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15  
 16 UNITED STATES DISTRICT COURT  
 17 DISTRICT OF ARIZONA

18  
 19 Friendly House; et al.,  
 20  
 Plaintiff,  
 21  
 v.  
 22 Michael B. Whiting; et al.,  
 23  
 Defendant.  
 24

No. CV 10-1061-PHX-JWS

**LODGED: PROPOSED  
 BRIEF OF AMICUS CURIAE  
 LAWYERS' COMMITTEE FOR  
 CIVIL RIGHTS UNDER LAW**

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No. CV 10-1061-PHX-JWS

**BRIEF OF AMICUS CURIAE  
 LAWYERS' COMMITTEE FOR  
 CIVIL RIGHTS UNDER LAW IN  
 SUPPORT OF PLAINTIFFS'  
 MOTION FOR PRELIMINARY  
 INJUNCTION**

24  
 25 **PRELIMINARY STATEMENT**

26 Because freedom of movement is essential to a smoothly functioning federal  
 27 system, the right to travel has long been recognized as a fundamental constitutional right.  
 28 States cannot create "patchworks" of regulation that infringe that right, particularly in an

1 area such as immigration, that is already regulated by the federal government. Yet Senate  
2 Bill 1070 (“S.B. 1070”) does just that. It creates flawed presumptions, which are unique  
3 to Arizona and have no precedent in any state or federal law, regarding whether  
4 individuals are “not unlawfully present” in the United States. As a result, United States  
5 citizens, most notably (but not exclusively) citizens residing in New Mexico (with which  
6 Arizona shares a lengthy border), will not be presumed to be “not unlawfully present” in  
7 the United States if they are stopped, arrested or detained by Arizona law enforcement.  
8 The practical effect of this legislation is that certain groups of citizens will be forced to  
9 either carry additional documentation to prove their legal presence in their own country  
10 or face the risk of a lengthy detention (a risk not faced by other citizens). Because S.B.  
11 1070 unquestionably burdens the right of citizens to travel in and through Arizona, it  
12 cannot stand.

### 13 **ARGUMENT**

#### 14 **I. STATE ACTION THAT HINDERS FREE MOVEMENT BETWEEN** 15 **STATES IMPLICATES THE FUNDAMENTAL RIGHT TO TRAVEL.**

16 “The constitutional right to travel from one State to another . . . occupies a  
17 position fundamental to the concept of our Federal Union. It is a right that has been  
18 firmly established and repeatedly recognized.” *Shapiro v. Thompson*, 394 U.S. 618, 630  
19 (1969) (quoting *United States v. Guest*, 383 U.S. 745, 757 (1966)), *overruled on other*  
20 *grounds by Edelman v. Jordan*, 415 U.S. 651 (1974). The United States Supreme Court  
21 has found support for the “right to travel” from multiple sources, including the  
22 Commerce Clause, the Privileges and Immunities Clause of Article IV § 2, the Equal  
23 Protection Clause, and the Privileges and Immunities Clause of the Fourteenth  
24 Amendment; the right has also been “inferred from the federal structure of government  
25 adopted by our Constitution.” *Att’y Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 902-  
26 05 (1986) (plurality opinion).

27 One component of the right to travel is the right to free interstate movement.  
28 *Saenz v. Roe*, 526 U.S. 489, 500-01 (1999). In *United States v. Guest*, the Supreme Court

1 noted that Article IV of the Articles of Confederation explicitly provided that “the people  
2 of each State shall have free ingress and regress to and from any other State.” 383 U.S. at  
3 758. The Court noted that the right to travel among the states is “so elementary [that it]  
4 was conceived from the beginning to be a necessary concomitant of the stronger Union  
5 the Constitution created.” *Id.* (citing Zechariah Chafee, *Three Human Rights in the*  
6 *Constitution of 1787*, at 185 (1956)).

7 Because the right to travel is a fundamental right, any statute placing limits on it  
8 “must be judged by the stricter standard of whether it promotes a *compelling* state  
9 interest.” *Shapiro*, 394 U.S. at 638 (emphasis added). Further, the means the State uses  
10 to promote its interest must be narrowly tailored. When a statute curtailing the right to  
11 travel is challenged, the “heavy burden of justification is on the State” for the “statute  
12 will be closely scrutinized in light of its asserted purposes.” *Dunn v. Blumstein*, 405 U.S.  
13 330, 343 (1972). Instances in which the states’ proffered reasons have been found not to  
14 meet this burden include budgetary justifications (*Saenz*, 526 U.S. at 506; *Memorial*  
15 *Hospital v. Maricopa County*, 415 U.S. 250, 262-263 (1974)), and minimizing fraud and  
16 encouraging early entry into the labor force. *Shapiro*, 394 U.S. at 634-39.

