: 2009*, POPULATION ESTIMATE, January 2010, available at

http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2009.pdf

f. Local law enforcement in Arizona, therefore, simply cannot effectively maintain public safety if such large segments of the community are alienated or unwilling to interact with law enforcement out of fear of possible deportation for themselves or someone they know.

For these reasons, numerous law enforcement officials from across the country—including officials from areas that also experience significant patterns of legal and illegal immigration—oppose the Arizona immigration law. In particular, they are concerned with the counterproductive effects it may have on community policing and public safety:

Effective local policing is entirely dependent upon the relationship between officers and the communities they serve. Members of the community must be able to trust the police in order to feel comfortable enough to call them when there is a problem. . . .

Community policing efforts during the last 20 years have helped bridge gaps in trust, especially with immigrant communities, and markedly have contributed to crime reduction. However, when victims or witnesses to crimes are afraid to call the police because of their immigration status and mandatory reporting requirements, many serious crimes will inevitably go unreported. This escalates cycles of violence and also grants tremendous power to certain unscrupulous employers in exploiting an entirely new and silent group of victims.

Guest Opinion: Solution for illegal immigration must be comprehensive, DAILY CAMERA, May 20, 2010 (statement of Jared Polis, a United States Congressman from Boulder County, Colorado, and Joe Pelle, Sheriff of Boulder County); *see also* Beard Rau & Hensley, *supra* (George Gascón, former Mesa, Arizona Police Chief and current San Francisco Police Chief opining that the bill will have “catastrophic impacts on community policing”).

As Chief Roberto Villasenor of the Tucson Police Department has explained, “[w]hen you enact legislation that makes any subset of that community feel like they are being targeted specifically or have concerns about coming forward and talking to police, that damages our capability to obtain information to solve the crimes.” Tim Gaynor, *Arizona police officer challenges migrant law*, REUTERS, June 5, 2010,

<http://www.reuters.com/article/idUSTRE6541T320100605>.³ Chief Villasenor’s concerns over the damage that the Arizona immigration law would cause to law enforcement’s ability to obtain valuable information from immigrant communities has been echoed by numerous chiefs of police, including:

John Harris, Sahuarita (Arizona) Police Chief and President of the Arizona Association of Chiefs of Police⁴
Chris Burbank, Salt Lake City (Utah) Police Chief⁵
Rob Davis, San Jose (California) Police Chief⁶

³ In a National Public Radio interview, Chief Villasenor further commented that this law “could put up a barrier that tears down some of th[e] bridges” his department was able to build across the Hispanic community. *Ariz. Police Chief Weighs In On Immigration Law*, NAT’L PUBLIC RADIO, Apr. 26, 2010, <http://www.npr.org/templates/story/story.php?storyId=126286849>.

⁴ Chief Harris has stated he opposes the law and among his objections listed his “concern[] that victims may not report crimes to his officers.” Nathan Thornburgh, *Arizona Police Split on Immigration Crackdown*, TIME, Apr. 30, 2010, <http://www.time.com/time/nation/article/0,8599,1986080,00.html>.

⁵ Chief Burbank opined: ““This effort will not reduce crime, in fact, the majority of us believe it will increase crime in our communities and that’s why we’ve stood up and taken this stance.”” Thomas Burr, *SLC police chief rails against Arizona law*, THE SALT LAKE TRIBUNE, May 26, 2010, http://m.sltrib.com/sltrib/db_32134/contentdetail.htm;jsessionid=4F3D4298C05C8DA1E1BBB6BFF2A50CF3?contentguid=yFBWky54&detailindex=2&pn=0&ps=5&full=true.

⁶ Chief Davis has noted that “Arizona-like laws would ‘drive a wedge between some communities and law enforcement’ and expressed his concern that ‘the decades of work to establish great relationships with immigrant

Charles Ramsey, Philadelphia (Pennsylvania) Police Commissioner⁷

Tim Dolan, Minneapolis (Minnesota) Police Chief⁸

William McManus, San Antonio (Texas) Police Chief⁹

Chris Vicino, Pasadena (California) Interim Police Chief.¹⁰

Samuel Granato, Yakima (Washington) Police Chief¹¹

communities could be hampered by this.” *Police Chiefs or Politicians, supra.*

⁷ Commissioner Ramsey has explained that: “Over the last 25 years we’ve worked hard to build relationships with minority communities . . . Enforcing immigration laws will cause us many problems in terms of those people feeling they can talk to us about crime issues and report crimes.” *Police Chiefs or Politicians, supra.*

⁸ Chief Dolan “noted that the law would make immigrants less likely to report crimes or act as witnesses, saying, ‘We know for a fact that those people won’t [call], and it will start from there.’” *Police Chiefs or Politicians, supra* (alteration in original).

