

1 **APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO**
2 **SHOW CAUSE RE: PRELIMINARY INJUNCTION**

3 Plaintiffs Valle del Sol, Inc.; Chicanos Por La Causa, Inc.; and Somos America,
4 pursuant to Rule 65 of the Federal Rules of Civil Procedure, hereby request that the Court
5 issue a temporary restraining order and an order to show cause why a preliminary
6 injunction should not issue.

7 **NEED FOR TEMPORARY RESTRAINING ORDER**

8 On January 1, 2008, provisions of the Legal Arizona Workers Act (the “Act”) will
9 take effect unless this Court takes action. The Act violates the Supremacy Clause
10 because it is preempted by federal immigration law. A portion of Section 2 of the Act
11 (Ariz. Rev. Stat. §23-212) establishes a system unique to Arizona for sanctioning
12 employers that employ aliens who are not authorized to work even though Congress, in
13 enacting a uniform federal scheme for the same purpose, prohibited states from crafting
14 their own schemes. Another portion of Section 2 of the Act (Ariz. Rev. Stat. §23-214)
15 unlawfully makes mandatory employer participation in a voluntary, experimental, and
16 temporary federal employment eligibility verification program known as “E-Verify.” If
17 Section 2 of the Act becomes operative on January 1, significant irreparable harm will
18 befall plaintiffs and others as they are forced to bear the burden of compliance with an
19 unconstitutional law. Plaintiffs respectfully request that the Court act to prevent this
20 harm.

21 **GROUNDS FOR APPLICATION**

22 The application is made on the ground that plaintiffs meet the requirements for a
23 temporary restraining order because they have demonstrated: 1) a likelihood of success on
24 the merits and the possibility of irreparable injury, or 2) serious questions about the merits
25 and that the balance of hardships tips sharply in plaintiffs’ favor.

26 Plaintiffs have a strong likelihood of success on the merits of the preemption claim
27 because the laws Congress created to regulate the employment of non-citizens confer
28 rights and responsibilities in a careful balance reflecting the national interest. The Act’s

1 prohibition on employers intentionally or knowingly employing an unauthorized alien and
2 requirement that employers verify employment eligibility via the voluntary E-Verify
3 program threaten that balance and are preempted.

4 The balance of equities also overwhelmingly favors a stay to preserve the status
5 quo until plaintiffs' request for a preliminary injunction can be heard. Defendants will
6 suffer no real harm from simply maintaining the status quo. Indeed, it makes no sense for
7 the State of Arizona to implement and enforce an unconstitutional law with all the
8 associated disruption, burden, and cost to the State – and then to require the State to
9 return to the status quo ante, with more disruption, burden, and cost.

10 On the other hand, implementation of the Act will cause irreparable harm to
11 plaintiffs and to others in derogation of the public interest. Plaintiffs and many others
12 will have to comply with an unconstitutional law that requires costs and obligations to
13 sign up for and use the E-Verify system. Employers will be faced with State sanctions,
14 including revocation of their business licenses – the “business death penalty.” Employees
15 will be faced with termination and discrimination in hiring – even though they are eligible
16 for employment. This harm should be avoided while the Court reaches a decision on a
17 preliminary injunction.

18 RELIEF SOUGHT

19 Plaintiffs respectfully request that the Court grant this application as follows:

20 1. The Court should issue an immediate temporary restraining order, pending a
21 hearing on the request for a preliminary injunction, that enjoins defendants, their officials,
22 agents, employees, assigns, and all persons acting in concert or participating with them
23 from implementing or enforcing Section 2 of the Legal Arizona Workers Act;

24 2. The Court should issue an order to show cause why a preliminary injunction
25 should not issue to enjoin defendants from implementing or enforcing Section 2 of the
26 Legal Arizona Workers Act.

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SUPPORTING DOCUMENTS

The motion is based on this Application and the following documents: the Complaint; the Motion to Reassign and Consolidate; the Memorandum of Points and Authorities in Support of Motion for Temporary Restraining Order and Preliminary Injunction; the Declaration of Tyler Moran; the Declaration of Luz Sarmina; and the Declaration of Jonathan Weissglass (attaching two declarations from Edmundo Hidalgo and a declaration from Anthony Charles Forschino); the complete files and records of this action; and such other and further matters as the Court may properly consider.

NOTICE

Plaintiffs previously stated in the Motion to Reassign and Consolidate their intent to seek a temporary restraining order and preliminary injunction. Plaintiffs served that Motion by e-mail as reflected in the Certificate of Service. Unless otherwise requested or instructed, Plaintiffs will continue serving all documents by e-mail until Notices of Appearance are filed, and will serve the Summons and Complaint as soon as possible.

1 **JOINDER IN MOTION BY ARIZONA CONTRACTORS ASSOCIATION**

2 Plaintiffs also join in the Motion for Temporary Restraining Order and
3 Preliminary Injunction filed in *Arizona Contractors Association, Inc., et al. v. Candelaria,*
4 *et al.*, Case No. CV-07-2496-PHX-NVW. Plaintiffs believe it is appropriate for both that
5 Motion and this Application be heard at the same time, and do not seek to delay any
6 schedule set in that case.

7 Dated: December 12, 2007

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21 By: /s/ Kristina M. Campbell
22 Kristina M. Campbell

23 Attorneys for Plaintiffs

1 CERTIFICATE OF SERVICE

2 I hereby certify that on December 12, 2007, I electronically transmitted the
3 foregoing document to the Clerk's Office using the CM/ECF System for filing and e-
4 mailed the document to the following:

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28 COPY of the foregoing sent by overnight delivery
with Notice of Electronic Filing on December 12, 2007 to:

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23 /s/ Sally Mendez
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