

1 ALBERT M. FLORES
2 ALBERT M. FLORES LAW OFFICE
3 337 N 4th Ave
4 Phoenix, AZ 85003
5 Telephone: (602) 271-0070
6 *amflegal@aol.com*
7 Attorney No. 005653

8 HENRY L. SOLANO
9 CARLA GORNIAC
10 CHRISTOPHER R. CLARK
11 DEWEY & LEBOEUF LLP
12 1301 Avenue of the Americas
13 New York, NY 10019
14 Telephone: (212) 259-8000
15 Facsimile: (212) 632-0162
16 *hsolano@DL.com*
17 *cgorniak@DL.com*
18 *crclark@DL.com*

19 *Counsel for Amicus Curiae*

20 UNITED STATES DISTRICT COURT
21 DISTRICT OF ARIZONA

22 Friendly House, *et al.*,
23 Plaintiffs,
24 v.
25 Michael B. Whiting, *et al.*,
Defendants.

CASE NO. CV-10-1061-PHX-SRB

**BRIEF OF THE UNITED
MEXICAN STATES AS
AMICUS CURIAE IN SUPPORT
OF PLAINTIFFS PURSUANT
TO COURT ORDER**

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INTEREST OF THE *AMICUS CURIAE*

1
2 The United Mexican States (“Mexico”) herein expresses its grave concerns over
3 Arizona Senate Bill 1070, 49th Leg., 2nd Reg. Sess., Ch. 113 (Az. 2010), as amended
4 (“SB 1070”), and underscores the importance of declaring SB 1070 unconstitutional.

5 SB 1070 substantially and inappropriately burdens the consistent sovereign-to-
6 sovereign relations between Mexico and United States of America (“U.S.”), interfering
7 with diplomacy and adversely affecting Mexico, its officials, and its citizens.

8 Under Article 5(a) of the Vienna Convention on Consular Relations, to which both
9 countries are signatories, Mexico has a right to protect the interests of its nationals within
10 the limits of international law.¹ Mexico seeks to ensure that its citizens present in the U.S.
11 are accorded the human and civil rights granted under the U.S. Constitution. SB 1070
12 creates an imminent threat of state-sanctioned bias or discrimination, resulting not only in
13 individual injury, but also in broader social and economic harms to its citizens; thereby
14 undermining U.S.–Mexico relations.

15
16 The enactment of SB 1070 has been closely followed at the highest levels of the
17 Mexican government and throughout Mexican society. The issues raised herein are of
18 great importance to the people of Mexico, including the almost twenty million Mexican
19 workers, tourists and students admitted to the U.S. throughout 2009, those already present
20 in the U.S., and the countless millions affected by international trade, immigration
21 policies and drug violence. The government of Mexico respectfully submits that SB 1070
22 adversely impacts the U.S.–Mexico bilateral relations, as well as Mexican citizens and
23 other people of Latin-American descent present in Arizona.
24

25

¹ Vienna Convention on Consular Relations art. 5, Apr. 24, 1963, 596 U.N.T.S. 261.

ARGUMENT**I. SB 1070's Intrusion in International Affairs Impedes International Relations**

In order to conduct effective diplomatic relations with the U.S., countries such as Mexico need and depend on consistent and reliable bilateral negotiations. *Amicus* cannot effectively collaborate with the U.S. to address inherently international matters such as immigration, trade and security on a sovereign basis, if U.S. political subdivisions establish their own requirements that conflict not only with each other, but also with the efforts, priorities and commitments of the U.S. federal government.

Through SB 1070, Arizona directly interferes with the U.S. Department of State's ability to conduct foreign affairs and policy.² As conveyed by U.S. Secretary of State Hillary Clinton, although SB 1070 is not yet in effect, it is already straining U.S.–Mexico relations.³ Mexico's ambassador to the U.S. Arturo Sarukhan explains that SB 1070 “threatens to poison the well from which our two nations have found and should continue to find inspiration for a joint future of prosperity, security, tolerance and justice.”⁴

A. SB 1070 Will Severely Hinder Mexico-Arizona Trade and Tourism

Mexico is greatly concerned with the repercussions of SB 1070 on trade and commercial relations with the U.S. Growth in U.S.–Latin-American trade has historically outpaced all other regions.⁵ Mexico is the third largest trading partner of the U.S. and the

² Meissner Decl. ¶¶ 32–33.

³ *See Meet the Press with Secretary Clinton* [Transcript] (May 2, 2010), available at <http://secretaryclinton.wordpress.com/2010/05/02/meet-the-press/>.

⁴ Instituto Cultural Mexicano, *Entrega de los premios Ohtli*, at 3 (May 4, 2010), www.ime.gob.mx/documentos/Entrega_Ohtlis.doc; CNN, *U.S., Mexican Presidents Say Key Issues Must be Tackled Together* (May 20, 2010), <http://www.cnn.com/2010/US/05/19/mexico.president.visit/index.html>. *See also* Lowenthal Decl. ¶ 10.