⁹ Chief McManus “said relationships between the police and residents, regardless of immigration status, ‘would go back to the dark ages because no one in the community would want to come forward and interact with the police, whatsoever.’” Gary Martin, *HPD Chief McClelland airs concerns about Arizona law*, THE HOUSTON CHRONICLE, May 26, 2010, <http://www.chron.com/disp/story.mpl/metropolitan/7023967.html>.

¹⁰ Pasadena Interim Police Chief Chris Vicino has commented that the Arizona law “undermines community policing.” Dan Abendschein, *Pasadena set to discuss Arizona immigration law*, PASADENA STAR-NEWS, May 16, 2010,

¹¹ Proposed Declaration of Samuel Granato, dated May 28, 2010, *Friendly House, et al. v. Whiting*, No. 10-cv-1061 (D. Az. filed June 14, 2010) (Dkt. No. 115) (“Granato Decl.”) ¶ 11 (“My job as a law enforcement officer is compromised when the individuals I am charged to serve and protect are afraid to have contact with me. This is exactly what will happen as a result of SB 1070’s mandate to investigate immigration status.”).

Several of these officials come from areas with some of the highest concentrations of immigrants in this country.¹² Yet, officials from such cities recognize that “[i]t is through partnership with people and communities that our cities are made safer, because partnership builds trust and communication.” Paul Demko, *Minneapolis and St. Paul police chiefs oppose Arizona-style immigration law*, THE LEGAL LEDGER, May 7, 2010 (Joint Statement from Minneapolis and St. Paul Police Chiefs).

The deleterious effect of the Arizona immigration law is not confined to localities or immigrant communities. Indeed, it poses a risk to national security by undermining the positive relationships forged with immigrant communities and the ability of police to obtain valuable information from *all* members of the community. For example, the New York City Police Department has gone to great lengths to utilize the city’s immigrant communities, including its Muslim community. In a 2005 speech to the city’s Muslim leaders, Raymond W. Kelly, New York Police

¹² For example, as of 2008, the top 20 states in terms of foreign-born population were as follows: California, Texas, Florida, New York, Georgia, Arizona, Illinois, New Jersey, Virginia, North Carolina, Washington, Maryland, Nevada, Massachusetts, Pennsylvania, Colorado, Tennessee, Ohio, Connecticut, and Minnesota. *States Ranked by Numeric Difference in the Foreign-Born Population: 1990, 2000, and 2008*, MPI Data Hub, MIGRATION POLICY INSTITUTE, available at http://www.migrationinformation.org/datahub/files/MPIDataHub_ACS_2008-NumericDifferenceForeignBorn.xls.

Department Commissioner, stressed to “immigrants in particular . . . that the Police Department is *not* an immigration agency.” David A. Harris, *The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America*, 38 RUTGERS L.J. 1, 45 (2006) [hereinafter *Curious Tale*] (emphasis added). Richard A. Clarke, former National Counterterrorism Coordinator for the National Security Council who advised both the Clinton and George W. Bush administrations, has similarly stressed the need to “seek the cooperation of the American Muslim community in identifying possible problem groups and individuals.” *Id.* at 47. The reason for building such relationships is that “the prime ingredient for anti-terrorism work on any level is, and will always be, information.” *Id.* at 46. As the former Chief of Operations and Analysis of the CIA Counterterrorism Center and former Special Assistant for Intelligence of the Office of the Secretary of Defense, Vincent Cannistraro, has explained, “the problem of terrorism is one of getting intelligence, having the information to preempt terrorist acts before they occur. If you don’t have good intelligence, you don’t have good antiterror.” *Id.* at 46 n.166 (quoting Cannistraro’s remarks at the 26th National Legal Conference on Immigration & Refugee Policy (Apr. 3, 2003)). Unless police officers have access to the valuable

information that results from maintaining positive relationships with the community, the entire nation is at an increased risk.

