

Nos. 07-17272, 07-17274, 08-15357, 08-15359, 08-15360

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARIZONA CONTRACTORS ASSOCIATION, INC., *et al.*,)
)
 Plaintiffs/Appellants,)
)
 vs.)
)
 CRISS CANDELARIA, *et al.*,)
)
 Defendants/Appellees.)
)
 _____)
)
 And consolidated cases.)
)
 _____)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA

MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF

PILLSBURY WINTHROP
SHAW PITTMAN LLP
KEVIN M. FONG
BRIAN J. WONG
50 Fremont Street
Post Office Box 7880
San Francisco, CA 94120-7880
Telephone: (415) 983-1000

Attorneys for Amicus Curiae
Lawyers' Committee for Civil Rights
of the San Francisco Bay Area

LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO
BAY AREA
ROBERT RUBIN
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444

Attorneys for Amici Curiae
Lawyers' Committee for Civil Rights of
the San Francisco Bay Area, *et al.*

CORPORATE DISCLOSURE STATEMENT

The amici curiae are Lawyers' Committee for Civil Rights of the San Francisco Bay Area, the Asian American Justice Center, the Asian American Legal Defense Education Fund, the Arizona Advocacy Network, the Arizona Hispanic Community Forum, the Asian Pacific American Legal Center, Centro Legal, Inc., Immigration Equality, La Raza Centro Legal, the Legal Aid Society-Employment Law Center, Los Abogados Hispanic Bar Association, the National Center for Lesbian Rights, the National Council of La Raza, the National Employment Law Project, the Southern Poverty Law Center, and the Women's Employment Law Center. These organizations do not have any parent corporations, and no public company owns 10% or more of their stock.

MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF

Pursuant to Federal Rule of Appellate Procedure 29, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("LCCR") and the other amici described in the Appendix hereto (collectively, the "Amici") respectfully request permission to file the attached amicus curiae brief in support of the Appellants challenging the Legal Arizona Workers Act (the "Arizona Act").

Counsel for Amici are familiar with the questions involved and the scope of their presentation in the proceedings below and to this Court, and believe there is necessity for additional argument. Most notably, the attached brief demonstrates that:

1. The Arizona Act is preempted by federal law;
2. Congress intended to balance its concern with discrimination with control of illegal immigration; and
3. The Arizona Act would ignore Congress' discrimination concerns and upset this balance.

Amici believe that Congress has crafted federal immigration law to balance, in part, the federal government's interest in controlling illegal immigration with its interest in preventing discrimination against prospective employees. As part of this balancing, Congress has chosen to keep employer enrollment in the E-Verify program voluntary and temporary, subject to renewal, because of Congress' concern that the program might result in serious

discrimination. Amici believe that the Arizona Act will upset this balance and result in discrimination against groups for whom the Amici advocate.

LCCR is a non-profit organization devoted to advocating for the legal rights of people of color, poor people, immigrants and refugees. LCCR provides free legal assistance and representation to individuals on civil legal matters. In addition, LCCR handles policy impact cases that focus on important civil rights issues.

Through its advocacy work with people of color, poor people, immigrants and refugees, LCCR is familiar with the discrimination these groups have faced as well as the protections afforded these groups under state and federal law. LCCR has a strong interest in the Arizona Act and, in particular, a strong interest in ensuring that the statute does not interfere with federal law that has been specifically designed to protect from discrimination those persons for whom LCCR exists to advocate. Because of its experience in addressing the discrimination, LCCR is particularly suited to provide additional argument regarding the issues of discrimination at stake in this matter.

The other Amici are the Asian American Justice Center, the Asian American Legal Defense Education Fund, the Arizona Advocacy Network, the Arizona Hispanic Community Forum, the Asian Pacific American Legal Center, Centro Legal, Inc., Immigration Equality, La Raza Centro Legal, the Legal Aid Society-Employment Law Center, Los Abogados Hispanic Bar Association, the National Center for Lesbian Rights, the National Council of La Raza, the National Employment Law Project, the Southern Poverty Law Center,

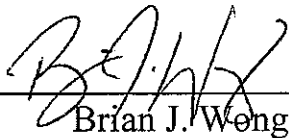
and the Women's Employment Law Center. These Amici work on behalf of groups that have historically suffered from the types of discrimination Congress intended to balance against illegal immigration controls, and are therefore also suited to address the issues of discrimination at stake in this matter. They believe that immigration law provides protections against discrimination and that the Arizona Act threatens the protections against discrimination that Congress has put in place. More detailed statements of interest for each amicus are attached in the Appendix hereto.

In light of their desire to protect groups that have historically suffered from discrimination, Amici strongly oppose the Arizona Act. For the reasons stated above, the Amici should be allowed to submit the attached amicus curiae brief in support of the Appellants challenging the Arizona Act.

Dated: April 9, 2008.