17 The right to travel also provides protection against inconsistent regulation by  
18 states of areas that are exclusively or primarily areas of federal concern. *See, e.g.,*  
19 *Edwards v. California*, 314 U.S. 160, 172-73 (1941). In *Edwards*, for example, the  
20 Supreme Court rooted the right to travel in the Commerce Clause and held that  
21 California’s Indigent Act, which criminalized the knowing transportation of out-of-state  
22 indigents into California, was an “unconstitutional barrier to interstate commerce”  
23 because it prevented free movement of citizens across California’s borders. *Id.* In so  
24 holding, the Court noted that “[t]he prohibition against transporting indigent non-  
25 residents into one State is an open invitation to retaliatory measures” and that “it would  
26 be a virtual impossibility for migrants and those who transport them to acquaint  
27 themselves with the peculiar rules of admission of many States.” *Edwards*, 314 U.S. at  
28 175-76. S.B. 1070 raises similar concerns.

1 **II. SENATE BILL 1070 VIOLATES THE CONSTITUTIONAL RIGHT TO**  
2 **TRAVEL.**

3 **A. Senate Bill 1070 Creates Flawed Presumptions Regarding Whether**  
4 **Citizens Are “Not Unlawfully Present” in the United States.**

5 S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010) (as modified by H.B. 2162),  
6 requires that, during “any lawful stop, detention or arrest” in the enforcement of any “law  
7 or ordinance of a county, city or town or this state,” law enforcement officers with a  
8 “reasonable suspicion” that an individual is unlawfully present in the United States must  
9 determine the immigration status of that individual. S.B. 1070 § 2, as modified by H.B.  
10 2162 § 3 (adding A.R.S. § 11-1051(B)), Ex. 1 to Plaintiffs’ Compl. (Dkt. # 1-2). A  
11 presumption that a person is “not unlawfully present” is afforded to those individuals  
12 who can provide one of the following four forms of identification:

- 13 • a valid Arizona driver’s license;
- 14 • a valid Arizona identification card;
- 15 • a “valid tribal enrollment card or other form of tribal identification”; or
- 16 • “[i]f the entity requires proof of legal presence in the United States before  
17 issuance, any valid United States federal, state or local government issued  
18 identification.” *Id.*

19 The way in which these presumptions will operate is unclear. S.B. 1070 is silent  
20 as to what happens when an individual receives the benefit of a presumption; the extent  
21 to which a law enforcement officer can further investigate immigration status in those  
22 circumstances is unknown.

23 Equally troubling is S.B. 1070’s silence as to what happens to those individuals  
24 who do not get the benefit of the presumption. Although the law requires a law  
25 enforcement officer to make a “reasonable attempt . . . when practicable” to determine  
26 immigration status, the statute says nothing about the standards and practices to be used.  
27 Because federal law contains no analogous “presumptions” and Arizona is unique among  
28 states in creating such “presumptions,” no guidance exists as to how the law will be  
enforced or interpreted. Someone who does not have documentation of legal status is

1 subject to the discretion of the particular law enforcement officer.<sup>1</sup> In any event, those  
2 without the enumerated forms of identification will receive additional, and undoubtedly  
3 inconsistent, scrutiny during any stop, detention or arrest.

4 **B. Not All Driver's Licenses or Tribal Identification Cards Establish**  
5 **Proof of Legal Presence.**

6 Not all driver's licenses will entitle a citizen to the presumption that he or she is  
7 "not unlawfully present" because not all states require proof of legal presence to issue a  
8 license. Nevertheless, a driver's license is the primary form of identification for most  
9 people and is usually the only form of identification that a person carries. A driver's  
10 license is an acceptable form of identification for air travel in all 50 states.  
11 [Transportation Security Administration, *ID Requirements for Airport Checkpoints*,  
12 *available at* [http://www.tsa.gov/travelers/airtravel/acceptable\\_documents.shtm](http://www.tsa.gov/travelers/airtravel/acceptable_documents.shtm) (Barr  
13 Ex. 1)<sup>2</sup>] S.B. 1070, however, produces the absurd situation in which certain groups of  
14 citizens have sufficient identification to permit them to fly throughout the United States,  
15 including to and from Arizona. Yet, once in Arizona, those citizens would not be able to  
16 establish their lawful presence in the United States.