The value of this type of cooperation on the terrorism front is not theoretical. The recent arrest of accused terrorists at Kennedy Airport on June 5, 2010, was facilitated by the fathers of both suspects—one of whom is a Dominican immigrant from New Jersey. *See* Barry Paddock et al., *Father of New Jersey Terror Suspect Carlos Almonte Says He's Not Supporting His Son*, N.Y. DAILY NEWS, June 7, 2010, http://www.nydailynews.com/ny_local/2010/06/07/2010-06-07_father_of_new_jersey_terror_suspect_carlos_almonte_says_hes_not_supporting_son.html. In addition, “[i]t has been shown in cities such as Lackawanna, New York and Toledo, Ohio, that vital intelligence has been contributed by members of the Middle Eastern, Muslim and Arab communities, both of documented and undocumented status.” Jennifer M. Hansen, Comment, *Sanctuary's Demise: The Unintended Effects of State and Local Enforcement of Immigration Law*, 10 SCHOLAR 289, 317 (2008) (citing David Harris, *Avoidable Disaster: Police Enforcing U.S. Immigration Law*, JURIST, Oct. 18, 2006, <http://jurist.law.pitt.edu/forumy/2006/10/avoidable-disaster-police-enforcing-us.php>). Likewise, when the indictments of three young Muslim

men for forming a terrorist cell were announced in Toledo, the FBI agent in charge of the investigation praised the Muslim community for its cooperation in the case. *See Harris, Curious Tale, supra*, at 49. As he explained, “[t]he ability to prevent another terrorist attack cannot be won without the support this community gives.” *Id.* (Special Agent in Charge, Ted Wasky, of the Cleveland FBI field office, quoted in Mike Wilkinson & Christina Hall, *3 Charged in Terror Plot: Local Suspects Planned Attacks in Iraq, U.S. Says*, TOLEDO BLADE, Feb. 22, 2006 at A1)).

Past efforts to have local law enforcement officers act as immigration officials illustrate the damaging impact such efforts can have on public safety. *See, e.g.*, Orde F. Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 IOWA L. REV. 1449, 1480 (2006) (noting that several empirical studies have found a causal link between the threat of deportation and reduced crime reporting by immigrants). For example, in Irving, Texas, a cooperative arrangement between the police department and the Bureau of Immigration and Customs Enforcement (“ICE”) led its citizens to regard the city as anti-Hispanic. *See Huyen Pham, Problems Facing the First Generation of Local Immigration Laws*, 36 HOFSTRA L. REV. 1303, 1309 (2008) (citing Brandon Formby, *Hispanics in Irving Feeling Disheartened*, DALLAS MORNING NEWS, Oct. 7, 2007, at B1,

available at http://www.dallasnews.com/sharedcontent/dws/news/localnews/stories/DNirvimmigration_07met.ART.North.Edition1.424c966.html). As the mayor of Irving later recognized, “[a] lot of work over the years has simply been destroyed. There is a large segment of our city that is now anxious about talking to a police officer, and it is causing problems.” *Id.* at 1310. Similar fears exist in El Paso County, Texas, where—as the result of local police officers working with ICE—“residents have reported their concern about reporting state criminal violations because of their civil immigration status.” Adrian J. Rodriguez, Note, *Punting on the Values of Federalism in the Immigration Arena? Evaluating Operation Linebacker, a State and Local Law Enforcement Program Along the U.S.-Mexico Border*, 108 COLUM. L. REV. 1226, 1265 n.254 (2008) (citing Brandi Grissom, *Deputies Instilling Fear in Residents, Groups Say*, EL PASO TIMES, May 23, 2006, at 2A); *see also* Hansen, *supra*, at 318 (“In areas where state or local agencies have chosen to assist in federal immigration, police departments are noticing that only a portion of crime on immigrant victims is being reported.”) (citing Bryan Dean, *New Law Has Hispanics Fearing Cops*, NEWSOK, Oct. 27, 2007, <http://newsok.com/article/3157959/1193461329>). In addition, after “three people were killed inside a Houston Vietnamese restaurant,” witnesses

refused to come forward and cooperate, in part, “because many of them were in the country illegally.” Carrie L. Arnold, Note, *Racial Profiling in Immigration Enforcement: State and Local Agreements to Enforce Federal Immigration Law*, 49 ARIZ. L. REV. 113, 122-23 (2007) (citing Marc M. Harrold, *Community Policing and Enforcement of Immigration Laws*, IMMIGR. L. TODAY, Sept.-Oct. 2005, at 34).