PILLSBURY WINTHROP
SHAW PITTMAN LLP
KEVIN M. FONG
BRIAN J. WONG

By: _____


Brian J. Wong

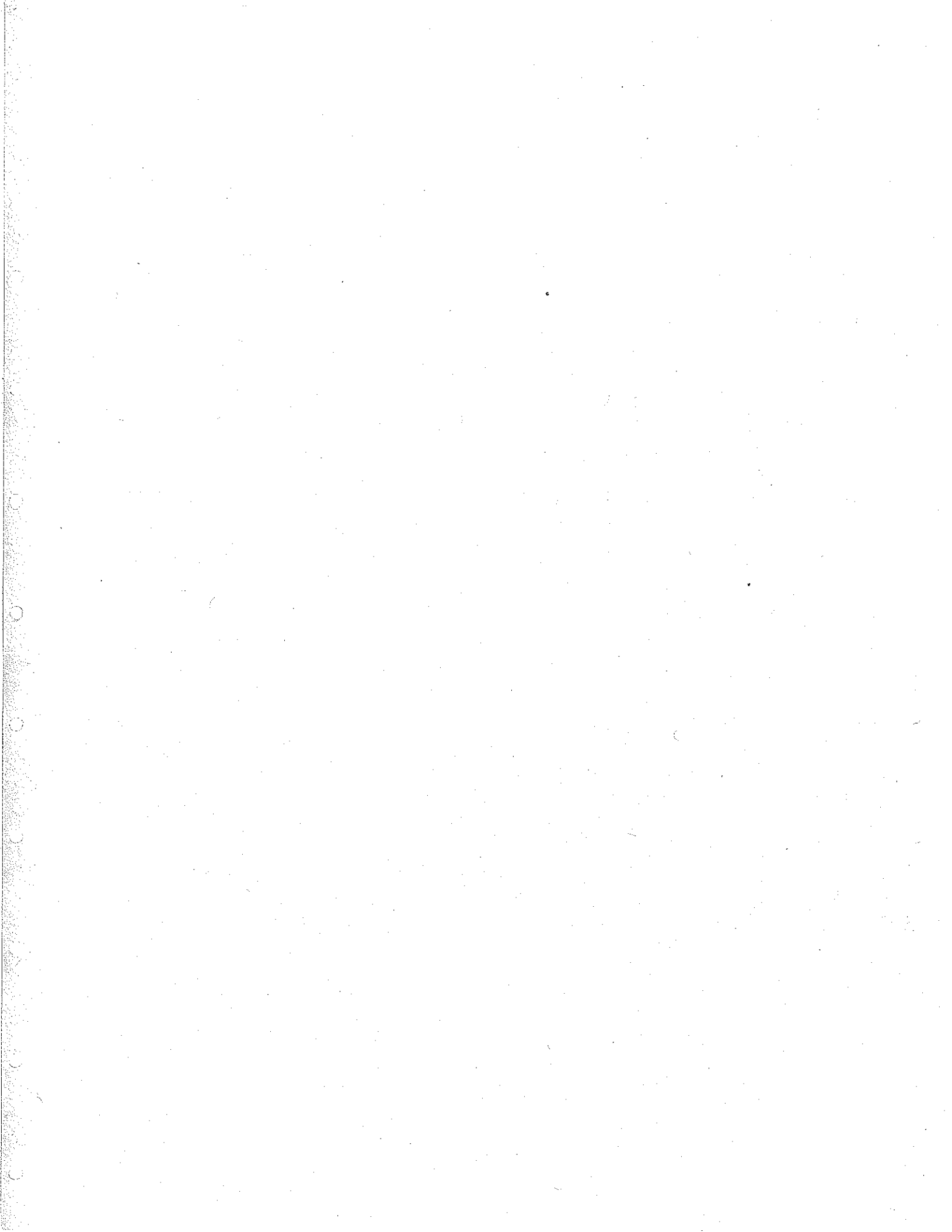
Attorneys for Amicus Curiae
Lawyers' Committee for Civil Rights
of the San Francisco Bay Area

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS OF THE SAN
FRANCISCO BAY AREA
ROBERT RUBIN

By: _____


Robert Rubin

Attorneys for Amici Curiae
Lawyers' Committee for Civil Rights
of the San Francisco Bay Area, *et al.*



APPENDIX

Asian American Justice Center

The Asian American Justice Center (“AAJC”) is a national non-profit, non-partisan organization whose mission is to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. Collectively, AAJC and its Affiliates the Asian American Institute, the Asian Law Caucus, and the Asian Pacific American Legal Center of Southern California have over 50 years of experience in providing legal public policy, advocacy, and community education on discrimination issues. AAJC has advanced its longstanding concern for the protection of rights of immigrants – a significant proportion of whom are Asian Americans – by educating policymakers and the general public on the need for fair and humane immigration laws and filing briefs in relevant cases before the courts.

Asian American Legal Defense Education Fund

The Asian American Legal Defense and Education Fund (“AALDEF”), founded in 1974, is a non-profit organization based in New York City. AALDEF defends the civil rights of Asian Americans nationwide through litigation, legal advocacy and dissemination of public information. Throughout its long history, AALDEF has protected the rights of Asians and other immigrants to be free from discrimination based on race and ethnicity as well as immigrant status.

Arizona Advocacy Network

The Arizona Advocacy Network Foundation (“AzANF”) promotes social, economic, racial and environmental justice by connecting and building power among activists and leaders in those fields, and by leading efforts for electoral justice and increased civic participation. AzANF builds coalitions, conducts research, organizes communities, registers thousands voters, and lobbies elected officials at the local, state, and national levels to build a progressive future for Arizona.

In response to Arizona's climate of intolerance, AzANF has led efforts to expose and condemn racial profiling and harassment of people perceived to be of Latino heritage. AzANF is known for challenging unscrupulous employers for mistreatment of workers. AzANF has a clear interest in ensuring that no worker is mistreated or abused.

