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14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE DISTRICT OF ARIZONA

16 FRIENDLY HOUSE, ET AL.,

17 Plaintiff,

18 v.

19 MICHAEL B. WHITING, ET AL.,

20 Defendants.
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No. CV 10-1061-PHX-JWS

PROPOSED *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION BY THE COUNTY OF SANTA CLARA, CALIFORNIA; THE CITY OF BALTIMORE, MARYLAND; THE CITY OF BERKELEY, CALIFORNIA; THE CITY OF LOS ANGELES, CALIFORNIA; THE COUNTY OF LOS ANGELES, CALIFORNIA; THE CITY OF MINNEAPOLIS, MINNESOTA; THE COUNTY OF MONTEREY, CALIFORNIA; THE CITY OF NEW HAVEN, CONNECTICUT; THE CITY OF PALO ALTO, CALIFORNIA; THE CITY OF PORTLAND, OREGON; THE CITY OF SAINT PAUL, MINNESOTA; THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA; THE CITY OF SAN JOSE, CALIFORNIA; AND THE CITY OF SEATTLE, WASHINGTON

(Hon. John W. Sedwick)

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1 The County of Santa Clara, California; the City of Baltimore, Maryland; the City
2 of Berkeley, California; the City of Los Angeles, California; the County of Los
3 Angeles, California; the City of Minneapolis, Minnesota; the County of Monterey,
4 California; the City of New Haven, Connecticut; the City of Palo Alto, California; the
5 City of Portland, Oregon; the City of Saint Paul, Minnesota; the City and County of San
6 Francisco, California; the City of San Jose, California; and the City of Seattle,
7 Washington (hereinafter collectively referred to as "*amici*") provide this amicus curiae
8 brief in support Plaintiffs' motion for a preliminary injunction.

9 I.

10 INTRODUCTION

11 *Amici* are cities and counties located across the United States. Our local
12 governments provide essential services to residents of our jurisdictions, including
13 maintaining safe communities through the funding, operation, and oversight of local law
14 enforcement agencies. The communities we serve are racially, ethnically, economically,
15 and culturally diverse. Our cities and counties are home to some of the largest
16 immigrant communities in the country, and our local law enforcement agencies provide
17 law enforcement services within these and other minority communities.

18 *Amici* support the Plaintiffs' arguments in favor of a preliminary injunction to
19 prevent the implementation of Arizona Senate Bill 1070, as amended by Arizona House
20 Bill 2162 (hereinafter referred to in its amended form as "SB 1070"). Since the State of
21 Arizona enacted SB 1070, the law has garnered national attention and has sparked a
22 national debate. SB 1070 imposes a comprehensive state immigration enforcement
23 regime that focuses local government resources on the enforcement of federal civil
24 immigration law. If this Court allows SB 1070 to take effect before its constitutionality
25 is determined, the consequences will be detrimental not only to federal immigration
26 enforcement but also to public safety, both in Arizona and across the country. SB 1070
27 undermines the federal government's plenary authority to regulate immigration and
28 requires local law enforcement agencies to enforce federal civil immigration law through

1 means that are unconstitutional, impractical, costly, and deeply damaging to the
2 relationships of trust law enforcement agencies have built with immigrant communities
3 and the public at large. SB 1070 suggests, wrongly, that the enforcement of federal civil
4 immigration law is the proper responsibility of local government officials, and that basic
5 constitutional principles do not apply when those officials are investigating or enforcing
6 immigration law. That message will be heard not just in Arizona, but in every state in the
7 country, making immigrants — whether they are naturalized citizens, lawful permanent
8 residents, visa holders, or undocumented individuals — deeply distrustful of local
9 government and law enforcement officials. Such distrust will have serious, long-term
10 deleterious effects on the ability of local governments such as *amici* to protect the health
11 and safety of all residents within their jurisdictions.

12 *Amici* submit this *amicus curiae* brief because our experience as local governments
13 charged with providing law enforcement and other services to diverse communities gives
14 us an informed perspective on the inevitably divisive and unconstitutional ways in which
15 SB 1070 will operate if allowed to go into effect. Moreover, the effects of SB 1070's
16 implementation will be felt not only in Arizona, but in our jurisdictions as well. In
17 considering whether a preliminary injunction should issue, *amici* urge the Court to look
18 beyond Arizona at the anticipated effects that implementation of SB 1070 will have on
19 communities nationwide. The fear and mistrust of local governments that SB 1070 will
20 instill in Arizona's residents and visitors will create a ripple effect throughout the
21 country and the communities we serve. A nationwide epidemic of distrust of local
22 government among immigrant communities will not easily be reversible. As community
23 members lose faith in local law enforcement officers, the protection of public safety will
24 become more difficult, particularly in an economic climate where government resources
25 are already stretched thin. Accordingly, *amici* respectfully request that this Court to
26 issue a preliminary injunction enjoining the implementation of SB 1070.

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II.