Recognizing the counterproductive effects of alienating large segments of a community, many local governments and law enforcement agencies have done the opposite of Arizona, implementing policies to encourage positive relationships and open lines of communications with immigrant communities. As of December 2008, there were at least 73 cities, towns, counties and states—including Alaska, Los Angeles, San Francisco, the District of Columbia, Chicago, Baltimore, Boston, Detroit, Minneapolis, St. Paul, Montana, New Mexico, New York City, Oregon, Philadelphia, Pittsburgh, Austin, Houston, Seattle, and Milwaukee—that, at various times, implemented non-cooperation-type laws, ordinances, or other directives prohibiting or limiting the activities of local government, particularly law enforcement, in enforcing federal immigration laws to avoid alienating the immigrant communities (both legal and illegal) that they serve. *See Laws, Resolutions and Policies Instituted Across the U.S. Limiting Enforcement of*

Immigration Laws by State and Local Authorities, National Immigration Law Center, <http://www.nilc.org/immlawpolicy/LocalLaw/locallaw-limiting-tbl-2008-12-03.pdf>.

Furthermore, law enforcement's deep concern over the Arizona immigration law echoes similar opposition to past Congressional efforts to pressure local governments and law enforcement agencies to enforce immigration law. In particular, in 2003, bills were introduced in both houses of Congress that, if passed, would have encouraged state and local law enforcement officials to investigate, apprehend, detain, and remove aliens in the United States, and would have limited federal funding of states that failed to expressly authorize police officers to enforce federal immigration laws. *See Harris, Curious Tale, supra*, at 26, n.103 (discussing the Clear Law Enforcement for Criminal Alien Removal Act of 2003 ("CLEAR") and the Homeland Security Enhancement Act). At the time, numerous law enforcement officials publicly opposed the legislation for reasons similar to the present law enforcement opposition to the Arizona immigration law. For example, Overland Park (Kansas) Police Chief John Douglass explained as follows:

Our City and our Police Department have taken the lead in establishing a meaningful relationship with our minority communities, especially the Hispanic community. If the CLEAR Act is voted into law, it

will have a devastating effect on how we provide law enforcement/police service. It will diminish the positive strides we have made to embrace minority group members. We have accomplished so much, and this proposed legislation would certainly reverse our success.

CLEAR Hearings at 74 (letter from John Douglass, Overland Park Police Chief, to The Honorable Dennis Moore); *accord id.* at 143 (letter from Ronald Miller, Kansas City Police Chief, to Senator Sam Brownback). Boston Police Commissioner Paul Evans similarly explained that “[b]y turning all police officers into immigration agents, the CLEAR Act will discourage immigrants from coming forward to report crimes and suspicious activity.” *Id.* at 173 (letter from Paul F. Evans, Boston Police Commissioner, to Senator Edward M. Kennedy). In the end, Evans predicted, legislation which tasked local police with immigration duties would “mak[e] our streets less safe.” *Id.*¹³ Here, the Arizona immigration law threatens to do the same.

¹³ See also *CLEAR Hearings* at 174 (letter from Ellen Hanson, Lenexa Police Chief, to Congressman Dennis Moore) (“The most troubling aspect of this act is that it could cause members of certain groups to not report crimes or come forward with information about crimes for fear of being deported. The level of public safety we should deliver to these groups as well as the trust we are attempting to establish in our community could be severely damaged by the CLEAR Act.”); *id.* at 178 (*Border Officials Say “No, Thanks” to Proposal for Federal Immigration Enforcement by Local Police, The Fax on Immigration*) (“We have worked hard to build bridges and establish partnerships with the diverse population of our city. I believe that

