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Lucas Guttentag
Jennifer C. Chang
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
Immigrants' Rights Project
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 343-0770
Facsimile: (415) 395-0950
E-mail: jchang@aclu.org

Omar C. Jadwat
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
Telephone: (212) 549-2620
Facsimile: (212)-549-2654
Email: ojadwat@aclu.org

Attorneys for Plaintiffs

1 **INTRODUCTION**

2 1. This lawsuit challenges Arizona’s attempt to enact laws regulating
3 immigration that intrude on the federal government’s plenary power and provide less
4 protection to workers and employers than federal laws.

5 2. The recently-enacted Legal Arizona Workers Act (the “Act”), establishes a
6 system unique to Arizona for sanctioning employers that employ aliens who are not
7 authorized to work. The Act also requires employers to verify the employment eligibility
8 of each employee through a federal verification program known as “E-Verify,” even
9 though federal law establishes that participation in that program is voluntary. The Act is
10 attached as Exhibit A.

11 3. The Act violates the Supremacy Clause of the United States Constitution
12 because it is preempted by federal immigration law and the federal government’s
13 exclusive authority to regulate immigration. The Act also violates the Fourteenth
14 Amendment to the U.S. Constitution because it deprives employers and workers of liberty
15 and property without due process of law.

16 4. Were the Act’s provisions regarding employment of unauthorized aliens
17 and verification of employment eligibility to be upheld, it would be license for every state
18 and, indeed, every locality to enact its own immigration laws. The result would be
19 inconsistency and extreme confusion. This lawsuit seeks to avoid that result.

20 5. This lawsuit also seeks to prevent the inevitable harm to workers who are
21 authorized to work in the United States, particularly foreign-born workers and national
22 origin minorities, that the Act will cause if it is allowed to take effect. The Act will cause
23 authorized workers to not be hired, to be terminated, to have to undertake additional state-
24 created efforts to demonstrate that they are authorized to work, or to suffer other harms.
25 Finally, the suit seeks to prevent harm to employers who must comply with the Act.

26 **JURISDICTION AND VENUE**

27 6. This Court has jurisdiction under 28 U.S.C. §§1331 and 1343 because
28 Plaintiffs assert claims under the Constitution of the United States and 42 U.S.C. §1983.

1 and may be subject to harsh penalties. Using E-Verify would impose added costs and
2 obligations on Valle del Sol, including learning how to use E-Verify; registering for E-
3 Verify, which includes signing a Memorandum of Understanding with the Department of
4 Homeland Security (“DHS”) and Social Security Administration (“SSA”) that in turn
5 requires employers to complete a tutorial and become familiar with and comply with a
6 lengthy manual; and submitting data to E-Verify for all new hires such as name, date of
7 birth, and social security number. If the Act does not take effect, Valle del Sol will not
8 use E-Verify and will not incur the attendant costs and obligations.

9 9. Plaintiff Chicanos Por La Causa, Inc. (“CPLC”) was formed in 1969 by
10 concerned Hispanic citizens to address social issues in their community. Today, CPLC is
11 one of Arizona’s largest non-profit, community-based organizations, as well as one of the
12 largest community development corporations in the nation. CPLC is licensed by the State
13 of Arizona and is headquartered in Phoenix. CPLC is committed to building stronger,
14 healthier communities as a lead advocate, coalition builder, and direct service provider.
15 CPLC employs more than 600 people in Arizona and regularly contracts with independent
16 contractors. CPLC has programs in education, including the Migrant Head Start
17 Program, charter schools, prevention programs, and school enrichment programs. CPLC
18 also has programs in housing, including property management; client counseling; and
19 single, multi-family, senior, and self-help housing. CPLC’s economic development
20 programs include business lending, commercial development, and employment and
21 training. CPLC runs social services programs, including behavioral health, emergency
22 assistance, domestic violence, elderly, immigration, HIV, health, and legal information
23 and referral services. CPLC subsidiaries include a facility management company, federal
24 credit union, mortgage company, women’s care center, construction company, day labor
25 center, and property/real estate purchasing and management company. CPLC challenges
26 the Act because of the harm it will cause to workers that are authorized to work in the
27 United States and to their families. CPLC is concerned that workers, particularly
28 foreign-born workers and national origin minorities, will not be hired in the first place,