ARGUMENT

All factors that govern whether a preliminary injunction should be issued weigh in favor of the issuance of an injunction in this case. First, plaintiffs are likely to succeed on the merits because SB 1070 is facially unconstitutional and is preempted by federal law. *See Sierra Forest Legacy v. Rey*, 577 F.3d 1051, 1021 (9th Cir. 2009). Second, absent preliminary relief, irreparable harm will be suffered not only by immigrants residing in or visiting Arizona, but also by cities, counties, local law enforcement agencies, and the public at large across the country. *See id.* Finally, both the balance of equities and the public interest also strongly favor issuance of a preliminary injunction. *See id.* Indeed, in this case the balance of equities is entirely one sided: Plaintiffs will be irreparably harmed if SB 1070 takes effect, the ability of the local government defendants in this case to protect public safety will be profoundly undermined, and the State of Arizona has no legally permissible interest in SB 1070's immediate implementation. Given the harm to the plaintiffs, to the local government defendants, to *amici*, and to the public interest that will result if SB 1070 is allowed to take effect, *amici* urge this Court to grant plaintiffs' motion for a preliminary injunction.

A. SB 1070 CONFLATES THE DISTINCT ROLES AND RESPONSIBILITIES OF FEDERAL AND LOCAL GOVERNMENTS, AND THEREBY CONSTITUTES AN IMPERMISSIBLE "REGULATION OF IMMIGRATION."

SB 1070 imposes mandates on local law enforcement officials that impermissibly regulate immigration in violation of the U.S. Constitution. The "power to regulate immigration is unquestionably exclusively a federal power." *DeCanas v. Bica*, 424 U.S. 351, 354 (1976). The federal government has plenary authority to determine "who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." *Id.* at 355; *see also Toll v. Moreno*, 458 U.S. 1, 11 (1982) ("[D]etermining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of

1 their naturalization,” are matters reserved exclusively for the federal government).
2 States, by contrast, “enjoy no power with respect to the classification of aliens,” *Plyler*
3 *v. Doe*, 457 U.S. 202, 225 (1982), and therefore may not enact laws that unlawfully
4 “regulate immigration” in violation of the Supremacy Clause of the U.S. Constitution,
5 *DeCanas*, 424 U.S. at 355. SB 1070 represents a sweeping, unprecedented, and flatly
6 unconstitutional attempt by the State of Arizona to regulate immigration. It both
7 undermines and interferes with the federal government’s exclusive authority to control
8 and enforce federal immigration law.

9 SB 1070’s unconstitutional intrusion into the federal realm is accomplished by
10 requiring local law enforcement officers to implement Arizona’s alternative immigration
11 scheme. It thereby conflates and distorts the separate and distinct roles of federal
12 immigration and local law enforcement officials, compromising both federal immigration
13 priorities and the ability of local governments to protect the health and safety of their
14 communities.

15 Of particular concern to *amici* are four distinct enforcement responsibilities that SB
16 1070 imposes upon local law enforcement officers:

17 (1) Investigation of individuals’ immigration status. SB 1070 requires that any officer
18 making a “lawful stop, detention or arrest . . . in the enforcement of any other law or
19 ordinance of a county, city or town or [the State of Arizona]” make a “reasonable
20 attempt” to determine the immigration status of the person who has been stopped,
21 detained, or arrested, whenever there is “reasonable suspicion” that the person “is an
22 alien and is unlawfully present in the United States.” SB 1070, § 2, as amended; Arizona
23 Revised Statute (“A.R.S.”) § 11-1051(B).

24 (2) Detention pending verification of immigration status. SB 1070 provides that,
25 with respect to “[a]ny person who is arrested,” an officer must determine the person’s
26 immigration status “before the person is released,” creating the possibility of continued
27 detention when the arrestee would otherwise have been released.

28 //

1 (3) Warrantless arrests. SB 1070 authorizes officers to make warrantless arrests
2 where they have probable cause to believe that an individual has committed “any public
3 offense that makes the person removable from the United States.” SB 1070, § 6, as
4 amended; A.R.S. § 13-3883(A)(5).

5 (4) Enforcement of requirements regarding the carrying of alien registration
6 documents. SB 1070 creates various state-law crimes related to federal civil immigration
7 status and requires local law enforcement officers to enforce them. For example, SB
8 1070 makes failure to “complete and carry an alien registration card” a crime for which
9 certain individuals are to be arrested and prosecuted. SB 1070, § 3, as amended; A.R.S.
10 § 13-1509(A); see also 8 U.S.C. §§ 1304(e) and 1306(a).

11 As plaintiffs’ motion for preliminary injunction explains, imposing such
12 requirements on local law enforcement officials is unconstitutional, inconsistent with
13 federal immigration law, and in conflict with the federal government’s immigration
14 enforcement practices. *See* Plaintiffs’ Motion for Preliminary Injunction and
15 Memorandum in Support at 8-9 (filed June 4, 2010). Congress has authorized
16 participation by local law enforcement agencies in the enforcement of federal
17 immigration law only under certain circumstances and in an extremely narrow manner.
18 The primary mechanism through which Congress has authorized the federal government
19 to allow state and local participation in civil immigration enforcement activities is 8
20 U.S.C. §1357(g), which allows the federal government to enter into a written agreement
21 (a “Section 287(g) agreement”) with a state or local agency, deputizing a limited number
22 of its officials to enforce civil immigration law. The 287(g) program requires that any
23 state or local officials so deputized be trained and supervised by federal authorities to
24 ensure that their immigration enforcement activities comply with federal law and the
25 Constitution. Few local law enforcement officers in Arizona have been deputized to
26 enforce civil immigration law under a Section 287(g) agreement. With or without such
27 an agreement, however, neither the State of Arizona nor a local law enforcement agency
28 has the authority to enforce federal civil immigration law in the manner prescribed by SB

1 1070. Furthermore, as explained below, the imposition of SB 1070's immigration
2 enforcement requirements significantly undermine local governments' ability to ensure
3 public safety.