⁵ J. F. Hornbeck, *U.S.-Latin America Trade: Recent Trends and Policy Issues*, Congressional Research Service, at 1 (Sept. 3, 2009), available at <http://www.fas.org/sgp/crs/row/98-840.pdf>.

1 second purchaser of U.S. exports.⁶ The interaction of labor markets, tourism, business
2 travel and student migration is of great importance to both economies.⁷ A University of
3 California study estimates that immigration into the U.S. over the 1990–2006 period
4 increased U.S. economic efficiency resulting in a 2.86% real wage increase for the
5 average U.S. worker.⁸ In particular, each day approximately 65,000 Mexicans are
6 admitted into Arizona, where they spend an average of \$7.35 million daily.⁹ But if SB
7 1070 takes effect, Mexican citizens will be afraid to visit Arizona for work or pleasure
8 out of concern that they will be subject to unlawful police scrutiny and detention.

9
10 To enhance the benefits of economic trade and collaboration, the U.S. and Mexico
11 have pursued trade liberalization through collaborative multilateral, regional and bilateral
12 negotiations, resulting in advantageous multi-faceted economic relationships.¹⁰
13 Diplomacy is crucial to such efforts. SB 1070 impedes collaboration by pushing “nations
14 that work together and trade” to “mutual recrimination, which has been so useless and
15 damaging in previous times.”¹¹ Strained diplomatic ties substantially impede the ability

16
17 ⁶ M. Angeles Villarreal, *U.S.-Mexico Economic Relations: Trends, Issues, and*
18 *Implications*, Congressional Research Service, at 1 (Mar. 31, 2010), available at
<http://www.fas.org/sgp/crs/row/RL32934.pdf>.

19 ⁷ Press Release, The White House, *Remarks by President Obama and President Calderón*
20 *of Mexico at Joint Press Availability* (May 19, 2010), available at
[http://www.whitehouse.gov/the-press-office/remarks-president-obama-and-president-](http://www.whitehouse.gov/the-press-office/remarks-president-obama-and-president-calder-n-mexico-joint-press-availability)
21 [calder-n-mexico-joint-press-availability](http://www.whitehouse.gov/the-press-office/remarks-president-obama-and-president-calder-n-mexico-joint-press-availability). See also Tamar Jacoby, *Immigration Nation*, 85
22 *Foreign Affairs* 50, 54-58 (2006).

23 ⁸ Giovanni Peri, *The Impact of Immigrants in Recession and Economic Expansion*,
24 University of California Davis, at 10 (June 2010), available at
<http://www.migrationpolicy.org/pubs/Peri-June2010.pdf>.

25 ⁹ Vera Pavlakovich-Kochi and Alberta H. Charney, *Mexican Visitors to Arizona*,
Economic and Business Research Center (Dec. 2008), available at
http://ebr.eller.arizona.edu/research/mexican_visitors_to_arizona_2007_08.pdf.

¹⁰ Hornbeck, *supra* note 5, at 5; Villarreal, *supra* note 6, at 16-18.

¹¹ Press Release, The White House, *Remarks by President Calderón of Mexico at Official*
Arrival Ceremony (May 19, 2010), available at [http://www.whitehouse.gov/the-press-](http://www.whitehouse.gov/the-press-office/remarks-president-calder-n-mexico-official-arrival-ceremony)
[office/remarks-president-calder-n-mexico-official-arrival-ceremony](http://www.whitehouse.gov/the-press-office/remarks-president-calder-n-mexico-official-arrival-ceremony). See also *Dep't of*

1 of the federal governments of the U.S. and Mexico to collaboratively develop, enhance
2 and maintain commercial ties critical to both of their economies.

3 **B. SB 1070 Derails Efforts Towards Comprehensive Immigration Reform**

4 With over 11 million nationals in the U.S., Mexico has a significant interest in U.S.
5 comprehensive immigration reform. Similarly, the Obama Administration recognizes the
6 need for collaboration with Mexico as one of its five guiding immigration principles.¹²

7 Immigration was a principal discussion topic at the bilateral meeting of the U.S. and
8 Mexican presidents on May 19, 2010. As President Obama acknowledged, both countries
9 share a responsibility to address the issue, with Mexico's efforts to create jobs and the
10 U.S.'s efforts to "fix our broken immigration system[.]"¹³ Both presidents believe that SB
11 1070 is a "misdirected effort" to address immigration concerns, and that collaboration
12 among the two federal governments is essential to ensure that immigration reform "does
13 not have an adverse impact on the economies of [the border] regions."¹⁴

15 The effects of U.S.–Mexico migration to labor markets, tourism, business travel, and
16 education is of great importance to both countries.¹⁵ Mexican citizens comprised the
17 highest percentage (12%) of the 163 million tourists, business travelers, specialty workers
18 and students admitted into the U.S. in 2009.¹⁶

21 *Transp. v. Pub. Citizen*, 541 U.S. 752, 770 (2004) (removing blockade to cross-border
trucking); and Villarreal, *supra* note 6, at 20-24 (discussing Mexico-U.S. trade issues).