B. The Arizona Immigration Law Undermines Law Enforcement Efforts To Effectively Police The Communities They Serve

Specifically, the Arizona immigration law has two components that threaten to create a divide between local police officers and the immigrant communities in Arizona and thus impede the task of policing in Arizona. First, the law provides that “[f]or any lawful stop, detention or arrest” made “in the enforcement of any other law or ordinance of a county, city or town or this State” the local police officer “shall” make a reasonable attempt to determine the immigration status of the person if there is reasonable suspicion that the person is an alien and unlawfully present in the United States. Ariz. Rev. Stat. § 11-1051(B). Hence, whenever police officers respond to a call of suspicious activity or disorderly conduct, they must, as a matter of course, investigate the immigration status of any suspects they encounter if there is reasonable suspicion that the person is

taking on the additional role of enforcing immigration laws would jeopardize those relationships and create unneeded tension in our community.”) (quoting Tucson Police Chief Richard Miranda); *id.* (“Police agencies in California have worked very hard over the years to gain the confidence of their diverse population. We deal with immigrants from all over the world, many who are steeped in beliefs and practices that alienate them from law enforcement. . . . By turning police into immigration agents, all of our agency’s efforts to gain the trust of immigrants—both legal and illegal—would be undermined as immigrants would be discouraged from coming forward to report crimes and suspicious activity.”) (quoting Newark Police Chief Ray Samuels).

here illegally.¹⁴ Second, the Arizona immigration law makes the willful failure to register or to carry an alien registration document, as required by federal immigration law, a state crime. Ariz. Rev. Stat. § 13-1509(A). In doing so, the law sends a clear message to the public that local police officers have the authority—indeed, the obligation—to investigate the status of any individual they encounter if they have reason to believe the person may not be properly registered or is not carrying proof of registration. The District Court found the United States likely to succeed on its claim that both § 11-1051(B) and § 13-1509(A) are preempted by federal law. United States v. State of Arizona, et al., 703 F. Supp. 2d 980, 998-99 (D. Ariz. 2010), and the public policy reasons that follow strongly support the District Court’s decision.

In immigrant communities, application and enforcement of § 11-1051(B) and § 13-1509(A) will discourage individuals from reporting suspicious activity or even a crime out of fear that doing so may trigger an immigration status inquiry into themselves or someone they know. Even if they recognize that an undocumented alien is committing a crime, individuals in these communities may, nevertheless, view a deportation “as

¹⁴ There is an exception “if the determination may hinder or obstruct an investigation.” Ariz. Rev. Stat. § 11-1051(B).

too harsh [a punishment] to make calls [to the police] that might involve inquiries into [the] suspect’s immigration status.” Vargas, *supra*, at 795. In addition, even if they are here legally, individuals are not likely to come forward if an incident involves a loved one who is not. See Pham, *supra*, at 1399 (explaining that because many immigrant families are of “mixed status” where certain children may be citizens but older siblings or parents may not, family members may refrain from contacting police to avoid drawing attention to family members without legal status); see also Proposed Declaration of Eduardo Gonzalez, dated May 28, 2010, *Friendly House, et al. v. Whiting*, No. 10-cv-1061 (D. Az. filed June 14, 2010) (Dkt. No. 114) (“Gonzalez Decl.”) ¶ 13 (“This distrust of law enforcement will be created whether or not community members have legal status, both because immigrant families and communities are typically made up of both those with lawful status and those without”) (former Chief of Tampa Police Department and former Director of United States Marshals Service). These fears are likely to be magnified by the law’s failure to provide a safe harbor for crime victims or witnesses—*i.e.*, the law “does not provide any assurances to those who assist law enforcement in ongoing investigations that their legal status will not be investigated at a future date after the criminal investigation is concluded.” Granato Decl. ¶ 12.

These problems are compounded by the wording of the Arizona immigration law, which fails to provide officers, and the individuals they protect, with sufficient guidance as to how to enforce and obey, respectively, the law. This will unfairly burden the police. At the same time, it will undoubtedly contribute to the hesitation of an uncertain immigrant community to interact with law enforcement.

In particular, by its own terms, the Arizona immigration law targets “unlawfully present aliens.” Ariz. Rev. Stat. § 11-1051. However, although the law instructs police officers to ignore race, color or nationality when attempting to enforce it, it fails to provide officers—and, equally important, the communities they serve—with guidance as to what constitutes a reasonable suspicion that someone is here illegally, short of an inquiry to the appropriate federal authorities and a potential detention while that is done. This uncertainty leaves the indelible impression that the law will ensnare, and allow for the detainment of, individuals in Arizona who appear to be immigrants and who are stopped for relatively minor offenses (including, for example, traffic offenses). Furthermore, given that Hispanics comprise over one-third of the state’s population, *see supra* at 6, this uncertainty has the potential to adversely and disproportionately impact a large segment of the state population.