4 **B. SB 1070'S IMPERMISSIBLE CONFLATION OF THE RESPONSIBILITIES**
5 **OF FEDERAL AND LOCAL GOVERNMENTS UNDERMINES LOCAL**
6 **GOVERNMENTS' ABILITY TO ENSURE PUBLIC SAFETY.**

7 The requirements that SB 1070 imposes on local law enforcement agencies not only
8 constitute an impermissible regulation of immigration and a usurpation of the federal
9 government's authority; as *amici* can attest, the also conflict with local law enforcement
10 officials' primary function: protecting public safety. If SB 1070 is allowed to go into
11 effect, local law enforcement agencies in Arizona will be forced to prioritize the
12 enforcement of federal *civil* immigration law over significant threats to public safety
13 occurring within their jurisdictions, thereby reducing the capacity of local law
14 enforcement agencies to detect, investigate, and prosecute serious *criminal* activity. SB
15 1070 will further undermine local law enforcement's capacity to protect public safety
16 because it will expose localities to potential liability where compliance with SB 1070
17 requires local officers to engage in unconstitutional conduct. Finally, SB 1070 will
18 severely undermine the relationships of trust with community members upon which local
19 law enforcement officials rely to effectively prevent, investigate, and prosecute crimes.

20 1. SB 1070 Impermissibly Dictates Local Law Enforcement Priorities
21 and Results in the Diversion of Scarce Local Resources at the Expense
22 of Public Safety.

23 By requiring local law enforcement officers to devote significant time and resources
24 to the enforcement of federal civil immigration law and newly created immigration-
25 related state crimes, SB 1070 forces localities to devote fewer resources to addressing the
26 most pressing threats to public safety occurring in their jurisdictions.

27 SB 1070's requirement that local law enforcement officers investigate individuals'
28 immigration status is particularly troubling in this regard. Because SB 1070 requires
local law enforcement officers to make a "reasonable attempt" to determine the
immigration status of any person whom they have stopped, detained, or arrested if the

1 officer finds there is “reasonable suspicion . . . that the person is an alien and is
2 unlawfully present in the United States,” SB 1070, § 2, as amended; A.R.S. § 11-
3 1051(B), officers will be required on a routine basis to spend time and resources
4 investigating the immigration status of persons with whom they come into contact.

5 Although SB 1070 purports to allow officers not to investigate immigration status
6 during routine detentions when doing so would be impractical or when attempting to
7 make such a “determination may hinder or obstruct an investigation,” in the vast majority
8 of detentions, law enforcement officers will be required to make this inquiry in order to
9 comply with the law. As many *amici* can attest, time required to make even the
10 “reasonable attempt” to determine immigration status can be substantial; it will often
11 require contacting federal employees or other trained officers and waiting for those
12 officials to make a determination and provide a response to local officials.¹ Although the
13 federal government has a statutory “[o]bligation” to “respond to an inquiry by a . . . local
14 government agency, seeking to verify or ascertain the citizenship or immigration status
15 of any individual within the jurisdiction of the agency for any purpose authorized by
16 law,” the federal government is under no obligation to provide a *timely* response. 8
17 U.S.C. § 1373(c). In the experience of many *amici*, response times by the federal
18 government’s immigration-related agencies vary widely. The federal government is
19 almost certainly unprepared to comply with the increased flow of requests that Arizona’s
20 new verification scheme will generate, and local law enforcement officials are likely to
21 experience long delays waiting for the federal government to respond to their requests.

22 ¹ Under Section 3(b) of SB 1070, A.R.S. § 11-1051(b), a person is presumed to
23 not be “unlawfully present” if he or she can provide a valid Arizona drivers license or
24 nonoperating identification license, a valid tribal enrollment card, or a valid government-
25 issued identification card for which “proof of legal presence in the United States” is a
26 prerequisite. Where such identification cannot be produced, local law enforcement
27 officers will be required to contact federal authorities and wait for a response. Such
28 situations are likely to occur quite frequently—e.g. when a pedestrian is stopped and is
not carrying identification, or when a motorist from New Mexico or another state that
does not require confirmation of legal status produces his or her state-issued driver’s
license.

1 SB 1070's requirement that local law enforcement officers determine an arrestee's
2 immigration status *before* the person can be released creates similar problems. Under SB
3 1070, local law enforcement officers must verify the immigration status of "[a]ny person
4 who is arrested . . . *before* the person is released." A.R.S. § 11-1051(B) (emphases
5 added). Thus, SB 1070 mandates that local governments verify the immigration status of
6 *all* arrestees, even without any reasonable suspicion or probable cause to believe that
7 they are aliens or out of status, and further requires that those arrestees be detained
8 beyond the point at which they would otherwise have been released if continued
9 detention is necessary for the completion of a pre-release verification of immigration
10 status.