Arizona Hispanic Community Forum

The Arizona Hispanic Community Forum ("AHCF") is an advocacy organization that coalesces with other organizations on civil and human rights issues. The mission of the AHCF is to empower Hispanic communities: to work towards active participation with policy-making bodies at all levels of the public and private sectors; to become involved in local state and national issues impacting the Hispanic community; to educate, promote and preserve Hispanic history, language, cultures, customs, and contributions; to increase opportunities and improve the quality of life for Hispanics; to defend, preserve and protect rights of Hispanics under the law; to educate and ensure that the public and private sector provide equal access and fair treatment for Hispanics. AHCF is committed to protecting immigrant workers who are the targets of workplace abuses.

Asian Pacific American Legal Center

The Asian Pacific American Legal Center of Southern California ("APALC") was founded in 1983 and is the largest non-profit public interest law firm devoted to the Asian American community. APALC provides direct legal services to indigent members of our community and uses impact litigation, policy advocacy, community education and leadership development to obtain, safeguard and improve the civil rights of Asian Americans. APALC's civil rights litigation has covered a broad range of issues such as: race and national origin discrimination (e.g., advocating for monolingual clients victimized by unscrupulous business practices), access to higher education (e.g., advocating for Pilipino, Latino and African American high school students denied entry to UC Berkeley), immigration and naturalization (e.g., representing naturalization applicants delayed in the citizenship process), language rights (e.g., challenging English-only ordinances and policies) and garment workers' rights (e.g., representing low-wage workers in their claims against corporate retailers and labels). In addition, APALC has a long history of advocating on issues

affecting immigrants, including immigration policy, and thus has a strong interest in the outcome of this case.

Centro Legal, Inc.

Centro Legal, Inc. is a tax-exempt 501(c)(3) nonprofit community law office that was established in 1981 with the mission of empowering Latinos through legal advocacy. As the largest Latino legal institution in the Midwest, Centro Legal's civil legal services safeguard the well-being of disadvantaged Latinos by addressing issues of immigration and naturalization, domestic violence, employment and housing discrimination and exploitation, predatory lending and other consumer issues.

Centro Legal believes that one of its primary responsibilities is to work towards changing the systems that are inequitable to Latinos and immigrants. In recent years, Centro Legal has maintained a comprehensive scheme to deal with anti-immigrant, unconstitutional and unlawful policies and practices by DHS and ICE. The agency has played a pivotal role in exposing the harmful effects of their enforcement strategies when it filed two federal complaints related to the Swift raids in Worthington, Minnesota and the home-raids in Willmar, MN this past year. Both lawsuits are against the U.S. Government and charge violations of discrimination and violations of the Fourth and Fifth Amendments of the U.S. Constitution. The pattern of these individual's claims also strongly suggests the need for continued litigation to resolve federal Constitutional rights violations including those that target and harm workers against abuses by their employers.

Immigration Equality

Immigration Equality (formerly The Lesbian and Gay Immigration Rights Task Force, Inc. ("LGIRTF")) is a national organization that works to end discrimination in immigration law against those in the gay, lesbian, bisexual, and transgender community and immigrants who are living with HIV or AIDS. Incorporated in 1994, Immigration Equality seeks to help those affected by these discriminatory practices through education, outreach, advocacy and the maintenance of a nationwide resource network and a heavily trafficked website. Immigration Equality also runs a pro bono asylum program and

provides technical assistance and advice to hundreds of attorneys nation-wide on sexual orientation, transgender and HIV- based asylum matters. Immigration Equality is particularly concerned by the Arizona statute because any use of outdated databases disproportionately affects transgender immigrants whose names and gender markers in old databases often conflict with their corrected gender and/or legal name.

La Raza Centro Legal

La Raza Centro Legal is a community-based legal organization dedicated to empowering Latino, immigrant and low-income communities of San Francisco to advocate for their civil and human rights. La Raza Centro Legal combines legal services, organizing, advocacy, and social services to build grassroots power and alliances towards creating a movement for a just society. La Raza Centro Legal was founded in 35 years ago in 1973. La Raza Centro Legal since its inception has provided direct legal services, policy advocacy, and civil rights advocacy on behalf of immigrants. Since 1990, La Raza Centro Legal has operated its Workers Rights Project which advocates for the rights of low-income workers, the majority of whom are immigrant workers. La Raza Centro Legal specifically has focused on the rights of immigrant workers who are targets of workplace abuses. La Raza Centro Legal has a profound interest in protecting immigrant workers who are the targets of workplace abuses.

Legal Aid Society-Employment Law Center

The Legal Aid Society – Employment Law Center (“LAS-ELC”) is a San Francisco-based nonprofit public interest law firm that, for over 35 years, has litigated on behalf of the workplace rights of communities of color, women, individuals with disabilities, and the working poor. LAS-ELC has special expertise in the area of immigrant workers’ rights, having litigated cases such as *Contreras v. Corinthian Vigor Ins. Brokerage, Inc.*, 25 F. Supp. 2d 1053 (N.D. Cal. 1998) and 103 F. Supp. 2d 1180 (N.D. Cal. 2000); *Singh v. Jutla*, 214 F. Supp. 2d 1056 (N.D. Cal. 2002); and *Rivera v. NIBCO, Inc.*, 364 F.3d 1057 (9th Cir. 2004), *cert. denied*, 544 U.S. 905 (2005). In particular, LAS-ELC has been involved in numerous cases in which employers have improperly attempted to reverify or otherwise impermissibly inquire into the immigration status of their employees in contravention of the Immigration Reform and Control Act of 1986 (IRCA).