22 ¹² The White House, *Immigration* (last visited June 10, 2010),
<http://www.whitehouse.gov/issues/immigration>.

23 ¹³ *Remarks by Presidents Obama and Calderón*, *supra* note 7.

24 ¹⁴ *Id.*

25 ¹⁵ *Id.* See also, Jacoby, *supra* note 7, at 54-58 (noting that foreign labor has
complemented, not competed with, the U.S. labor force).

¹⁶ Randall Monger and MacReadie Barr, *Nonimmigrant Admissions to the United States:
2009*, Department of Homeland Security Office of Immigration Statistics (April 2010),
available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ni_fr_2009.pdf;

1 In particular, immigration policy is crucial to the communities of the U.S.–Mexico
2 border. As noted by President Obama, “there are enormous flows of trade and tourists
3 and people along the border region; the economies are interdependent[.]”¹⁷ In addition to
4 immigration, law enforcement policies are critical to border areas highly susceptible to
5 drug-related violence. Accordingly, on May 19, 2010,

6 [r]ecognizing the importance of securing and facilitating the lawful flow of goods,
7 services, and people between their countries[,] [u]nderstanding that joint and
8 collaborative administration of their common border is critical to transforming
9 management of the border to enhance security and efficiency[, and u]nderstanding
10 that law enforcement coordination between the Participants is essential to
preventing crime and to disrupting and dismantling transnational criminal
organizations[.]”

11 *amicus* and the U.S. entered into the Declaration by The Government Of The United
12 States Of America and The Government Of The United Mexican States Concerning
13 Twenty-First Century Border Management to express their commitment to strengthen
14 collaboration regarding economic trade, tourism, and against criminal organizations.¹⁸

15 It is due to the social, economic, intellectual and security benefits of international
16 collaboration, that the U.S. federal government and Mexico recognize the importance of
17 comprehensive immigration reform.¹⁹ Through SB 1070, Arizona impinges upon the
18 U.S.–Mexico agenda and obstructs the bilateral collaboration to tackle immigration and
19 border problems while preserving the benefits of economic and intellectual exchange. SB
20 1070 institutes an independent state immigration enforcement system that not only derails
21

22 *see also Remarks by Presidents Obama and Calderón, supra* note 7 (highlighting
Calderón’s U.S. education as an example of the benefits of intellectual exchange).

23 ¹⁷ *Id.*

24 ¹⁸ Press Release, The White House, *Declaration by The Government Of The United
States Of America and The Government Of The United Mexican States Concerning
Twenty-First Century Border Management* (May 19, 2010), available at
25 <http://www.whitehouse.gov/the-press-office/declaration-government-united-states-america-and-government-united-mexican-states-c>.

¹⁹ *Remarks by Presidents Obama and Calderón, supra* note 7.

1 bilateral economic, social and security efforts, but imperils the U.S. federal government's
2 efforts at a comprehensive solution for immigration policy. Mexico cannot effectively
3 cooperate with the U.S. when states interfere with the sovereigns' efforts.

4 **C. SB 1070 Obstructs International Collaboration to Combat Drug Issues**

5 For over thirty years, the war against drug-trafficking organizations has been a critical
6 issue for the U.S. and Latin American governments.²⁰ Just during 2009, approximately
7 seven thousand people were killed by drug-related violence in Mexico; 31% took place in
8 the border State of Chihuahua.²¹ The Obama and Bush Administrations, as well as
9 numerous scholars, recognize the shared responsibility for drug-related violence, stating
10 "it is absolutely critical that the U.S. joins as a full partner in dealing with this issue."²²
11

12 To this end, following extensive bilateral negotiations, the Merida Initiative was
13 announced in 2007. Its mission is to collaboratively strengthen the counter-narcotic
14 efforts of both governments.²³ Such cooperation has made great strides, leading the U.S.
15 and Mexico to successfully make over a thousand arrests, develop intelligence-sharing,
16 and strengthen the implementation of weapon-tracing and cash-seizure initiatives.²⁴
17

18 ²⁰ Clare Ribando Seelke, Liana Sun Wyler and June S. Beittel, *Latin America and the*
19 *Caribbean: Illicit Drug Trafficking and U.S. Counterdrug Programs*, Congressional
20 Research Service (Feb. 3, 2010), available at http://assets.opencrs.com/rpts/R41215_20100430.pdf; see also Steven E. Hendrix, *The Merida Initiative for Mexico and Central*
21 *America*, 5 Loy. U. Chi. Int'l L. Rev 107, 108-09 (2007-2008).

22 ²¹ David A. Shirk, *Drug Violence in Mexico: Data and Analysis from 2001-2009*, Trans-
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24 http://www.justiceinmexico.org/resources/pdf/drug_violence.pdf.

25 ²² *Id.* at 12-13; Tom Baldwin, *Barack Obama Arrives in Mexico Amid Drugs Violence*,
Times, at 1-3 (Apr. 17, 2009), available at http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6108394.ece.