17 As set forth in Plaintiff's Motion (at 25-26 (Dkt # 70)), New Mexico and  
18 Washington do not require proof of legal presence to obtain a driver's license.<sup>3</sup> N.M.  
19 Stat. Ann. § 66-5-9(B) ("For foreign nationals applying for driver's licenses the secretary  
20 shall accept the individual taxpayer identification number as a substitute for a social  
21

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22 <sup>1</sup> It is no answer for Defendants to promise that the burden on such individuals  
23 will be minimal because law enforcement officers will act reasonably. *See United States*  
24 *v. Stevens*, 130 S. Ct. 1577, 1591 (2010) ("We would not uphold an unconstitutional  
statute merely because the Government promised to use it responsibly.").

25 <sup>2</sup> Exhibits attached to the Declaration of Counsel Daniel C. Barr (filed  
concurrently) are referred to as "Barr Ex. \_\_\_\_."

26 <sup>3</sup> Utah issues a special document, a "Driving Privilege Card," which acts as  
27 authorization to drive (but not legal identification) for those individuals who are unable to  
28 provide proof of legal presence. Utah Code Ann. § 53-3-207(7)(a). Utah's Driving  
Privilege Card is visually distinct from its regular licenses. *Id.*

1 security number regardless of immigration status.”); N.M. Admin. Code § 18.19.5.12(D)  
 2 (allowing foreign national to obtain driver’s license with federal tax identification  
 3 number and valid foreign passport or matricula consular card); Wash. Rev. Code  
 4 46.20.035(3) (allowing use of “other available documentation” for issuance of driver’s  
 5 license). Individuals from New Mexico and Washington who are stopped, detained or  
 6 arrested in Arizona will be unable to avail themselves of the presumption that they are  
 7 “not unlawfully present” despite having valid driver’s licenses. Consequently, they will  
 8 be treated differently than residents of Arizona or any other state.

9 Similarly, there are no uniform requirements for issuance of a tribal enrollment  
 10 card or other form of tribal identification, and tribes need not issue such cards at all.  
 11 Each tribe (whether federally recognized or not) establishes its own enrollment criteria,  
 12 sets its own standards for issuance of tribal identification, and maintains its own  
 13 enrollment records. [Dep’t of Interior, *Tribal Enrollment Process*, available at  
 14 <http://www.doi.gov/tribes/enrollment.cfm?renderforprint=1&> (Barr Ex. 2)] For example,  
 15 the Karuk Tribe of California requires only that members fill out the following basic form  
 16 to obtain a tribal identification card:

**INSTRUCTIONS FOR OBTAINING TRIBAL ID CARDS**  
*The Karuk Tribe is currently issuing Tribal Membership cards and Tribal  
 Descendancy cards.*

*For those of you who live too far away to come to Happy Camp to obtain  
 your ID card, please complete the following information and return this  
 form with an appropriate picture.*

***Please return this form with a new, color, head and shoulders photo taken from  
 2-3 feet away and at least 4x4 inches with a light blue or gray background.***

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ County: \_\_\_\_\_

SEX: M F      HAIR COLOR: \_\_\_\_\_

EYE COLOR: \_\_\_\_\_ WEIGHT: \_\_\_\_\_

HEIGHT: \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

1 [Karuk Tribe of California, *Instructions for Obtaining Tribal ID Cards*, available at,  
2 <http://www.karuk.us/karuk2/departments/tribal-enrollment> (Barr Ex. 3)]

3 The Nipmuc Nation of Massachusetts (which is not federally-recognized) allows  
4 tribal identification cards for individuals under age 18 to be issued simply upon  
5 submission of a letter from the legal, custodial parent. [Nipmuc Nation, *Tribal ID Cards*,  
6 available at [http://www.nipmucnation.org/index.php?option=com\\_content&view=article](http://www.nipmucnation.org/index.php?option=com_content&view=article&id=67:tribal-id-cards&catid=60&Itemid=57)  
7 &id=67:tribal-id-cards&catid=60&Itemid=57 (Barr Ex. 4)]

8 These are just two examples from the hundreds of tribes in the United States. In  
9 short, S.B. 1070 grants *anyone* with a tribal identification card (including, based on the  
10 lack of any limiting language in the statute, international visitors with tribal identification)  
11 the benefit of the presumption, regardless of the proof that must be shown to receive such  
12 a card.