Los Abogados Hispanic Bar Association

Since its inception in 1976, Los Abogados Hispanic Bar Association has created meaningful social and political change and remains a leading voice on legal issues. It is an organization of Arizona lawyers, judges, professors and students dedicated to promoting public awareness of the legal issues affecting the Hispanic community and challenging those legal issues when appropriate.

National Center for Lesbian Rights

The National Center for Lesbian Rights (“NCLR”) is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender (“LGBT”) people and their families through litigation, public policy advocacy, and public education. In 1994, NCLR established a national project dedicated to immigration issues. Since that time, NCLR’s Immigration Project has made significant legal and policy gains for LGBT immigrants. NCLR has also provided free legal assistance to thousands of immigrants nationwide through our national intake service and free monthly legal clinics in the San Francisco Bay Area, as well as through direct representation of LGBT immigrants in impact and individual cases. NCLR works in coalition with immigrant advocacy groups nationwide to protect immigrants from discrimination and mistreatment.

National Council of La Raza

The National Council of La Raza (“NCLR”) – the largest national Hispanic civil rights and advocacy organization in the United States – works to improve opportunities for Hispanic Americans. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas – assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families. Founded in 1968, NCLR is a private, nonprofit, nonpartisan, tax-exempt organization headquartered in Washington, DC. NCLR serves all Hispanic subgroups in all regions of the

country and has operations in Atlanta, Chicago, Los Angeles, New York, Phoenix, Sacramento, San Antonio, and San Juan, Puerto Rico.

NCLR believes that making the Basic Pilot/E-Verify program mandatory without serious attention to the reliability of data or the protections available to workers would expand a highly unreliable program at a serious cost to U.S. citizens and lawful workers. Research on the Basic Pilot/E-Verify program shows that: (1) database errors would deny lawful workers -- including U.S. citizens -- their right to work; (2) data entry errors would affect all types of workers, but would acutely impact workers with "ethnic" names; (3) employer misuse of the system would penalize lawful workers before they have a chance to correct their records; and (4) such program would result in large-scale discrimination against workers who are perceived to be "foreign." In light of those findings, massively scaling up this flawed program without extensive standards for the quality of data and vigorous worker protections would have dangerous consequences for U.S. citizens and lawful workers, and would be especially harmful to Latino workers.

National Employment Law Project

The National Employment Law Project ("NELP") is a non-profit legal organization with over 30 years of experience advocating for the employment and labor rights of low-wage and immigrant workers. In partnership with community groups, unions, and proactive public agencies, NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the full protection of employment laws, regardless of an individual's immigration status as an immigrant. NELP's areas of expertise include the workplace rights of documented and undocumented immigrant workers under federal employment and labor laws. NELP has litigated and participated as *amicus* in numerous cases addressing the rights of immigrant workers under the Fair Labor Standards Act and the National Labor Relations Act, state workers compensation and other acts. NELP also provides legal assistance to labor unions and immigrant worker organizations regarding the rights of immigrant workers in relation to the Bureau of Immigration and Customs Enforcement, formerly the Immigration and Naturalization Service, and state and local law enforcement.

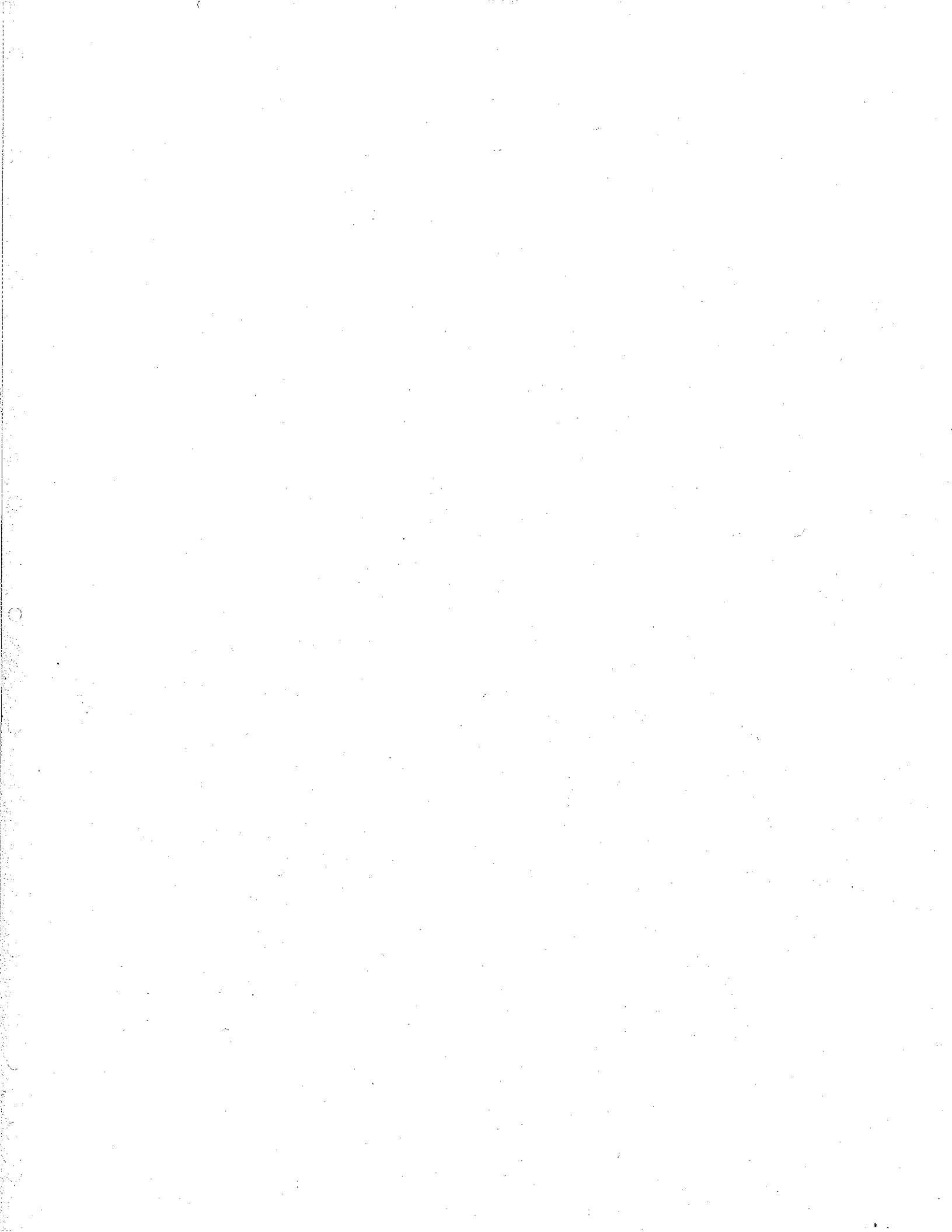
NELP has an interest in the outcome of this case because the Arizona statute undermines labor standards rights for immigrant and all workers by permitting employers to discriminate against immigrants with impunity.