1 will lose their jobs, will have to undertake additional efforts to demonstrate that they are
2 authorized to work, or will otherwise be harmed because of the Act. CPLC in turn may
3 need to divert resources from its ongoing programs to assist persons who are denied
4 employment or terminated. Complying with the employer sanctions and verification
5 provisions of the Act will also harm CPLC. Currently, CPLC complies with federal legal
6 requirements, but does not use the voluntary E-Verify system as a means of verifying
7 employment eligibility of its employees. If the Act takes effect, CPLC will use the
8 voluntary E-Verify program to verify employment eligibility both because the Act
9 requires employers to do so (Ariz. Rev. Stat. §23-214) and, separately, because doing so
10 provides a rebuttable presumption against liability for intentionally or knowingly
11 employing an unauthorized alien (Ariz. Rev. Stat. §23-212(I)). Using E-Verify would
12 impose added costs and obligations on CPLC, including learning how to use the program;
13 registering for E-Verify, which includes signing a Memorandum of Understanding; and
14 submitting to E-Verify for all new hires information such as name, date of birth, and
15 social security number.

16 10. Plaintiff Somos America is a community based coalition of grassroots
17 organizations, community and religious leaders, labor unions, and students established in
18 March 2006 to mobilize for social justice and equal rights for immigrant communities in
19 Arizona and for comprehensive immigration reform. Somos America seeks to challenge
20 injustice and the exploitation of workers and to promote civic participation, political
21 awareness, and education within the Latino community.

22 11. Defendant Terry Goddard is sued in his official capacity as the Attorney
23 General of the State of Arizona. The Attorney General is in charge of and directs the
24 department of law and is Arizona's chief legal officer. Ariz. Rev. Stat. §41-192(A). The
25 department of law supervises the county attorneys. Ariz. Rev. Stat. §41-193(A)(4). The
26 department of law also shall, ["a]t the direction of the governor, or when deemed
27 necessary, assist the county attorney of any county in the discharge of the county
28 attorney's duties." Ariz. Rev. Stat. §41-193(A)(5). The Act appropriates \$100,000 in

1 fiscal year 2007-2008 to the Attorney General for enforcing the Act. An injunction in this
2 lawsuit would prevent the Attorney General from using this and any future appropriations
3 to enforce the Act, and the Attorney General would no longer be able to exercise his
4 authority under and with respect to the Act.

5 12. Defendant Gale Garriott is sued in his official capacity as the Director of
6 the Arizona Department of Revenue. Section 3 of the Act requires the Department of
7 Revenue to provide notice of the Act to every employer on or before October 1, 2007.
8 The Director has complied with Section 3. The notice is attached as Exhibit B. An
9 injunction in this case would require the Director to rescind this notice.

10 13. Defendant Andrew Thomas is the County Attorney for Maricopa County,
11 Arizona. The County Attorney intends to enforce the Act. A news release from the
12 County Attorney is attached as Exhibit C.

13 **GENERAL BACKGROUND**

14 14. Governor Janet Napolitano signed the Legal Arizona Workers Act, House
15 Bill 2779, into law on July 2, 2007. Section 2 of the Act institutes sanctions against
16 employers that intentionally or knowingly employ an unauthorized alien and requires
17 employers to use the federal “Basic Pilot Program” – since renamed “E-Verify” – to
18 verify employment eligibility of their employees.

19 **Prohibition on Intentionally or Knowingly Employing an Unauthorized Alien**

20 15. Section 23-212 prohibits employers from intentionally or knowingly
21 employing an unauthorized alien. Ariz. Rev. Stat. §23-212(A). An “unauthorized alien”
22 is defined as an alien who does not have the legal right to work in the United States under
23 federal law. Ariz. Rev. Stat. §23-211(8). An “employer” is defined as any individual or
24 organization that transacts business in Arizona, has a license issued by an Arizona
25 agency, and employs at least one person who performs employment services in Arizona.
26 Ariz. Rev. Stat. §23-211(4). A “license” is broadly defined to include “any agency
27 permit, certificate, approval, registration, charter or similar form of authorization that is
28 required by law” and that is issued by any state or local agency for the purposes of

1 operating a business in Arizona, and includes articles of incorporation and partnership
2 registrations. Ariz. Rev. Stat. §23-211(1), (7).