13 **C. S.B. 1070 Imposes An Unconstitutional Burden on Interstate Travel.**

14 S.B. 1070 makes Arizona an island in which certain out-of-state residents are  
15 denied the ability to travel as freely as Arizonans and citizens of certain other states. Yet,  
16 *all* citizens of the United States that are present in Arizona for any reason—regardless of  
17 their state of residence—are entitled to enter and leave the state just as any Arizona  
18 resident would and “to be treated as a welcome visitor rather than an unfriendly alien  
19 when temporarily present” in Arizona. *Saenz*, 526 U.S. at 500. S.B. 1070 creates two  
20 classes of United States citizens—those who are entitled to the presumption that they are  
21 not unlawfully present and those who are not entitled to that presumption. Those who are  
22 not entitled to the presumption will be treated not as “welcome visitors,” but as  
23 “unfriendly aliens.”

24 As noted above, because S.B. 1070 infringes upon the fundamental right to travel,  
25 the Defendants must show that it furthers a compelling government interest and is  
26 narrowly tailored to advance that interest. *See, e.g., Shapiro*, 394 U.S. at 634 (“any  
27 classification which serves to penalize the exercise of [the right to travel], unless shown  
28



1 to be necessary to promote a compelling governmental interest, is unconstitutional”).  
2 Defendants cannot meet this standard.

3 The stated purpose of S.B. 1070 is to “discourage and deter the unlawful entry and  
4 presence of aliens and economic activity by persons unlawfully present in the United  
5 States.” S.B. 1070 § 1 (Dkt. # 1-2). Even assuming that this is a compelling state  
6 interest, the law is not narrowly tailored to its stated purpose. The classification created  
7 by S.B. 1070 unquestionably penalizes this country’s own citizens, who by definition  
8 cannot be “unlawfully present” in the United States. Under S.B. 1070, *no one* who  
9 presents a New Mexico or Washington driver’s license to a law enforcement officer is  
10 entitled to the presumption that he or she is “not unlawfully present” in the United States,  
11 even though many (if not most) of these individuals will be citizens.

12 Even more perplexing, S.B. 1070 grants the presumption of being “not unlawfully  
13 present” to *anyone* presenting a tribal identification card and does not limit its application  
14 to federally-recognized tribes. This means that Arizona will grant a presumption to  
15 Canadian or Mexican nationals simply for presenting a tribal identification card  
16 (regardless of what proof must be shown to obtain such a card) while denying that  
17 presumption to certain United States citizens.<sup>4</sup> The State cannot seriously argue that such  
18 absurd results are narrowly tailored to “discourage and deter” illegal immigration in  
19 Arizona.

20 In truth, what is discouraged and deterred by S.B. 1070 is free movement in and  
21 through Arizona by United States citizens. Arizona’s law is unique among all states in  
22 the burden it imposes on certain out-of-state residents. As such, S.B. 1070 creates the  
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24 <sup>4</sup> *Amicus* is aware that, pursuant to the Jay Treaty of 1794 and under Section 289  
25 of the Immigration and Nationality Act, American Indians born in Canada can travel  
26 freely across the United States borders. The point here is the absurdity of the  
27 classification created by S.B. 1070, which grants the benefit of the presumption of being  
28 “not unlawfully present” to a foreign national with a tribal identification card but not to a  
United States citizen with a valid driver’s license from New Mexico or Washington.

1 beginnings of a “patchwork” of state regulation of illegal immigration that not only  
2 infringes the right to travel, but also (as Plaintiffs’ Motion makes clear) raises serious  
3 concerns about preemption. *Cf. Rowe v. New Hampshire Motor Transp. Ass’n*, 552 U.S.  
4 364, 373 (2008) (state law that would “easily lead to a patchwork of state service-  
5 determining laws, rules, and regulations” expressly preempted).