Southern Poverty Law Center

Founded in 1971 and located in Montgomery, Alabama, the Southern Poverty Law Center has litigated numerous civil rights cases on behalf of victims of discrimination. Although the Center's work is concentrated in the South, its attorneys appear in courts throughout the country to ensure that all people receive equal and just treatment under federal and state law.

Women's Employment Law Center

The Women's Employment Rights Clinic ("WERC") of Golden Gate University School of Law is an in-house clinical education program in which faculty and students provide free and low cost legal services, and advise, counsel and represent clients in a variety of employment-related matters. WERC regularly assists immigrant workers with claims of unpaid wages, discrimination and harassment, and has represented workers in situations where the employer reported the worker to immigration authorities in retaliation for the assertion of statutory rights to unpaid wages. WERC also represented the lead plaintiff in a pattern and practice case prosecuted by the Equal Employment Opportunity Commission addressing classwide sexual harassment of immigrant female farm workers.



Nos. 07-17272, 07-17274, 08-15357, 08-15359, 08-15360

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARIZONA CONTRACTORS ASSOCIATION, INC., *et al.*,)
)
Plaintiffs/Appellants,)
)
vs.)
)
CRISS CANDELARIA, *et al.*,)
)
Defendants/Appellees.)
_____)
)
And consolidated cases.)
_____)

BRIEF OF AMICI CURIAE LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA, ET AL., IN SUPPORT OF
APPELLANTS AND REVERSAL

PILLSBURY WINTHROP
SHAW PITTMAN LLP
KEVIN M. FONG
BRIAN J. WONG
50 Fremont Street
Post Office Box 7880
San Francisco, CA 94120-7880
Telephone: (415) 983-1000

Attorneys for Amicus Curiae
Lawyers' Committee for Civil Rights
of the San Francisco Bay Area

LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO
BAY AREA
ROBERT RUBIN
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444

Attorneys for Amici Curiae
Lawyers' Committee for Civil Rights of
the San Francisco Bay Area, *et al.*

CORPORATE DISCLOSURE STATEMENT

The amici curiae are Lawyers' Committee for Civil Rights of the San Francisco Bay Area, the Asian American Justice Center, the Asian American Legal Defense Education Fund, the Arizona Advocacy Network, the Arizona Hispanic Community Forum, the Asian Pacific American Legal Center, Centro Legal, Inc., Immigration Equality, La Raza Centro Legal, the Legal Aid Society-Employment Law Center, Los Abogados Hispanic Bar Association, the National Center for Lesbian Rights, the National Council of La Raza, the National Employment Law Project, the Southern Poverty Law Center, and the Women's Employment Law Center. These organizations do not have any parent corporations, and no public company owns 10% or more of their stock.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND INTEREST OF AMICI CURIAE	1
ARGUMENT	5
I. THE ARIZONA ACT IS PREEMPTED BECAUSE IT CONFLICTS WITH FEDERAL LAW.....	5
II. MANDATORY PARTICIPATION IN E-VERIFY WOULD FRUSTRATE CONGRESS' INTENT TO BALANCE DISCRIMINATION CONCERNS WITH CONTROL OF ILLEGAL IMMIGRATION.....	7
A. Congress Was Concerned About Discrimination Both Before And During The Creation Of The E-Verify Program.	8
B. Before Deciding To Keep E-Verify Voluntary And Temporary, Congress Considered The Discrimination That Might Result From E-Verify.	13
C. Since Congress Last Extended E-Verify As A Voluntary And Temporary Program, The Risk Of Discrimination Remains High.	18
CONCLUSION	21