3 16. On receipt of a complaint that an employer is violating the prohibition on
4 employing an unauthorized alien, the Arizona Attorney General or county attorney must
5 investigate the complaint by verifying the work authorization of the alleged unauthorized
6 alien with the federal government, according to the federal inquiry procedure set forth in
7 8 U.S.C. §1373(c). Ariz. Rev. Stat. §23-212(B).

8 17. 8 U.S.C. §1373(c) provides: “The Immigration and Naturalization Service
9 shall respond to an inquiry by a Federal, State, or local government agency, seeking to
10 verify or ascertain the *citizenship or immigration status* of any individual within the
11 jurisdiction of the agency for any purpose authorized by law, by providing the requested
12 verification or status information.” (Emphasis added.)

13 18. Employment authorization status is distinct from citizenship or immigration
14 status under federal law. For instance, some persons who lack lawful immigration status
15 may nonetheless be authorized to work by the federal government.

16 19. If upon completion of the federal inquiry regarding citizenship or
17 immigration status the Arizona Attorney General or county attorney determines that the
18 complaint that an employer is employing an unauthorized alien was not frivolous, then he
19 or she must notify United States Immigration and Customs Enforcement and the local law
20 enforcement agency of the presence of the allegedly unauthorized alien. Ariz. Rev. Stat.
21 §23-212(C)(1), (2). For all non-frivolous complaints to the Attorney General, the Act
22 requires the Attorney General to “notify the appropriate county attorney to bring an action
23 pursuant to Subsection D.” Ariz. Rev. Stat. §23-212(C)(3).

24 20. Subsection D provides that the county attorney bring an action against an
25 employer who intentionally or knowingly employs an unauthorized alien in the county
26 where the unauthorized alien is employed. Ariz. Rev. Stat. §23-212(D). In determining
27 whether an employee is unauthorized to work, the Superior Court may *only* consider the
28 federal government’s “determination” under 8 U.S.C. §1373(c), even though that

1 “determination” is deemed to create a “*rebuttable* presumption of the employee’s lawful
2 status.” Ariz. Rev. Stat. §23-212(H) (emphasis added).

3 21. An employer that has verified its employee’s employment authorization
4 through a voluntary federal verification program known as E-Verify is entitled to a
5 rebuttable presumption that the employer did not intentionally or knowingly employ an
6 unauthorized alien. Ariz. Rev. Stat. §23-212(I). E-Verify is a voluntary program the
7 federal government has offered employers.

8 22. The Act authorizes several state-created employer sanctions for an
9 employer found to have intentionally or knowingly employed unauthorized aliens under
10 the Act. First, the employer must terminate the employment of all unauthorized aliens
11 and file a sworn affidavit stating that it has done so and that it will not intentionally or
12 knowingly employ any unauthorized aliens. Ariz. Rev. Stat. §23-212(F)(1)(a), (1)(c),
13 (2)(a), (2)(d). Second, the employer is placed on probation for the first violation – for
14 three years for a knowing violation and five years for an intentional violation – during
15 which time the employer must file quarterly reports of each new employee it has hired at
16 the location where the unauthorized alien performed work. Ariz. Rev. Stat. §23-
17 212(F)(1)(b), (2)(b). Third, all of the employer’s licenses may be suspended for a
18 knowing violation; must be suspended for an intentional violation; and, upon a second
19 violation of any type during the probation period, must be permanently revoked. Ariz.
20 Rev. Stat. §23-212(F)(1)(d), (2)(c), (3). Finally, all court orders with respect to violations
21 will be posted on the Attorney General’s website to publicize employer violations. Ariz.
22 Rev. Stat. §23-212(G).

23 **Mandated Verification of Work Status Through E-Verify**

24 23. The Legal Arizona Workers Act also requires employers, after hiring any
25 employee, to “verify the employment eligibility of the employee through the Basic Pilot
26 Program.” Ariz. Rev. Stat. §23-214.