The rationale that the Supreme Court of the United States has announced for applying the void-for-vagueness doctrine is instructive when analyzing the difficulties that the Arizona law presents. Specifically, in a string of cases spanning the last forty years, the Supreme Court has repeatedly invalidated laws as impermissibly vague where police officers are asked to detain various classes of persons—*e.g.*, vagrants, loiterers, persons who fail to carry “credible” identification, and persons hanging around with gang members for no “apparent purpose”—where neither the officers nor the community are provided with sufficient guidance as to how an officer might determine that a person is in the offending class. *See, e.g., Kolender v. Lawson*, 461 U.S. 352, 361 (1983) (“Although the initial detention is justified, the State fails to establish standards by which the officers may determine whether the suspect has complied with the subsequent identification requirement.”); *see also City of Chicago v. Morales*, 527 U.S. 41, 58-59 (1999); *Papachistou v. City of Jacksonville*, 405 U.S. 156, 166 (1972); *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971). The Arizona immigration law suffers from similar defects. *See* Gonzalez Decl. ¶ 16 (“SB 1070 does not give sufficient tools to allow police officers to enforce its provisions without coming into conflict with established constitutional protections, such as the protection against unlawful detention and racial

profiling. . . . The simple fact is that there are no sound ways for police officers to tell whether someone has lawful immigration status simply by observation.”); Gascón Decl. ¶ 18 (“Short of directly observing an individual actually crossing the border in a surreptitious way, there are not reliable indicia that would give rise to a reasonable suspicion to believe that a person is unlawfully in the United States.”).

Furthermore, the fact that an inquiry into immigration status may only occur during the enforcement “of any other law or ordinance of a county, city or town or this state,” does little to alleviate the dilemma given the breadth of the category of offenses covered, which would appear to include petty disorderly persons offenses (such as loitering) and minor traffic infractions. For example, what would otherwise have been a relatively brief detention during a traffic stop has the potential to become much lengthier as the officer tries to determine the immigration status of a driver who could be perceived to be an immigrant. This lack of clarity in the law, therefore, has the potential to further alienate large segments of the population in Arizona, and in the process undermining public safety.

Indeed, the mere *perception* that the Arizona law unfairly targets individuals who appear to be immigrants may create a divide between the immigrant population and law enforcement. Recent empirical

data demonstrates that an immigrant population that perceives laws or police policies to be illegitimate or unfair will be less likely to assist law enforcement (including interacting with police or volunteering information). See Tom R. Tyler, et al., *Policing Against Terrorism: Legitimacy and Deterrence Strategies for Motivating Cooperation Among Islamic Americans*, LAW & SOC. REV. (forthcoming), <http://www.law.yale.edu/documents/pdf/Clinics/TylerSchulhoferandHuq.pdf> (studying the willingness of New York City’s Muslim American population to cooperate with law enforcement’s anti-terror initiatives). Similarly, here, a negative perception of the Arizona law will cause a deterioration of the relationship between Arizona’s substantial minority population and its local law enforcement. Cf. *id.*; see also Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283, 284 (2003) (“[The process-based] model suggests that people’s willingness to accept the constraints of the law and legal authorities is strongly linked to their evaluations of the procedural justice of the police and the courts.”).

CONCLUSION

Arizona law enforcement officials should not be burdened with a statute that will hamper efforts to engage in effective community policy by alienating a substantial minority population. Public safety will suffer if large

segments of a community are alienated and fearful of interacting with police officers. Accordingly, because of the harm the Arizona immigration law will cause to public safety, the Center respectfully submits that the Ninth Circuit should affirm the preliminary injunction entered by the District Court.

Dated: New York, New York
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Respectfully submitted,

s/ Ricardo Solano Jr.

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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) and Ninth Circuit Rule 32-1, the foregoing Amicus Brief was prepared in Times New Roman 14-point font and contains 6,536 words, which is less than one-half the word count of Plaintiff-Appellee's brief.

DATED this 19th day of October, 2010.

s/ Ricardo Solano Jr.

Ricardo Solano, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2010, I electronically transmitted the above document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all participants in this case.

s/ Ricardo Solano Jr.

Ricardo Solano, Jr.