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<i>Geier v. American Honda Motor Co., Inc.</i> , 529 U.S. 861 (2000)	6, 18
<i>Hoffman Plastic Compounds, Inc. v. NLRB</i> , 535 U.S. 137 (2002)	5
<i>Int'l Paper Co. v. Ouellette</i> , 479 U.S. 481 (1987)	6

Statutes and Codes

Basic Pilot Program Extension and Expansion Act of 2003, Pub. L. No. 108-156, 117 Stat. 1944 (Dec. 3, 2003)	8
Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546.....	3
Immigration Reform and Control Act of 1986 Pub. L. No. 99-603, 100 Stat. 3359.....	4
United States Code Title 8, section 1324a	4
United States Code Title 8, section 1324b	4

Rules and Regulations

Federal Registrar Volume 69, page 75,997 (Dec. 20, 2004)	9
Federal Registrar Volume 69, page 75,998 (Dec. 20, 2004)	9
Federal Rules of Appellate Procedure Rule 29.....	1

Federal Rules of Appellate Procedure	
Rule 32(a)(7)(C)	22

Ninth Circuit Rules	
Rule 32-1	22

Other Authorities

2002 Evaluation at	
www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614	
176543f6d1a/?vgnextoid=9cc5d0676988d010VgnVCM10000048f3	
d6a1RCRD&vgnnextchannel=2c039c7755cb9010VgnVCM1000004	
5f3d6a1RCRD	8

2007 Evaluation at	
www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614	
176543f6d1a/?vgnextoid=89abf90517e15110VgnVCM1000004718	
190aRCRD&vgnnextchannel=a16988e60a405110VgnVCM1000004	
718190aRCRD	19

Congressional Records	
Volume 131, at S11414-03 (daily ed. Sept. 13, 1985).....	4

Congressional Records	
Volume 132, at H9708-02 (daily ed. Oct. 9, 1986)	4

Daniel González, “Taunts, Threats as Employer-Sanctions Law	
Nears,” The Arizona Republic, Sept. 30, 2007,	
www.azcentral.com/arizonarepublic/news/articles/0930backlash093	
0.html.....	6

House of Representatives Bills	
Bill 19, 110th Cong. (2007)	18

House of Representatives Bills	
Bill 2611, Title III, 109th Cong. (2006).....	18

House of Representatives Bills	
Bill 4437, Title VII, 109th Cong. (2005)	18

House of Representatives Bills	
Bill S. 1348, Title III, 110th Cong. (2007).....	18

House of Representatives Reports	
No. 99-682(I).....	4
http://www.immigrationpolicy.org/images/File/factcheck/EEVSbythenumbers04-08.pdf	14
http://www.socialsecurity.gov/oig/ADOBEPDF/audittxt/A-08-06-26100.htm	14
United States Code Congressional & Administrative News	
1986, at 5672	4

INTRODUCTION AND INTEREST OF AMICI CURIAE

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, the Lawyers Committee for Civil Rights of the San Francisco Bay Area (“LCCR”) and the following organizations,¹

- the Asian American Justice Center,
- the Asian American Legal Defense Education Fund,
- the Arizona Advocacy Network,
- the Arizona Hispanic Community Forum,
- the Asian Pacific American Legal Center,
- Centro Legal, Inc.,
- Immigration Equality,
- La Raza Centro Legal,
- the Legal Aid Society-Employment Law Center,
- Los Abogados Hispanic Bar Association,
- the National Center for Lesbian Rights,
- the National Council of La Raza,
- the National Employment Law Project,
- the Southern Poverty Law Center, and
- the Women’s Employment Law Center,

¹ The Appendix attached to this brief provides a statement of interest from each of the listed organizations.

respectfully submit this amicus brief in support of Appellants Arizona Contractors Association, Inc., *et al.* and reversal of the judgment below.

LCCR is a non-profit organization devoted to advocating for the legal rights of people of color, poor people, immigrants and refugees. LCCR is affiliated with the national Lawyers' Committee for Civil Rights Under Law, which was created at the behest of President John F. Kennedy in 1963. Leading members of the San Francisco Bar established the San Francisco office in 1968, shortly after the assassination of Dr. Martin Luther King, Jr., to advance civil rights. Towards this end, LCCR provides free legal assistance and representation to individuals on civil legal matters. In addition, LCCR handles policy impact cases that focus on important civil rights issues.

LCCR has a strong interest in the Legal Arizona Workers Act (the "Arizona Act") because it will interfere with federal laws specifically designed to prevent discrimination. LCCR supports the position of Appellants and submits that the judgment should be reversed. However, LCCR also submits that additional argument is needed to highlight Congress' long-standing and well-documented desire to prevent discrimination.

Employer sanctions programs can, if poorly designed, result in discrimination against authorized workers, especially those who sound or appear foreign. In order to avoid sanctions for employing unauthorized workers as well as to avoid the costs associated with resolving verification problems

under the E-Verify program,² employers may avoid hiring workers who they believe look or sound foreign, because they presume such workers are unauthorized or, at a minimum, will have problems proving they are authorized under the E-Verify program.³

Congress recognized the threat of discrimination when it crafted legislation imposing employer sanctions for the employment of unauthorized aliens, and sought to create employer sanctions legislation that prevented unintended discrimination. As discussed below, Congress has crafted federal immigration law to balance, in part, the federal government's interest in controlling illegal immigration with its interest in preventing discrimination against prospective employees. When it first imposed employer sanctions for employment of unauthorized aliens under the Immigration Reform and Control

² Congress created a pilot electronic verification program (the federal Basic Pilot Program (now titled "E-Verify")) with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") (Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546, note following 8 U.S.C. §§1324a).