11 These extended detentions raise serious constitutional concerns as described in
12 Section B(4) below. They also will result in the expenditure of significant local law
13 enforcement resources, occupying officers' time and tying up space in jails and other
14 holding facilities where local law enforcement agencies will be forced to detain arrestees.
15 Furthermore, many of the persons detained will be minor offenders who otherwise
16 would have been cited and immediately released from custody. As the City of Tucson
17 averred in its Answer and Cross-Claim in the related *Escobar v. Brewer et. al.* litigation,
18 the City of Tucson alone cited and immediately released 36,821 misdemeanor arrestees
19 in fiscal year 2009. Answer and Cross-Claim of Defendant/Cross-Plaintiff City of
20 Tucson at ¶38, *Escobar v. Brewer et al.*, No. CV 10-249 TUC DCB (filed May 26, 2010)
21 (hereinafter "Tucson Answer and Cross-Claim"). Forcing local law enforcement
22 agencies to extend the detentions of thousands of arrestees pending verification of their
23 immigration status will significantly deplete the scarce resources these agencies need in
24 order to fulfill their responsibility to protect and maintain public safety.

25 The diversions of local law enforcement resources described above are further
26 compounded by SB 1070's creation of a private right of action against local governments
27 that fail to allocate resources in the manner prescribed SB 1070. A.R.S. § 11-1051(H).
28 Defending against private lawsuits challenging a law enforcement agency's resource

1 allocation decisions will be an additional drain on local governments in Arizona,
2 depleting local resources needed to fight crime and to provide basic services for all
3 community members.

4 As *amici* can attest, local law enforcement agencies simply cannot perform the
5 immigration-related investigations required by SB 1070 and enforce new criminal
6 immigration provisions without significantly reducing the time and resources allocated to
7 the essential task of maintaining safe communities. As the City of Tucson averred:

8 [R]educed revenues have forced the [Tucson Police Department] to carefully
9 prioritize its method and manner of implementing law enforcement.
10 Compliance with [SB 1070] will require [the Tucson Police Department] to
change those priorities and may result in decreased investigation and
prosecution of violent crimes against persons and major felonies.

11 See Tucson Answer and Cross-Claim at ¶54. If SB 1070 is not enjoined, law
12 enforcement agencies in Arizona will be forced to prioritize the enforcement of federal
13 immigration law over the protection of public safety.

14 2. SB 1070 Imposes Vague and Unworkable Requirements on Local Law
15 Enforcement Officers that Effectively Require Them to Violate the
Constitution and Therefore Create Potential Liability for Localities.

16 SB 1070 also threatens to expose localities and officials in Arizona to substantial
17 potential liability because it (1) provides no effective mechanism for local officials to
18 determine that they have reasonable suspicion that an individual is “an alien and
19 unlawfully present” in the United States, and (2) requires local officials to detain
20 individuals in violation of the Constitution.

21 *i. It Will Be Difficult If Not Impossible for Local Law*
22 *Enforcement Officials to Determine Whether an Individual Is*
“Unlawfully Present” in the United States

23 As noted above, SB 1070 compels local officers to attempt to determine the
24 immigration status of a stopped, arrested, or detained individual “where reasonable
25 suspicion exists that the person is an alien and is unlawfully present.” SB 1070, § 2, as
26 amended; A.R.S. § 11-1051(B). The term “unlawfully present” is not defined for
27 enforcement purposes in federal law. SB 1070 fails to provide any guidance concerning
28 the factors upon which an officer may rely to develop reasonable suspicion that a person

1 is “an alien and unlawfully present” in the United States. By failing to provide such
2 guidance, the Arizona Legislature appears to have left the question of what creates
3 reasonable suspicion of unlawful presence in the United States to local law enforcement
4 officials.

5 As *amici* can attest, while local law enforcement officials have expertise in
6 identifying facts that suggest an individual is engaged in criminal conduct, they have no
7 expertise in identifying facts that might support a reasonable suspicion that an individual
8 is unlawfully present in the United States in violation of federal civil immigration law.
9 Local law enforcement officers are trained and experienced in assessing whether there is
10 sufficient cause or suspicion to believe an individual has engaged in criminal activity.
11 Such assessments tend to be based on facts that officers can readily observe or obtain,
12 such as witnessing the commission of a crime, analyzing forensic evidence from a crime
13 scene, or evaluating informant or witness testimony. By contrast, the question of
14 whether a person is “unlawfully present” in the United States can be answered only by
15 applying a complex scheme of federal statutory and regulatory law to an individual’s
16 factual circumstances (potentially including the person’s place of birth, the date and
17 method of entry into the country, his or her history while residing in this country, and
18 any prior adjudications of immigration status by a federal agency or court). Local law
19 enforcement officers do not have the expertise or training necessary to interpret this
20 complex statutory and regulatory scheme; nor do they have the ability during a stop,
21 arrest, or detention to identify critical facts that would permit them to distinguish
22 between individuals with lawful status and those whom they might reasonably suspect
23 are “unlawfully present” in the United States. SB 1070 does not purport to identify any
24 factors upon which reasonable suspicion of “unlawful presence” may be based.