6 Moreover, the harm that befalls a citizen who does not receive the benefit of the  
7 presumption is severe and far outweighs any potential government interest. Under S.B.  
8 1070, citizens from New Mexico and Washington will be treated differently than citizens  
9 from Arizona or any other state. In fact, the City of Tucson has averred that S.B. 1070  
10 will force it to “requir[e] additional proof of citizenship or lawful status upon persons  
11 from New Mexico and other states.” [*City of Tucson v. Arizona*, No. 10-CV-249 (D.  
12 Ariz. May 26, 2010) (Ans. and Cross-Claim at 12, ¶ 50) (Boyd Decl. Ex. 20, Dkt. # 109-  
13 1)] However, most people do not routinely carry additional proof of citizenship, such as  
14 birth certificates, social security cards, or passports, largely because they fear that these  
15 documents will be lost or stolen. [Declaration of Vicki Gaubeca at ¶ 7 (Dkt. # 113);  
16 Declaration of Jesus Cuauhtemoc Villa at ¶ 5 (Dkt. # 125)]

17 Consequently, any New Mexico or Washington resident who is stopped by a law  
18 enforcement officer in Arizona, even for a relatively minor violation of a city ordinance,  
19 could be detained until immigration status can be determined.<sup>5</sup> If those individuals are  
20 arrested, the consequences of being unable to provide the documentation required by S.B.  
21 1070 are clear. S.B. 1070 *requires* that law enforcement determine the immigration  
22 status of any person who is arrested before that person can be released. S.B. 1070 § 2  
23

24 <sup>5</sup> New Mexico’s U.S. Senator, Jeff Bingaman, has asked U.S. Attorney General  
25 Eric Holder to examine S.B. 1070 because of his concern that his constituents will either  
26 have to carry additional documentation of their legal status or be subject to detention  
27 pending verification of their status. [Office of Senator Jeff Bingaman, *Bingaman Asks*  
28 *Attorney General Holder to Examine How New Arizona Law Could Affect New Mexicans*  
(Apr. 29, 2010), available at <http://bingaman.senate.gov/news/20100429-03.cfm?renderforprint=1> (Barr Ex. 5)]

1 (adding A.R.S. § 11-1051(B), which also requires that the immigration status be “verified  
2 with the federal government pursuant to 8 United States code section 1373(c)”).

3 Because the determination of immigration status takes time, a New Mexico or  
4 Washington resident could be detained for hours or even days, when an otherwise  
5 similarly-situated Arizona resident would not be subject to a lengthy detention. The City  
6 of Tucson has stated that federal Immigration and Customs Enforcement officials “will  
7 not be able to respond with an immediate verification of the immigration status of every  
8 person who receives a criminal misdemeanor citation” and that the “federal verifications  
9 may take days or weeks.” [*City of Tucson*, Ans. and Cross-Claim at 12, ¶¶ 44-45 (Boyd  
10 Decl. Ex. 20, Dkt. # 109-1)] As the City of Tucson points out, federal verification of  
11 immigration status is “particularly difficult for *natural born citizens* who do not have a  
12 passport or other record with federal immigration agencies.” [*Id.* ¶ 45 (emphasis added)]  
13 A law that permits (and in some instances requires) the detention of certain U.S.  
14 citizens—simply because of their state of residence—pending determination of their  
15 immigration status cannot pass constitutional muster.

16 The harms imposed by S.B. 1070 are far from theoretical. Because Arizona shares  
17 a border with New Mexico, New Mexico residents frequently travel to and within  
18 Arizona for a variety of purposes. [*See, e.g.*, Gaubeca Decl. ¶¶ 3-4 (Dkt. # 113); Villa  
19 Dec. ¶¶ 3, 8 (Dkt. # 125)]

20 Some New Mexico residents (most notably those attending one of Arizona’s  
21 universities) live in Arizona for most of the year. The risk of detention is particularly  
22 pronounced for these individuals. Simply by virtue of the amount of time that they spend  
23 in the state, they are more likely to have an encounter with law enforcement. For  
24 example, Plaintiff Jesus Villa, a U.S. citizen and New Mexico resident of Hispanic  
25 descent is a student at Arizona State University. [Villa Decl. ¶¶ 2-3 (Dkt. # 125)] If Mr.  
26 Villa is stopped or arrested, even for a minor violation, he could be detained for days  
27 until his immigration status is verified.