²³ Hendrix, *supra* note 20, at 109-10, 112; Clare Ribando Seelke, Mark P. Sullivan and
June S. Beittel, *Mexico-U.S. Relations*, Congressional Research Service, at 14 (Feb. 3,
2010), available at <http://www.hsdl.org/?view&doc=19141&coll=public>.

²⁴ Roberta S. Jacobson, *U.S.-Mexico Security Cooperation*, Statement Before the U.S.
House of Representatives Committee on Foreign Affairs (May 27, 2010), available at

1 As the U.S. and Mexico attempt to strengthen trust and collaboration among bi-
2 national, federal, state and local law enforcement, SB 1070 threatens the bilateral efforts
3 to attack drug-trafficking organizations and drug-related violence by straining and
4 encumbering collaboration. States' interference with federal policies is of major concern
5 in U.S. border states like Arizona, which play a significant operations role in the Merida
6 Initiative's goal of controlling weapons traffic into Mexico and disrupting criminal
7 organizations operating on both sides of the border.²⁵ Additionally, SB 1070 will obstruct
8 international drug-related efforts by raising a very real risk of reducing crime-reporting in
9 Arizona,²⁶ thereby impeding law enforcement's priority efforts to continue making
10 arrests and seizures on both sides of the border. Mexico cannot collaborate with the U.S.
11 without certainty that these bilateral efforts will not be obstructed by divergent states.
12

13 "[T]he interest of the cities, counties and states, no less than the interests of the
14 people of the whole nation, imperatively requires that federal power in the field affecting
15 foreign relations be left entirely free from local interference."²⁷ Mexico has a compelling
16

17 <http://www.state.gov/p/wha/rls/rm/2010/142297.htm>; Seelke, *Mexico-U.S. Relations*,
18 *supra* note 23, at 1-6, 13-20.

19 ²⁵ See e.g., Amanda Lee Meyers, *Officials: Phoenix Gun Dealer Sold to Mexican Drug*
20 *Cartels*, Seattle Times (May 6, 2008), available at http://seattletimes.com/html/nationworld/2004396644_apguntraffickingbust.html (describing
21 arrest of gun shop owner in Phoenix who knowingly sold firearms to Mexican drug-
22 trafficking organizations).

23 ²⁶ See Phillip Atiba Goff, Liana Maris Epstein, Chris Burbank, and Tracie L. Keese, *Deputizing Discrimination?*, The Consortium for Police Leadership in Equity (May 3,
24 2010) (on file with authors) (analyzing the chilling effects on crime reports of a Utah
25 statute permitting state law enforcement to identify and detain individuals whose
immigration status may be in question); see also Chris Burbank, Phillip Atiba Goff, and
Tracie L. Keese, *Policing Immigration: A Job We Do Not Want*, HUFFINGTON POST
(June 7, 2010), available at http://www.huffingtonpost.com/chief-chris-burbank/policing-immigration-a-job_602439.html.

²⁷ *Hines v. Davidowitz*, 312 U.S. at 63; see also The Federalist No. 42 (James Madison)
(concerning regulation of intercourse with foreign nations)("If we are to be one nation in

1 interest in consistent relations among sovereigns, and in the Court declaring SB 1070
2 unconstitutional.

3 **II. SB 1070 Poses a Risk of Racial Profiling By Law Enforcement. Mexico Seeks to**
4 **Protect Its Citizens' Rights Under the U.S. Constitution**

5 Discriminatory legal enforcement has adverse legal, social, economic and political
6 implications. Mexico has a legitimate interest in assuring that its citizens are not deprived
7 of constitutional protections or subjected to hostile attitudes or action by U.S. society.

8 While Latin-American identity is not a proper factor for law enforcement, SB 1070,
9 through clever wording, permits and impliedly encourages the use of race, color, or
10 national origin in implementing SB 1070's immigration provisions to the extent
11 permitted by the U.S. or Arizona Constitution.²⁸ This is confirmed by the public rhetoric
12 of the Arizona governor (the chief elected officer and civilian head of law enforcement)
13 and of other state officials. In discussing the criteria to be used as reasonable suspicion of
14 a person's legal status in the U.S. under SB 1070, Arizona Governor Jan Brewer focused
15 on the physical appearance of "illegal immigrants," stating:

16
17 I do not know what an illegal immigrant looks like. I can tell you that there are
18 people in Arizona that assume they know what an illegal immigrant looks like. I
19 don't know if they know that for a fact or not, but I know that if [Arizona Peace
Officers] gets themselves together, works on this law, puts down the description,
that the law will be enforced civilly, fairly and without discriminatory points to it.²⁹

20 Giving state police the authority to simply create a description of "what an illegal
21 immigrant looks like" is plainly racial profiling,³⁰ and will inevitably lead to casting an

22
23 any respect, it clearly ought to be in respect to other nations."); The Federalist No. 4
24 (John Jay) (concerning dangers from foreign force and influence).