25 *ii. Given the absence of readily identifiable indicia of immigration status,*
26 *profiling based on race, ethnicity, national origin, and language or accent*
are certain to occur.

27 *Amici* question whether the provisions of SB 1070 that require an officer to assess
28 whether a person is unlawfully present in the United States can be enforced in a

1 constitutional manner. As *amici* can attest, there is simply no sound way for local law
2 enforcement officers to tell by simple observation whether someone has lawful
3 immigration status. Accordingly, it is highly likely that factors such as an individual's
4 race, ethnicity, level of English proficiency, or national origin will be the basis for such
5 determinations, in violation of the Constitution. See, e.g., *Whren v. United States*, 517
6 U.S. 806, 813 (1996) (The "Constitution prohibits selective enforcement of [] law[s]
7 based on considerations such as race."); *United States v. Brignoni-Ponce*, 422 U.S. 873,
8 886-87 (1975) (an individual's "Mexican appearance" is not a sufficient basis, by itself,
9 to provide reasonable suspicion for a stop or brief questioning); *United States v. Manzo-*
10 *Jurado*, 457 F.3d 928, 937 (9th Cir. 2006) ("[A]n individual's inability to understand
11 English" does not give rise to reasonable suspicion that an individual is unlawfully
12 present in the United States "because the same characteristic applies to a sizable portion
13 of individuals lawfully present in this country"); *Chavez v. Illinois State Police*, 251 F.3d
14 612, 635 (7th Cir. 2001) ("[U]tiliz[ing] impermissible racial classifications in
15 determining whom to stop, detain, and search . . . would amount to a violation of the
16 Equal Protection Clause of the Fourteenth Amendment."); see also *Gardenhire v.*
17 *Schubert*, 205 F.3d 303, 319 (6th Cir. 2000); *Marshall v. Columbia Lea Regional*
18 *Hospital*, 345 F.3d 1157, 1166-69 (10th Cir. 2003); *Farm Labor Organizing Committee*
19 *v. Ohio State Highway Patrol*, 95 F.Supp.2d 723 (N.D. Ohio 2000). Although SB 1070
20 prohibits consideration of race, color, or national origin to support reasonable suspicion
21 that a person is "unlawfully present," as a practical matter, this section of the law will not
22 prevent reliance on these factors. Unless local law enforcement agencies adopt the
23 impossibly burdensome approach of contacting federal authorities to determine the
24 immigration status of *every* person stopped, arrested, or detained, each such encounter
25 will require an officer to (a) engage in potentially unconstitutional conduct by relying
26 upon observable factors such as race, ethnicity, or level of English proficiency when
27 assessing whether a person is unlawfully present, or (b) ignore SB 1070's requirement
28 that immigration status be verified during such encounters. Thus, SB 1070 puts local

1 officials in the untenable position of having either to act in an unconstitutional manner or
2 to violate state law.

3 *iii. SB 1070's provision of authority to local law enforcement to*
4 *carry out warrantless arrests raises similar liability concerns.*

5 SB 1070 authorizes local law enforcement officers to make warrantless arrests
6 where they have probable cause to believe that an individual has committed "any public
7 offense that makes the person removable from the United States." SB 1070, § 6, as
8 amended; A.R.S. § 13-3883(A)(5). This standard is unworkable and therefore is likely to
9 result in potential liability if officers rely upon it to make warrantless arrests. First, a
10 crime would "make[] the person removable" only if the person who committed the crime
11 is an alien, as citizens are not removable from the United States. Determinations of
12 alienage are complex and fall outside local law enforcement's expertise. Second,
13 determining whether the commission of a particular crime renders an alien removable is
14 even more complex. *See Padilla v. Kentucky*, 130 S. Ct. 1473, 1483 (2010) ("There will
15 . . . undoubtedly be numerous situations in which the deportation consequences of a
16 particular [crime] are unclear or uncertain."); *Galeana-Mendoza v. Gonzales*, 465 F.3d
17 1054, 1058 n. 9 (9th Cir. 2006); *Ortiz v. INS*, 179 F.3d 1148, 1155 (9th Cir. 1999). The
18 complexity of alienage and removability determinations make it highly likely that local
19 law enforcement officers, operating without the oversight afforded by the warrant
20 process, will make mistakes that give rise to potential liability. Indeed, the federal
21 government has taken care to limit the circumstances in which authorized *federal*
22 immigration officers may make warrantless arrests. *See* 8 U.S.C. § 1357(a)(2); 8 C.F.R.
23 § 287.8(c)(2). Arizona's alternative immigration scheme contains no such restrictions
24 and instead purports to authorize a warrantless arrest based on an individual local law
25 enforcement officer's assessment that a person has committed an offense that would
26 make him or her removable. Such determinations fall far outside the training, expertise,
27 and authority of local law enforcement officers.