28

1 Other New Mexico residents travel to Arizona as part of their employment. For  
2 example, Plaintiff Vicki Gaubeca, who is a U.S. citizen and New Mexico resident of  
3 Latina descent, travels to Arizona as part of her duties as the Director of the Regional  
4 Center for Border Rights at the ACLU of New Mexico. [Gaubeca Decl. ¶ 3 (Dkt. # 113)]  
5 Should S.B. 1070 take effect, Ms. Gaubeca will risk being detained merely because she  
6 must enter Arizona as part of her job.

7 And there are thousands of people like Plaintiffs Villa and Gaubeca. Following  
8 are just some examples of the extensive contacts that New Mexico residents have with  
9 Arizona:

- 10 • In 2008, New Mexico residents constituted 3% of the 26.1 million domestic  
11 leisure tourists who had overnight stays in Arizona. [Arizona Office of  
12 Tourism, *2008 Arizona Visitor Profile, Total Domestic Overnight, Leisure*  
13 *v. Business*, at 1, 3 (Barr Ex. 6)]
- 14 • In 2008, New Mexico residents constituted 2.9% of the 6.3 million people  
15 who had overnight stays in Arizona for business purposes. [*Id.*]
- 16 • In fiscal year 2009, 7,050 New Mexico residents visited Arizona's Painted  
17 Cliffs Welcome Center, which is located on Interstate 40 near the  
18 Arizona/New Mexico border. [Arizona Office of Tourism, *Fiscal Year*  
19 *2009 Annual Report*, at 31 (Barr Ex. 7)]
- 20 • There are currently 862 New Mexico residents enrolled in Arizona's  
21 university system. Of those, 145 are enrolled at Arizona State University,  
22 365 are enrolled at Northern Arizona University, and 352 are enrolled at the  
23 University of Arizona. [Decl. of Dan Anderson, ¶ 2 (Barr Ex. 8)]
- 24 • 2,763 alumni of Arizona State University are New Mexico residents.  
25 [Decl. of Jennifer Holsman, ¶ 2 (Barr Ex. 9)]
- 26 • 606 New Mexico residents participated in P.F. Chang's 2010 Rock 'n' Roll  
27 Arizona Half Marathon (*available at* <http://results.active.com/pages/>  
28

1 searchform.jsp?rsID=88865 (Barr Ex. 10))<sup>6</sup>, and 186 New Mexico residents  
2 participated in the full Marathon (*available at* <http://results.active.com/pages/searchform.jsp?rsID=88864>) (Barr Ex. 11))<sup>7</sup>

- 4 • Between 2000 and 2009, the number of people flying into Arizona from  
5 New Mexico each year has ranged from 104,500 to 148,200. In 2009,  
6 104,500 people flew into Arizona from New Mexico. [Dean Runyon  
7 Associates Inc., *Arizona Air Traffic Analysis: Tracking visitors to Arizona*  
8 *who arrive by air, available at* <http://www.deanrunyan.com/AZAirTraffic/AZAirTraffic.html> (Barr Ex. 12)<sup>8</sup>]

10 If the Court permits S.B. 1070 to take effect, each one of these individuals will  
11 risk being detained just by entering Arizona. The fact that citizens of this country face  
12 detention simply because they have traveled to Arizona and do not have identification  
13 that meets the unique standards imposed by this state is unacceptable. S.B. 1070's  
14 creation of two classes of citizens unquestionably violates the constitutional right to  
15 travel. The law cannot stand.

### 16 CONCLUSION

17 For the foregoing reasons, *amicus curiae* Lawyers' Committee for Civil Rights  
18 Under Law requests that the Court grant Plaintiffs' Motion for Preliminary Injunction and  
19 enjoin all Defendants from enforcing Arizona Senate Bill 1070.

20  
21  
22 <sup>6</sup> This website allows you to search the half marathon results for a list of  
23 participants from each state. Barr Ex. 10 contains the list of New Mexico residents that  
24 results from such a search.

25 <sup>7</sup> As in note 6 above, this website allows you to search the full marathon results  
26 for a list of participants from each state. Barr Ex. 11 contains the list of New Mexico  
27 residents that results from such a search.

28 <sup>8</sup> The "Visitor Volume" tab on this webpage allows you to obtain data on air  
travel from one state to another by selecting an "origin state" and a "destination state."  
Barr Ex. 12 contains the data produced when the "destination state" is Arizona and the  
origin state is "New Mexico."

1 Dated: June 16, 2010.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2010, I electronically transmitted the above document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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