³ Employers discriminate against workers they believe are foreign-looking or foreign-sounding if they ask such prospective workers for more documents than what is required to verify work authorization or what they ask from other prospective workers. When faced with the prospect of new, state-created employer sanctions, employers may ask only those workers they believe are foreign-born to re-verify their work authorization after hiring. All of these practices are discriminatory as they place additional burdens on workers based on perceptions of their nationality or immigration status. In addition, these discriminatory practices will invariably be applied to authorized workers who employers view with suspicion simply due to their national origin, accented speech, and/or race or ethnicity.

Act of 1986 (“IRCA”), Pub. L. No. 99-603, 100 Stat. 3359, 8 U.S.C. §§1324a-1324b, Congress attempted to strike this balance by incorporating anti-discrimination provisions into IRCA.⁴ In contrast, the Arizona Act lacks any anti-discrimination provisions. When Congress created the E-Verify program in 1996 through passage of IIRIRA, Congress continued its balancing effort by choosing to keep employer enrollment in the E-Verify program voluntary and temporary, subject to renewal. Congress structured IRCA and IIRIRA in this way because of Congress’ concerns that the employer sanctions and verification requirements could result in serious discrimination.

⁴ The legislative history of IRCA demonstrates Congress’ understanding of the potential for discrimination with respect to the imposition of employer sanctions: H.R. Rep. No. 99-682(I), 1986 U.S.C.C.A.N. at 5672 (“Numerous witnesses over the past three Congresses have expressed their deep concern that the imposition of employer sanctions will cause extensive employment discrimination against Hispanic-Americans and other minority group members. These witnesses are genuinely concerned that employers, faced with the possibility of civil and criminal penalties, will be extremely reluctant to hire persons because of their linguistic or physical characteristics.”); 132 Cong. Rec. H9708-02 (daily ed. Oct. 9, 1986) (statement of Cong. Berman) (“When an employer, particularly one who does not have elaborate personnel and legal departments, is faced with the potential of civil and criminal penalties, that employer, for totally nonracist reasons, may, when in doubt with respect to the legal status of an applicant, decide to protect himself by excluding that applicant.”); see also 131 Cong. Rec. S11414-03 (daily ed. Sept. 13, 1985) (statement of Sen. Levin) (“We do not want people discriminated against because they look or sound foreign.”); 132 Cong. Rec. H9708-02 (daily ed. Oct. 9, 1986) (statement of Cong. Fish) (“Mr. Chairman, numerous witnesses in the past Congresses have expressed their deep concern that the imposition of employer sanctions would cause extensive unemployment [sic] discrimination.”).

E-Verify should remain voluntary and temporary to preserve Congress' intent to balance strong concerns regarding discrimination with effective immigration control. Making E-Verify mandatory and permanent, as the Arizona Act does, would create discrimination that Congress has expressly sought to avoid.

ARGUMENT

I. THE ARIZONA ACT IS PREEMPTED BECAUSE IT CONFLICTS WITH FEDERAL LAW.

LCCR supports Appellants' position that the sanctions scheme for employment of unauthorized aliens and mandatory participation in E-Verify imposed by the Arizona Act are contrary to congressional intent and preempted by federal immigration law. As set forth in Appellants' Consolidated Opening Brief, IRCA created a "comprehensive scheme prohibiting the employment of unauthorized aliens in the United States." *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002)) (internal quotation marks omitted).

IIRIRA subsequently established E-Verify as a voluntary and experimental pilot program to verify electronically the employment authorization of newly hired employees. When Congress most recently renewed E-Verify in 2003, it kept the program voluntary as part of a comprehensive immigration policy balancing the prevention of unauthorized alien employment with the possibility of discrimination resulting from E-Verify.

Even if the goals of federal and state law are the same, a state law “is preempted if it interferes with the methods by which the federal statute was designed to reach this goal.” *Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987). Conflict preemption will invalidate a state statute that “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Geier v. American Honda Motor Co., Inc.*, 529 U.S. 861, 873 (2000). The Arizona Act makes participation in E-Verify mandatory and permanent even though Congress has made it voluntary and temporary.

The Arizona Act’s requirement of mandatory and permanent participation in E-Verify (and failure to include anti-discrimination provisions) upsets the careful balance struck by Congress, fundamentally altering the way Congress sought to address the employment of unauthorized aliens and discrimination. In doing so, the Arizona Act has become an obstacle — thwarting Congress’ intended objective of minimizing discrimination caused by the E-Verify program.⁵ As discussed below, Congress sought to accomplish this goal by keeping participation in E-Verify voluntary and temporary — at

⁵ In fact, it appears that the Arizona Act is already resulting in the types of discrimination that Congress sought to avoid:

- Shortly after the Arizona employer sanctions law was enacted in 2007, immigration lawyers, industry groups and employers reported that they noticed “an increase in hostility toward Hispanic workers.” Daniel González, “Taunts, Threats as Employer-Sanctions Law Nears,” *The Arizona Republic*, Sept. 30, 2007, www.azcentral.com/arizonarepublic/news/articles/0930backlash0930.html.

least until it could assess the discriminatory effects of the program. The Arizona Act conflicts with federal law and is invalid.