25 ²⁸ Ariz. Rev. Stat. § 11-1051(B) (2010).

²⁹ CNN Wire Staff, *Arizona Governor Signs Immigration Bill*, CNN, Apr. 24, 2010,
available at <http://www.cnn.com/2010/POLITICS/04/23/obama.immigration/index.html>.

³⁰ See *United States v. Montero-Camargo*, 208 F.3d 1122 (9th Cir. 2000).

1 overbroad net in the pursuit of “illegal immigrants” through appearance-based arrests,
2 giving Mexico justified cause for concern.

3 In 2000, the Ninth Circuit held that the “use of race and ethnicity for such purposes
4 [as a criterion in government decision-making] has been severely limited.”³¹ It
5 acknowledged that “[t]he Hispanic population of the nation and of the Southwest and Far
6 West in particular, has grown enormously — at least five-fold in the four [border] states
7 referred to in the Supreme Court’s decision [Arizona, California, New Mexico and
8 Texas].”³² The Court opined that even at border check stops, “at this point in our nation’s
9 history, and given the continuing changes in our ethnic and racial composition, Hispanic
10 appearance is, in general, of such little probative value that it may not be considered as a
11 relevant factor where particularized or individualized suspicion is required...[to be used]
12 in determining which particular individuals among the vast Hispanic populace should be
13 stopped by law enforcement officials on the lookout for illegal aliens.”³³ In fact, recent
14 preliminary demographic information establishes that minorities represent more than 50%
15 of the population in Hawaii, New Mexico, California and Texas.³⁴ As of 2008, there were
16 11.4 million Mexican-born individuals in the U.S. (5.4% in Arizona),³⁵ making use of
17 ethnicity as a law-enforcement factor inappropriate. Nonetheless, SB 1070 gives local
18
19

20 ³¹ *Montero-Camargo*, 208 F.3d at 1143 (citing *Adarand Constructors v. Pena*, 515 U.S.
21 200 (1995); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989)).

22 ³² *Montero-Camargo*, 208 F.3d at 1133-34 n.22. The court pointed out that race “may be
23 considered when the suspected perpetrator of a specific offense has been identified as
24 having such an appearance.”

25 ³³ *Id.* at 1134.

³⁴ Hope Yen, *Minority Population Growing, Census Says*, Associated Press (June 11,
2010), available at [http://www.boston.com/news/nation/washington/articles/
2010/06/11/minority_population_growing_census_says/](http://www.boston.com/news/nation/washington/articles/2010/06/11/minority_population_growing_census_says/).

³⁵ Aaron Terrazas & Jeanne Batalova, Migration Policy Institute, *Frequently Requested
Statistics on Immigrants and Immigration in the United States* (2009),
<http://www.migrationinformation.org/feature/display.cfm?ID=747#3b>.

1 officers *carte blanche* authority to stereotype and to rely on the popular perception that
2 the appearance of “foreign-ness” is a justifiable means for their actions.

3 SB 1070 imposes a risk of unfair and disproportionate targeting of Latin-Americans,
4 which, in immigration enforcement, a federal judge found indistinguishable from “the
5 former practice of Southern peace officers who randomly stopped black pedestrians to
6 inquire, ‘Hey, boy, what are you doin’ in this neighborhood?’”³⁶ In addition, racial
7 profiling promotes negative stereotypes about Latin-American appearance and may
8 encourage private persons to target Mexicans, as seen when armed Arizona ranchers used
9 unjustified force to arrest Hispanics crossing their land.³⁷ Mexico is justly concerned that
10 law enforcement will use seemingly state-sanctioned stereotypes.

11 CONCLUSION

12 For the foregoing reasons, *amicus curiae* respectfully requests that this Court declare
13 SB 1070 unconstitutional in its entirety. Respectfully submitted by *counsel for Amicus*,

14
15 **Albert M. Flores Law Office**
16 ALBERT M. FLORES
17 337 N 4th Ave
18 Phoenix, AZ 85003

Dewey & LeBoeuf LLP
HENRY L. SOLANO
CARLA GORNIK
CHRISTOPHER R. CLARK
1301 Avenue of the Americas
New York, NY 10019

19 ³⁶ *United States v. Zapata-Ibarra*, 223 F.3d 281, 285 (5th Cir. 2000) (Wiener, J.,
20 dissenting). See Joan W. Howarth, *Representing Black Male Innocence*, 1 J. Gender,
21 Race & Just. 97, 106 (1997). “The stereotype that all Latino’s are ‘foreigners’ of
22 suspicious immigration status influences immigration law.” Similarly, “the deeply
23 imbedded idea of a frightening Black man has some influence on every person in
24 America, including every person in the criminal justice system. Each stage of [the
25 American] criminal justice process reflects and reinforces the ‘knowledge’ that Black
male means criminal.”