28 //

1 iv. *SB 1070's requirement that arrestees' immigration status be determined*
 2 *prior to release will result in the unconstitutional detention of individuals*
 3 *who would otherwise be released.*

4 As noted above, SB 1070 requires that local law enforcement officers verify the
 5 immigration status of “[a]ny person who is arrested . . . before the person is released.”
 6 A.R.S. § 11-1051(B) (emphases added). Thus, SB 1070 mandates that local
 7 governments verify the immigration status of *all* arrestees, even where authorities have
 8 neither reasonable suspicion nor probable cause to believe that an arrestee is an alien or
 9 is unlawfully present in the United States. Furthermore, SB 1070 requires that arrestees
 10 be detained until their immigration status can be verified, which in some cases will be
 11 well beyond the point at which they would otherwise have been released. As noted
 12 above, the federal government has no obligation to provide a timely response to inquiries
 13 from localities regarding individuals’ immigration status, and thus detentions may extend
 14 for days or even weeks past time when they would otherwise have terminated. By
 15 requiring local governments to detain arrestees pending verification of their immigration
 16 status, SB 1070 directs local governments to hold arrestees in violation of the Fourth
 17 Amendment to the U.S. Constitution. SB 1070 thereby exposes localities (and thus tax-
 18 payers) to significant potential liability. As the City of Tucson averred in its Answer and
 19 Cross-Claim in *Escobar v. Brewer et al.*

20 [SB 1070] mandates the detention and verification of the immigration
 21 status of arrestees . . . in violation of the Fourth Amendment to the United
 22 States Constitution. . . . Immigration and Customs Enforcement agents
 23 will not be able to respond with an immediate verification of the
 24 immigration status of every individual who receives a criminal
 25 misdemeanor citation within the City of Tucson and within the State of
 26 Arizona as required by A.R.S. § 11-1051(B). As a result Tucson will be
 27 required to incarcerate persons who would have been released at the time
 28 of citation pending federal verification of the person’s immigration status.
 29 That verification will be particularly difficult for natural born citizens who
 30 do not have a passport or other record with federal immigration agencies.
 31 The federal verifications may take days or weeks . . .

32 Tucson Answer and Cross-Claim at ¶¶ 40, 44-45. By complying with SB 1070,
 33 local law enforcement agencies would expose themselves to significant potential
 34 liability for violating individuals’ Fourth Amendment rights.

1 3. Implementation of SB 1070 will irreparably damage the trust between
2 immigrant communities and law enforcement agencies in Arizona and
3 nationwide, creating a lasting barrier to maintaining public safety.

4 *Amici* submit that the public interest not only favors but requires the issuance of a
5 preliminary injunction to prevent irreparable damage to the relationships between
6 immigrant communities and local law enforcement agencies that are necessary to the
7 protection of public safety. Maintaining a clear separation between local government
8 operations and federal immigration enforcement is critical to enable local governments to
9 serve community needs appropriately, and to provide effective crime prevention and law
10 enforcement. As former Los Angeles Police Department Chief William Bratton
11 explained, “[W]hen local police enforce immigration laws, it undermines their core
12 public safety mission, diverts scarce resources, increases their exposure to potential
13 liability and litigation, and exacerbates fear in communities that are already distrustful of
14 police. . . . Working with victims and witnesses of crimes closes cases faster and protects
15 all of our families by getting criminals off the street.” William Bratton, *Opinion: The*
16 *LAPD Fights Crime, Not Illegal Immigration*, L.A. Times, Oct. 27, 2009. If SB 1070 is
17 allowed to go into effect, relationships between local law enforcement agencies and
18 immigrant communities in Arizona and across the country will be severely damaged.

19 As local governments charged with protecting public safety in diverse communities,
20 *amici* can attest to the indispensable role that community relationships play in the
21 maintenance of public safety. Local law enforcement officers cannot patrol every public
22 place at every time, nor can they guarantee safety in private places, such as people’s own
23 homes. To prevent, investigate, and prosecute crimes, law enforcement agencies depend
24 heavily on relationships with community members, crime victims, and witnesses.
25 Without their assistance, large numbers of crimes would go unreported; criminal
26 investigations would be more costly and would take longer to complete; many crimes
27 would never be solved; and prosecutions for criminal activity would be less frequent and
28 less successful.

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1 The relationships that local law enforcement agencies build with their local
2 communities, including immigrant communities, are created over time. They also are
3 fragile, and can be deeply damaged by events or perceptions that undermine people's
4 trust in local law enforcement officers. When local law enforcement officers are
5 perceived as enforcers of immigration law, many individuals in the community will be
6 reluctant to seek their help.¹ When individuals are afraid to approach local law
7 enforcement officials, crimes go unreported, victims go without protection, and the
8 whole community is less safe. The loss of trust among immigrant communities and
9 communities of color has wide-ranging effects on local officials' ability to engage in
10 effective crime detection, investigation, prosecution, and prevention — undermining the
11 safety of all community members — citizens and non-citizens alike.