27 24. The Basic Pilot Program, now known as “E-Verify,” refers to a *voluntary*
28 and *experimental* program established by Congress in the Illegal Immigration Reform and

1 Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208 (Sept. 30, 1996),
2 along with two other employment verification pilot programs which have since been
3 suspended. E-Verify is set to expire in November 2008 under the Basic Pilot Program
4 Extension and Expansion Act of 2003, Pub. L. No. 108-156 (Dec. 3, 2003). 8 U.S.C.
5 §1324a note; 69 Fed. Reg. 75997, 75998 (Dec. 20, 2004). E-Verify permits employers
6 who choose to participate to verify electronically workers’ employment eligibility.
7 (Pursuant to statute, a few employers that have violated federal employment verification
8 laws may be required to use E-Verify by the federal government.)

9 25. E-Verify started in 1997 in only five states, and has been available
10 nationwide since December 2004. Employers who use E-Verify must engage in various
11 activities, including learning how to use the program; registering for E-Verify, which
12 includes signing a Memorandum of Understanding (“MOU”) with DHS and SSA; and
13 submitting to E-Verify for all new hires data such as employee name, date of birth, and
14 social security number. In addition to initial training, employers must periodically update
15 and re-train the persons using E-Verify each time the system is updated or changed.

16 26. The MOU imposes requirements on employers, including the following: All
17 employer representatives who use E-Verify must complete a tutorial; the employer must
18 become familiar with and comply with the E-Verify manual (which is 64 pages); the
19 employer must agree that in verifying employment eligibility of an employee at the time
20 of hire via the federal Form I-9 process, the employer will only accept documents to
21 establish identity that contain a photograph even though other employers are not so
22 limited under federal law pursuant to 8 C.F.R. §274a.2(b)(1)(v)(B); and the employer
23 must agree not to use E-Verify as a pre-employment screening procedure or to engage in
24 any unlawful employment practice. The MOU also provides that the federal government
25 may terminate access to E-Verify with 30 days’ notice.

26 27. E-Verify compares data submitted by employers via the Internet to
27 information in federal SSA and DHS databases. The system first uses the SSA database
28 to verify an employee’s name, date of birth, and social security number. Upon such

1 verification, if the employee claimed U.S. citizenship and such citizenship is confirmed
2 by SSA's database, E-Verify confirms employment eligibility. For non-U.S. citizens, E-
3 Verify uses the DHS database and sometimes DHS personnel to check whether the
4 employee is authorized to work. If the SSA database is unable to verify the employee
5 information or DHS is unable to verify employment authorization, E-Verify issues a
6 tentative nonconfirmation. An employee may contest a tentative nonconfirmation by
7 contacting the federal government to resolve inaccuracies in the records. If an employee
8 does not contest the tentative nonconfirmation within eight federal working days, it
9 becomes final and employers must terminate the employee or notify DHS that the
10 employer is not terminating the employee.

11 28. E-Verify has encountered a number of problems with accuracy and capacity
12 since its inception. As the United States Citizenship and Immigration Services found in
13 its 2004 report mandated by Congress, the problems include "unacceptably high"
14 tentative nonconfirmation rates for foreign-born work-authorized employees and "higher
15 than desirable" rates for U.S.-born employees; lack of employer compliance with the
16 program's requirements, which reduces E-Verify's effectiveness and contributes to
17 discrimination against foreign-born employees; and unattractiveness of the program to
18 employers. In 2006, the SSA Inspector General found that the SSA database contained
19 enough discrepancies to result in an incorrect finding in four percent of E-Verify
20 submissions. Moreover, the records for supposedly non-U.S. citizens showed seven
21 percent were actually U.S. citizens who had not updated their citizenship status. As of
22 May 2007, approximately 17,000 employers nationwide had registered for E-Verify, of
23 which fewer than 9,000 were active users. The Act will add 130,000-150,000 businesses
24 to E-Verify, and the State of Arizona believes that this "could strain the system." Letter
25 from Governor Janet Napolitano to Speaker Nancy Pelosi and Majority Leader Harry
26 Reid, July 2, 2007, attached as Exhibit D.

1 **Effective Date and Harm**

2 29. Both the prohibition on intentionally or knowingly employing an
3 unauthorized alien and the verification requirement in Section 2 of the Act become
4 effective on January 1, 2008. Ariz. Rev. Stat. §§23-212(D), §23-214. Under Section 3 of
5 the Act, the Department of Revenue provided notice of Section 2 of the Act to every
6 employer on or before October 1, 2007.