³⁷ See Smita P. Nordwall & Elliot Blair Smith, *Mexico Threatens to Sue Arizona
Ranchers*, USA Today, May 3, 2000 at 19A; see also e.g., Kevin R. Johnson, *How Did
You Get to be Mexican? A White/Brown Man’s Search for Identity* 46 (1999) (regarding
the public outcry and distrust of law enforcement caused by the mistaken shooting deaths
of two black men, Amadou Diallo and Sean Bell, and the brutal torture of Abner Louima
by New York City law enforcement’s use of racial profiling).

APPENDIX A

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APPENDIX B

CERTIFICATE OF SERVICE

I, Carla Gorniak, hereby certify that on July 8, 2010, a copy of the forgoing Brief of the United Mexican States as *Amicus Curiae* in Support of Plaintiffs Pursuant to Court Order was served electronically to the following parties:

Isaiah Fields
Isaiah.Fields@azag.gov

Nicholas Jason Enoch
nicholas.enoch@azbar.org,
danette@lubinandenoch.com

Steven A LaMar
Steven.Lamar@azag.gov

Daniel S Jurkowitz
Daniel.Jurkowitz@pcao.pima.gov

Christopher Arthur Munns
christopher.munns@azag.gov

Daniel Clayton Barr
DBarr@perkinscoie.com,
docketphx@perkinscoie.com,
sneilson@perkinscoie.com

Kenneth Andrew Angle
kangle@graham.az.gov

Vikram Ketty Badrinath
vbadrinath@aol.com,
vikram.badrinath@azbar.org

Mary Ruth O'Grady
mary.ogrady@azag.gov

Paul F Eckstein
PEckstein@perkinscoie.com,
cwendt@perkinscoie.com,
docketphx@perkinscoie.com

Bryan B Chambers
bchambers@co.gila.az.us

Jon Marshall Greenbaum
jgreenbaum@lawyerscommittee.org

1 **Maria R Brandon**
brandonm@mail.maricopa.gov,
2 Garciaj013@mail.maricopa.gov,
3 fitzpatrickl@mail.maricopa.gov,
4 garciat@mail.maricopa.gov,
winkl@mail.maricopa.gov

Elizabeth Janney Kruschek
ekruschek@perkinscoie.com

5 **Mary Bridget Minder**
BMinder@perkinscoie.com,
6 docketphx@perkinscoie.com,
7 sneilson@perkinscoie.com

Ronald G Blum
rblum@manatt.com

8 **Thomas P Liddy**
tliddy@mail.maricopa.gov,
9 garciaj013@mail.maricopa.gov,
10 garciat@mail.maricopa.gov

Sirena Castillo
scastillo@manatt.com

11 **Wendy L Feng**
wfeng@cov.com,
12 mochoa@cov.com

Christopher Baird Dupont
dupontlaw@cox.net

13 **Richard Anthony Lopez**
rlopez@cov.com

Joanna S McCallum
jmccallum@manatt.com

14 **Joe A Albo, Jr**
15 joe.albo@pinalcountyz.gov,
16 joe.albo@azbar.org,
kristine.carver@pinalcountyz.gov

Carolyn B Lamm
clamm@whitecase.com

17 **George A Nilson**
18 george.nilson@baltimorecity.gov

Louis S Fidel
loufidel@hotmail.com

19 **Sara Elizabeth Dill**
20 sdill@pkjlaw.com,
21 saraedill@gmail.com

Stephen N Zack
szack@bsflp.com

22 **David Jeremy Bodney**
23 dbodney@steptoe.com,
24 awilmot@steptoe.com,
phdctnef@steptoe.com

Lydia Mendoza
lmendoza@manatt.com

1 **William Rowe Phelan, Jr**
william.phelan@baltimorecity.gov

Gregory N Pimstone
gpimstone@manatt.com

2
3 **Zachary D Cowan**
zcowan@ci.berkeley.ca.us

Lawrence L Hafetz
lhafetz@counsel.lacounty.gov

4 **Joseph G Adams**
5 jgadams@swlaw.com,
6 mgarsha@swlaw.com,

Jennifer AD Lehman
jlehman@counsel.lacounty.gov,
dblue@lucounsel.com

7 **John J Bouma**
8 jbouma@swlaw.com,
9 brhoades@swlaw.com,
docket@swlaw.com,
mzachow@swlaw.com

Andrea Sheridan Ordin
aordin@counsel.lacounty.gov

10 **Robert Arthur Henry**
11 bhenry@swlaw.com,
12 docket@swlaw.com,
pwilliams@swlaw.com

La Paz County Attorney
gbuckelew@co.la-paz.az.us

13 **Joseph Andrew Kanefield**
14 jkanefield@az.gov

Peter William Ginder
peter.ginder@ci.minneapolis.mn.us

15 **Lance B Payette**
lance.payette@navajocountyaz.gov

Susan L Segal
susan.segal@ci.minneapolis.mn.us

16 **Michael Dennis Latham**
17 mlatham@co.apache.az.us

William M Litt
littwm@co.monterey.ca.us

18 **Joseph Young**
19 jyoung@co.apache.az.us
20 **Daniel S Jurkowitz**
Daniel.Jurkowitz@pcao.pima.gov,
annette.atkins@pcao.pima.gov,
21 susan.montgomery@pcao.pima.gov