12 If SB 1070 is allowed to go into effect, relationships between local law enforcement
13 agencies and immigrant communities in Arizona and across the country will be severely
14 damaged. The express intent of SB 1070 is to achieve the "attrition [of undocumented

15 ¹ In order to avoid the development of such a perception, many local governments
16 have adopted policies that make clear that local law enforcement officers will not
17 investigate potential immigration violations, thereby encouraging immigrants to come
18 forward with relevant information about crimes without fear of deportation. *See*
19 *Sturgeon v. Bratton*, 174 Cal.App.4th 1407, 1413-1414 (Cal. Ct. App. 2009). For
example, Volume 1, section 390 of the Los Angeles Police Department Manual provides
as follows:

20 Undocumented alien status in itself is not a matter for police action. It is,
21 therefore, incumbent upon all employees of this Department to make a
22 personal commitment to equal enforcement of the law and service to the
23 public regardless of alien status. In addition, the Department will provide
24 special assistance to persons, groups, communities and businesses who, by
25 the nature of the crimes being committed upon them, require individualized
26 services. Since undocumented aliens, because of their status, are often
27 more vulnerable to victimization, crime prevention assistance will be
28 offered to assist them in safeguarding their property and to lessen their
potential to be crime victims. [¶] Police service will be readily available to
all persons, including the undocumented alien, to ensure a safe and tranquil
environment. Participation and involvement of the undocumented alien
community in police activities will increase the Department's ability to
protect and to serve the entire community.

Id. at 1414 n.5.

1 immigrants] through enforcement.” S.B. 1070, § 3. The law aims to achieve this goal by
2 creating a broad and intrusive detection and enforcement scheme that is sure to make
3 many members of immigrant communities — including those who are lawfully present
4 in the United States — justifiably afraid of interacting with local law enforcement
5 officials. The impact of SB 1070 on the ability of local law enforcement agencies to
6 detect, investigate, and prosecute crimes such as domestic violence, sexual assault, child
7 abuse and neglect, elder abuse, forced labor, and human trafficking will be particularly
8 severe. In investigating and prosecuting such crimes, which typically take place in
9 private spaces and that often target vulnerable populations, law enforcement officers are
10 particularly dependent on the cooperation of community members. For example, a victim
11 of domestic violence, child abuse, or elder abuse may endure months or years of abuse
12 before reporting it to a family member, friend, or faith leader, who then may approach
13 the police or encourage the victim to do so. In other cases, victims or witnesses to abuse
14 may be willing to report a single incident to the police, but their sustained cooperation
15 will be necessary in order to prosecute the crime and to prevent the perpetrator from
16 committing the same crime again. All of these sensitive crimes affect immigrant
17 communities, and local law enforcement’s capacity to address them is directly related to
18 their relationships within those communities.

19 Defendants are likely to argue that only immigrants who are undocumented have
20 reason to fear the enforcement of SB 1070. But immigrant communities in Arizona, like
21 immigrant communities across the country, are diverse. They include individuals with
22 lawful status, including natural born and naturalized U.S. citizens, lawful permanent
23 residents, and others with authorization to reside in the country — all of whom may
24 justifiably fear being caught in the net of unworkable standards that local officials are
25 expected to follow under SB 1070. The possibility of being asked for papers and
26 detained while immigration status is verified is enough to deter many crime victims,
27 witnesses, and other community members from approaching the police, even if they have
28 legal status. Furthermore, not all lawful residents have documents that meet the

1 standards set forth in SB 1070, and some will fear that the validity of their documents
2 will be questioned or disregarded. Other lawful residents have family members who are
3 undocumented or whose immigration status is not known; these individuals may not
4 want to risk approaching local law enforcement officers if that contact might lead to
5 investigation in their homes or neighborhoods and endanger the people close to them.

6 By instilling fear among immigrant communities, the enforcement of SB 1070 will
7 have a lasting effect on the relationships between those communities and local law
8 enforcement agencies in Arizona. If SB 1070 goes into effect, law enforcement officers
9 throughout the State of Arizona will be seen as enforcers of Arizona's new immigration
10 scheme rather than as protectors of public safety. *Amici* believe that the resulting fear and
11 loss of trust will be so devastating to community relationships that Arizona agencies may
12 never recover their ability to adequately protect the public safety.

13 In considering whether a preliminary injunction should issue, *amici* urge the Court
14 to look beyond Arizona at the anticipated effects that implementation of SB 1070 will
15 have on communities nationwide. The implementation of SB 1070 will send a message
16 to immigrant communities across the country that local law enforcement agencies are in
17 the business of enforcing civil immigration law. As local governments working in
18 jurisdictions with substantial immigrant communities, *amici* will suffer the effects of this
19 message as it diminishes the trust we have built with our own communities.

20 Relationships between local law enforcement agencies and immigrant communities are
21 undeniably affected by national sentiment and by the movement of people, ideas, and
22 beliefs between our interconnected communities. As local governments in jurisdictions
23 across the country, we see our communities change and develop as people move in and
24 out of our geographic borders. Many of our community members migrate from, travel
25 to, or have family members in Arizona. The fear and mistrust of local governments that
26 SB 1070 will instill in Arizona's residents and visitors will create a ripple effect
27 throughout the country and the communities we serve.

28 //

1 A nationwide epidemic of distrust of local government among immigrant
2 communities will not easily be reversible. As community members lose faith in local
3 law enforcement officers, the protection of public safety will become more difficult,
4 particularly in an economic climate where government resources are already stretched
5 thin.

6 4. Casting local law enforcement officers as immigration agents subverts
7 federal immigration policies designed to enhance public safety.