7 30. The Act will have at least the following adverse effects: (a) cause workers
8 who are eligible for employment, particularly foreign-born workers and national origin
9 minorities, not to be hired in the first place, to lose their jobs, and to have to undertake
10 additional, state-created efforts to demonstrate that they are authorized to work; and (b)
11 impose additional costs and obligations on employers not required by federal law.

12 **FIRST CLAIM FOR RELIEF**

13 (Article VI, Section 2, of the United States Constitution; 42 U.S.C. §1983)

14 31. Plaintiffs re-allege and incorporate by reference ¶¶1 through 30.

15 32. Article VI, Section 2, of the United States Constitution, known as the
16 Supremacy Clause, provides: “This Constitution, and the Laws of the United States which
17 shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under
18 the Authority of the United States, shall be the supreme Law of the Land; and the Judges
19 in every State shall be bound thereby, any Thing in the Constitution of Laws of any State
20 to the Contrary notwithstanding.”

21 33. The Supremacy Clause mandates that federal law preempts any state
22 regulation of any area over which Congress has expressly or impliedly exercised
23 exclusive authority or which is constitutionally reserved to the federal government.

24 34. The power to regulate immigration is an exclusively federal power that is
25 inherent in the nation’s sovereignty and derives from the Constitution’s grant to the
26 federal government of the power to “establish a uniform Rule of Naturalization,” U.S.
27 Const. art. I, §8, cl. 4., and to “regulate Commerce with foreign Nations,” *id.*, cl. 3.

1 35. Pursuant to its exclusive power over matters of immigration, the federal
2 government has established a comprehensive system of laws, regulations, procedures, and
3 administrative agencies that determine, subject to judicial review, whether and under
4 what conditions a person may enter and live in the United States, including the
5 Immigration and Nationality Act (“INA”), 8 U.S.C. §1101, *et seq.* In 1986, for the first
6 time, Congress prohibited employers from knowingly hiring unauthorized aliens and
7 established a detailed employment verification process with sanctions for employing
8 unauthorized aliens. Immigration Reform and Control Act of 1986 (“IRCA”), 8 U.S.C.
9 §§1324a-1324b. The process of verifying employment eligibility of an employee at the
10 time of hire is known as the federal Form I-9 process.

11 36. The INA as amended by IRCA sets forth a comprehensive employer
12 sanctions scheme that includes safeguards such as an affirmative defense for employers
13 who comply with the Form I-9 process in good faith; restrictions on reverification of
14 employees after they are hired; extensive antidiscrimination provisions; prohibitions on
15 employers requesting additional documents once an employee presents minimally
16 adequate documentation; a 10-day cure period for good-faith violations; and a graduated
17 series of penalties.

18 37. Before finding an employer in violation, federal immigration law requires
19 notice, an opportunity for a hearing with witnesses and evidence before a federal
20 administrative law judge, a finding that a violation has occurred based on a
21 preponderance of the evidence, a chance for an administrative appeal, and an opportunity
22 for review in the appropriate United States Court of Appeals. 8 U.S.C. §1324a(e)(2)-(3),
23 (7)-(8).

24 38. The comprehensive federal employer sanctions scheme does not require that
25 employers verify the immigration status of certain categories of workers, such as
26 independent contractors and casual domestic workers. 8 C.F.R. §274a.1(f), (h), (j).

1 39. The documents used in the federal verification process “may not be used for
2 purposes other than for enforcement of this chapter [IRCA] and sections [of Title 18 of
3 the U.S. Code].” 8 U.S.C. §1324a(b)(5).

4 40. Under the Supremacy Clause, the federal government has the authority to
5 enforce immigration statutes and regulations, confer benefits, make discretionary
6 determinations, undertake adjudication, and otherwise administer the federal immigration
7 laws.

8 41. The federal government retains and exercises the power to investigate
9 employment of unauthorized aliens at workplaces and has publicly raided workplaces
10 allegedly employing undocumented aliens.