Charles J McKee
mckee@co.monterey.ca.us
Richard Louis Brusca
richard.brusca@skadden.com

22 **Gary Michael Baum**
23 gary.baum@cityofpaloalto.org,
sharon.hanks@cityofpaloalto.org

James Neil Lombardo
neil.lombardo@skadden.com

24
25

1 **Linda Meng**
linda.meng@portlandoregon.gov

Foster Maer
fmaer@latinojustice.org

2
3 **Jean E Wilcox**
jwilcox@coconino.az.gov,
4 mrankin@coconino.az.gov

Cesar A Perales
cperales@latinojustice.org

5 **Anne Cecile Longo**
longoa@mcao.maricopa.gov,
6 ca-civilmailbox@mcao.maricopa.gov

Jose L Perez
jperez@latinojustice.org

7 **Bruce P White**
8 whiteb@mcao.maricopa.gov

Deborah S Smith
deb@debsmithlaw.com

9 **Peter S Holmes**
10 peter.holmes@seattle.gov

Charles F Walker
charles.walker@skadden.com

11 **Robert Alexander Taylor**
robert.taylor@co.mohave.az.us

Jean E Wilcox
jwilcox@coconino.az.gov

12 **Christopher R Clark**
13 crclark@dl.com

Gerald T Hendrickson
jerry.hendrickson@ci.stpaul.mn.us

14 **Albert M Flores**
15 amflegal@aol.com

Anjali Bhargava
anjali.bhargava@cco.sccgov.org

16 **Carla Gorniak**
17 cgorniak@dl.com,
courtalert@dl.com

Katherine Desormeau
kate.desormeau@cco.sccgov.org

18 **Robert Glenn Buckelew**
19 gbuckelew@co.la-paz.az.us
20 **Tamara Lange**
tamara.lange@cco.sccgov.org,
alexandra.weight@cco.sccgov.org

Greta S Hansen
greta.hansen@cco.sccgov.org

Jean Boler
jean.boler@seattle.gov,
katie.lindstrom@seattle.gov

21 **Miguel A Marquez**
22 miguel.marquez@cco.sccgov.org

Melissa S Keaney
keaney@nilc.org

23
24
25

1
2
3
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5
6
7
8
9
10
11
12
13
14
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16
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18
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20
21
22
23
24
25

Bradley S Phillips
brad.phillips@mto.com,
james.berry@mto.com,
mary.pantoja@mto.com

Britt Wesley Hanson
bhanson@cochise.az.gov,
kaguilar@cochise.az.gov

Nathan Jean Fidel
nfidel@hmpmlaw.com,
jlarsen@hmpmlaw.com,
slarsen@hmpmlaw.com

Carmina Ocampo
cocampo@apalc.org

Cecillia D Wang
cwang@aclu.org,
irptemp1@aclu.org

Chris Myrl Roll
chris.roll@pinalcountyz.gov,
kristine.carver@pinalcountyz.gov

Matthew Harrison Green
mgreenh@mattgreenlaw.com,
allisona@mattgreenlaw.com,
theresa@mattgreenlaw.com

David Joseph Euchner
deuchner@comcast.net

Connie Choi
cchoi@apalc.org

Michael M Markman
mmarkman@cov.com

Michael William McCarthy
mmccarthy@co.greenlee.az.us,
mwmccarthy2002@yahoo.com

Cynthia Ann Aziz
cynthia@azizimmigrationlaw.com

Stephen W Manning
smanning@ilgrp.com

Nicholas David Espiritu
nespiritu@maldef.org,
agodinez@maldef.org

Nina Perales
nperales@maldef.org,
cleija@maldef.org

Noel A Fidel
noel.fidel@mwmf.com,
lori.mandell@mwmf.com,
nafidel@mac.com

Adam Netel Bleier
adam@sherickbleier.com,
clarissa@sherickbleier.com

Nora A Preciado
preciado@nilc.org

Omar C Jadwat
ojadwat@aclu.org,
mlauterback@aclu.org

1 **Cynthia Valenzuela Dixon**
2 cvalenzuela@maldef.org,
3 agodinez@maldef.org

4 **Daniel Joseph Pochoda**
5 dpochoda@acluaz.org,
6 danpoc@cox.net,
7 jessican@acluaz.org

8 **Daniel R Ortega, Jr**
9 danny@rmgmo.com,
10 lupe@rmgmo.com

11 **David Lawrence Abney**
12 abneymaturin@aol.com

13 **Dennis J Herrera**
14 tara.collins@sfgov.org

15 **Elisabeth Jill Neubauer**
16 Elisabeth.Neubauer@mto.com,
17 Marsha.Oseas@mto.com

18 **George Jacob Romero**
19 YCAttyCivil@yumacountyaz.gov

20 **Ghazal Tajmiri**
21 tajmiri@nilc.org

22 **Gladys Limon**
23 glimon@maldef.org,
24 agodinez@maldef.org

Paul J Watford
paul.watford@mto.com,
marie.baltierra@mto.com

Peter Shawn Kozinets
pkozinets@steptoe.com,
mmedlin@steptoe.com,
phdctnef@steptoe.com