8 In contrast to the State of Arizona's disregard for the relationship between local law
9 enforcement and immigrant communities, the federal government has put in place
10 various programs designed to assist local law enforcement agencies in obtaining the trust
11 and cooperation of undocumented crime victims and witness. *See, e.g.*, 8 U.S.C. §
12 1101(a)(15)(T) (making "T" visas available to certain victims of human trafficking who
13 comply with law enforcement requests for assistance); § 1101(a)(15)(U) (making "U"
14 visas available to certain victims of serious crimes, including domestic violence, who
15 assist law enforcement). These provisions of federal law are severely undermined by SB
16 1070.

17 *Amici* can attest that local law enforcement and other officials have made
18 significant progress in protecting public safety by using these visa programs. By offering
19 immigrant crime victims and witnesses a pathway to stable immigration status, these
20 federal protections encourage immigrants to cooperate with local law enforcement, to
21 report crime, and to assist with prosecutions. SB 1070's requirement that law
22 enforcement officers question individuals about their immigration status, detain arrestees
23 while verification of their status is pending, and prosecute those who cannot show their
24 papers will deter immigrant victims and witnesses from cooperating in law enforcement
25 actions, even if they could ultimately be eligible for lawful status under Congress's visa
26 programs. By casting local law enforcement officers not as agents of public safety but as
27 enforcers of federal immigration law, SB 1070 both conflicts with and subverts federal
28 immigration policies that are designed to advance public safety by fostering trust

1 between immigrants and local law enforcement.

2 **III.**

3 **CONCLUSION**

4 *Amici* implore this Court to prevent irreparable harm to public safety and
5 community relationships nationwide by issuing a preliminary injunction enjoining the
6 implementation of SB 1070. The public interest demands that SB 1070 not take effect
7 unless and until its constitutionality can be definitely established.

8 Dated: June 15, 2010

Respectfully submitted,

9 MIGUEL MÁRQUEZ
County Counsel

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11 By: 
12 GRETA S. HANSEN
Deputy County Counsel

13 Attorney for the County of Santa Clara
14 On Behalf of Attorneys for all *Amici*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
**PROOF OF SERVICE BY U.S. MAIL
AND E-MAIL OR ELECTRONIC TRANSMISSION**

FRIEDNLY HOUSE, et al. v. MICHAEL B. WHITING et al.

Case No. CV-10-01061-MEA

I, Greta Hansen, say:

I am now and at all times herein mentioned have been over the age of eighteen years, employed in Santa Clara County, California, and not a party to the within action or cause; that my business address is 70 West Hedding Street, East Wing, 9th Floor, San Jose, California 95110-1770. I am readily familiar with the County's business practice for collection and processing of correspondence for mailing with the United States Postal Service.

On the date set forth below, following ordinary business practice, I served a true copy of the foregoing document described as:

PROPOSED *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION BY THE COUNTY OF SANTA CLARA, CALIFORNIA; THE CITY OF BALTIMORE, MARYLAND; THE CITY OF BERKELEY, CALIFORNIA; THE CITY OF LOS ANGELES, CALIFORNIA; THE COUNTY OF LOS ANGELES, CALIFORNIA; THE CITY OF MINNEAPOLIS, MINNESOTA; THE COUNTY OF MONTEREY, CALIFORNIA; THE CITY OF NEW HAVEN, CONNECTICUT; THE CITY OF PALO ALTO, CALIFORNIA; THE CITY OF PORTLAND, OREGON; THE CITY OF SAINT PAUL, MINNESOTA; THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA; THE CITY OF SAN JOSE, CALIFORNIA; AND THE CITY OF SEATTLE, WASHINGTON

on the interested parties in this action as follows:

SENT VIA U.S. MAIL AND ELECTRONIC MAIL

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **June 15, 2010**, at San Jose, California.


Greta Hansen

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I, Catherine M. Grijalva, say:

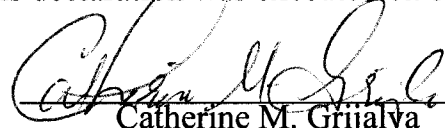
I am now and at all times herein mentioned have been over the age of eighteen years, employed in Santa Clara County, California, and not a party to the within action or cause; that my business address is 70 West Hedding Street, East Wing, 9th Floor, San Jose, California 95110-1770. I am readily familiar with the County's business practice for collection and processing of correspondence for mailing with the United States Postal Service.

On the date set forth below, following ordinary business practice, I served a true copy of the above-mentioned document.

SENT VIA U.S. MAIL ONLY

Mr. Kenny Angle Graham County Attorney 800 West Main Street Safford, AZ 85546	Mr. Preston Allred c/o Legal Liaison Graham County Sheriff 523 10th Avenue Safford, AZ 85546
Mr. Larry A. Dever c/o Legal Liaison Cochise County Sheriff 205 North Judd Drive Bisbee, AZ 85603	Mr. Edward G. Rheinheimer Cochise County Attorney 150 Quality Hili Road, 2nd Floor Bisbee, AZ 85603
Mr. Matthew J. Smith Mohave County Attorney 315 North 4th St. Kingman, AZ 86401	Mr. Tom Sheahan c/o Legal Liaison Mohave County Sheriff 600 West. Beale Street Kingman, AZ 86402

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **June 15, 2010**, at San Jose, California.


Catherine M. Grijalva