11 42. The laws, procedures, and policies created by the federal government confer
12 rights in a careful balance reflecting the national interest. The Legal Arizona Workers
13 Act’s prohibition on employers intentionally or knowingly employing an unauthorized
14 alien and requirement that employers verify employment eligibility threaten that balance
15 and are preempted.

16 43. IRCA provides for express preemption as follows: “The provisions of this
17 section preempt any State or local law imposing civil or criminal sanctions (other than
18 through licensing and similar laws) upon those who employ, or recruit or refer for a fee
19 for employment, unauthorized aliens.” 8 U.S.C. §1324a(h)(2).

20 44. The Act is expressly preempted under IRCA’s preemption provision
21 because it is not a licensing law. Rather, the Act is an employment law that includes
22 licensing sanctions. The Act’s title makes no reference to licensing; the Act is codified
23 separately from any licensing provisions; the Act encompasses legal instruments that
24 neither the State nor common sense would consider “licenses” in the usual context; the
25 Act imposes sanctions beyond even the “licenses” as defined in the Act; and the goal of
26 the Act is to set forth a general prohibition on the employment of unauthorized workers,
27 not to impose particular conditions as part of specific licensing procedures.

28

1 45. Under IRCA’s preemption provision, licensing penalties are permitted *only*
2 when the federal government has found an employer to have violated IRCA. The Legal
3 Arizona Workers Act purports to allow licensing penalties for employers that
4 intentionally or knowingly employ an unauthorized alien even if the federal government
5 has not found those employers to have violated IRCA, and is therefore expressly
6 preempted.

7 46. The Act’s institution of licensing penalties for employers that intentionally
8 or knowingly employ an unauthorized alien and the requirement that employers verify
9 employment are impliedly preempted because they:

10 a. Amount to an attempt to regulate immigration and its incidents.

11 b. Operate in a field occupied by the federal government through
12 Congress’ actions with respect to prohibiting the employment of unauthorized workers
13 and verifying employment eligibility.

14 c. Stand as an obstacle to federal law by posing a number of actual
15 obstacles to the objectives of Congress, including:

16 i. The Act will burden federal resources because the Arizona
17 Attorney General or county attorney must investigate *every complaint* about unauthorized
18 aliens through the federal inquiry procedure under 8 U.S.C. §1373(c). Ariz. Rev. Stat.
19 §23-212(B). Under IRCA, only complaints “which, on their face, have a substantial
20 probability of validity” or other violations “as the [U.S.] Attorney General determines to
21 be appropriate,” are investigated. 8 U.S.C. §1324a(e)(1).

22 ii. The Act’s unauthorized alien provisions disrupt and override
23 the carefully balanced system that Congress designed to guarantee due process, protect
24 employees against discrimination, and minimize disruption to businesses. 8 U.S.C.
25 §§1324a-1324b.

26 iii. The Act covers independent contractors and casual domestic
27 workers. Ariz. Rev. Stat. §23-211(3). Federal law does not. 8 C.F.R. §274a.1(f), (h), (j).

1 B. A permanent injunction enjoining Defendants, their officials, agents,
2 employees, assigns, and all persons acting in concert or participating with them from
3 failing to notify employers that the Act is no longer valid and the notice sent under
4 Section 3 of the Legal Act should be disregarded;

5 C. A declaration pursuant to 28 U.S.C. §§2201 and 2202 that Sections 2 and 3
6 of the Legal Arizona Workers Act are unlawful and invalid;

7 D. Reasonable attorneys' fees and expenses pursuant to 42 U.S.C. §1988;

8 E. Costs of suit; and

9 F. Such other and further relief as the Court deems equitable, just, and proper.

10 Dated: December 12, 2007

Stephen P. Berzon
Jonathan Weissglass
Rebecca Smullin
ALTSHULER BERZON LLP

Kristina M. Campbell
Cynthia A. Valenzuela
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

Linton Joaquin
Monica T. Guizar
Karen C. Tumlin
NATIONAL IMMIGRATION LAW CENTER

Daniel Pochoda
ACLU FOUNDATION OF ARIZONA

Lucas Guttentag
Jennifer C. Chang
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION – Immigrants' Rights Project

Omar C. Jadwat
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION – Immigrants' Rights Project

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

Attorneys for Plaintiffs