Phil A Thomas
pthomas@leonardcarder.com

Rebecca Ann Reed
rreed@hmpmlaw.com,
gnielsen@hmpmlaw.com

Robert Enrique Pastor
rpastor@hmpmlaw.com,
rpastor@hmpmlaw.com,
jlarsen@hmpmlaw.com,
slarsen@hmpmlaw.com

Robert S Remar
rremar@leonardcarder.com

Aileen Wheeler
awheeler@cov.com

Sean Aloysius Bodkin
sean.bodkin@azbar.org

Stanley G Feldman
sfeldman@hmpmlaw.com,
svancamp@hmpmlaw.com

1 **Harini Raghupathi**
hraghupathi@aclu.org,
2 bchandler@aclu.org,
3 sdhir@aclu.org

Stephanie Fleischman Cherny
stephanie.cherny@skadden.com

4 **Ivan E Espinoza-Madriral**
iespinoza@maldef.org

Susan Traub Boyd
Susan.Boyd@mto.com,
Robyn.Bird@mto.com

6 **Jack Hamilton Fields**
jack.fields@co.yavapai.az.us

Tanaz Moghadam
tmoghadam@aclu.org,
arastogi@aclu.org

8 **Jeffrey Allen Imig**
jimig@hmpmlaw.com,
9 jarchambeau@hmpmlaw.com

Thomas A Saenz
tsaenz@maldef.org

11 **Jose de Jesus Rivera**
jrivera@hmpmlaw.com,
12 jlarsen@hmpmlaw.com,
jsoto@hmpmlaw.com,
13 slarsen@hmpmlaw.com

Victor Viramontes
Vviramontes@maldef.org,
agomez@maldef.org,
mcabadas@maldef.org

14 **Joseph J Ybarra**
joseph.ybarra@mto.com

Vivek Mittal
mittal@nilc.org

16 **Julie A Su**
jsu@apalc.org

Wayne Snodgrass
wayne.snodgrass@sfgov.org

17 **June Ava Florescue**
18 jfloresc@co.gila.az.us

Yungsohn Park
ypark@apalc.org

19 **Karen Cassandra Tumlin**
20 tumlin@nilc.org

Yuval Miller
yuval.miller@mto.com,
susan.ahmadi@mto.com

21 **Linton Joaquin**
22 joaquin@nilc.org

Anne Lai
alain@acluaz.org,
jessican@acluaz.org

23
24
25

1 **Lucas Guttentag**
lguttentag@aclu.org,
2 Irp_ecf@aclu.org

3
4 In addition, a copy of the forgoing was served by FedEx to counsel of
5 record as follows:

6 **Laura D Blackburne**
NAACP
7 4805 Mt Hope Dr
Baltimore, MD 21215

Victor A Bolden
Office of Corporation Counsel
165 Church St
New Haven, CT 06510

8 **William W Carter**
9 Los Angeles City Attorney
200 N Main St
10 915 City Hall East
Los Angeles, CA 90012

Vikki Cooper
Office of Corporation Counsel
165 Church St
New Haven, CT 06510

11 **David Joseph Euchner**
12 32 N Stone 4th Fl
Tucson, AZ 85701

Richard Doyle
Office of the City Attorney
200 E Santa Clara St
16th Fl
San Jose, CA 95113-1905

13
14
15 **Katheleen M Foster**
Office of Corporation Counsel
16 165 Church St
New Haven, CT 06510

Nora Frimann
Office of the City Attorney
200 E Santa Clara St
16th Fl
San Jose, CA 95113-1905

17
18 **Claudia McGee Henry**
Los Angeles City Attorney
19 200 N Main St
915 City Hall E
20 Los Angeles, CA 90012

Lisa Kung
National Day Labor Organizing Network
675 S Park View St
Ste B
Los Angeles, CA 90057

21 **Ronald Lee**
Asian Pacific American Legal Center
22 1145 Wilshire Blvd
Ste 200
23 Los Angeles, CA 90017

Chris Newman
National Day Labor Organizing
Network
675 S Park View St
Ste B
Los Angeles, CA 90057

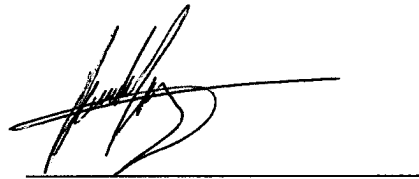
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22
23
24
25

Gerald M Sato
Los Angeles City Attorney
200 N Main St
915 City Hall E
Los Angeles, CA 90012

Andrew Silverman
University of Arizona
College of Law
PO Box 210176
Tucson, AZ 85721-0176

Carmen A Trutanich
Los Angeles City Attorney
200 N Main St
915 City Hall East
Los Angeles, CA 90012



Carla Gorniak, Esq.