For these and the other reasons set forth by Appellants, the Arizona Act is preempted.

II. MANDATORY PARTICIPATION IN E-VERIFY WOULD FRUSTRATE CONGRESS' INTENT TO BALANCE DISCRIMINATION CONCERNS WITH CONTROL OF ILLEGAL IMMIGRATION.

As addressed in Appellants' Consolidated Opening Brief, the statutory language of IRCA, IIRIRA and related legislation demonstrates Congress' intent to preempt state statutes like the Arizona Act. Congress sought to control the nations' borders while at the same time preventing such regulation from resulting in discrimination. This rationale for making E-Verify voluntary and temporary is well-documented: when it created the E-Verify program by passing IIRIRA, Congress mandated that the Attorney General submit reports on pilot programs to the House and Senate Judiciary Committees. The Attorney General delegated this responsibility to the Immigration and Naturalization Service ("INS"), and in 2002, the Institute for Survey Research – Temple University and Westat prepared a report on behalf of the INS titled "Findings of the Basic Pilot Program Evaluation" (the "2002 Evaluation").⁶

⁶ An electronic copy of the 2002 Evaluation may be found on the website of U.S. Citizen and Immigration Services at: www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d (continued...)

The 2002 Evaluation contains a lengthy history of Congress' concern with discrimination and extensive analysis of the relationship between E-Verify and discrimination. The report was before Congress when it passed legislation in 2003 to extend E-Verify through November 2008 and keep the program voluntary.⁷ The threat of E-Verify-related discrimination has been, and continues to be, a major consideration for Congress in its decision to keep the E-Verify program voluntary and temporary.

A. Congress Was Concerned About Discrimination Both Before And During The Creation Of The E-Verify Program.

In September 1996, IIRIRA created the "Basic Pilot" program, which is now called the E-Verify program. The program was first known as "Basic Pilot" because it was (and still is) a means for the INS and Social Security Administration ("SSA") to evaluate on a pilot basis methods of electronically verifying the employment authorization of newly hired employees. Because of its pilot status, E-Verify was a voluntary and experimental program, and remains so to this day. Initially, E-Verify was to run for four years, and later

(...continued)

1a/?vgnextoid=9cc5d0676988d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=2c039c7755cb9010VgnVCM10000045f3d6a1RCRD.

A summary of the 2002 Evaluation appears in Plaintiffs/Appellants Excerpts of Record as Exhibit 10, Excerpts of Record ("ER") 313-370.

⁷ See Basic Pilot Program Extension and Expansion Act of 2003, Pub. L. No. 108-156, 117 Stat. 1944 (Dec. 3, 2003) (extending term of Basic Pilot Program and expanding availability to all 50 states, but keeping program on voluntary and temporary basis for further study and evaluation).

legislation has reauthorized it on a temporary and voluntary basis. It is currently set to terminate in November 2008. *See* 69 Fed. Reg. 75,997, 75,998 (Dec. 20, 2004).

From the time Congress first began considering employer sanctions and employment verification as a means to address the employment of unauthorized aliens, it has been concerned with the potential discrimination resulting from such legislative action:

- In its 1980 report to the President and Congress titled “The Tarnished Golden Door,” the U.S. Commission on Civil Rights “recommended unequivocally against passage of employer sanctions legislation” because the “likely consequences...would be ineffectiveness, prescreening of job applicants, discrimination and placement of employers in the role of immigration officers.” 2002 Evaluation at 7.
- On April 30, 1981, the Select Commission on Immigration and Refugee Policy issued a report regarding its “comprehensive study of the major facets of immigration law” and stated that any employment verification system should incorporate “uniform and nondiscriminatory application.” 2002 Evaluation at 8.
- “As a result of years of debate and widely held concerns about the probable discriminatory impact of employer sanctions on foreign-appearing and foreign-sounding workers, IRCA included significant anti-discrimination provisions for unfair immigration-related employment practices.” 2002 Evaluation at 9.

- “IRCA also included several reporting requirements. It charged the General Accounting Office (GAO) with preparing a series of three reports to determine if employer sanctions were carried out satisfactorily, if they caused a pattern of discrimination against U.S. citizens or other authorized workers, and if sanctions caused an unnecessary regulatory burden on employers.... On March 29, 1990, GAO issued its final report, finding that the implementation of employer sanctions had resulted in a widespread pattern of discrimination against authorized workers and that a substantial amount of these discriminatory practices had apparently resulted from IRCA.”⁸ 2002 Evaluation at 11-12.

- The GAO studied employer sanctions both before and after the enactment of IIRIRA. “In a 1990 report to Congress indicating a pattern of widespread discrimination, GAO noted significant employer confusion on how to comply with the verification provisions.” 2002 Evaluation at 27.

The potential for discrimination has been a major consideration for Congress while legislating issues related to employer sanctions and employment verification, predating IRCA and the creation of E-Verify.

⁸ Both state/local studies and nongovernmental reports on employer sanctions also found that employer sanctions led to discrimination in the workplace. 2002 Evaluation at 13.

The Executive Branch also expressed specific concerns about potential discrimination stemming from pilot programs such as E-Verify:

- In 1995, President Clinton issued a directive to the heads of all executive departments and agencies proposing a blueprint of policies and priorities for work on curtailing illegal immigration. That directive “reiterated that strong anti-discrimination measures must continue to protect the privacy and civil rights of all persons lawfully in the United States and directed an interagency effort to ensure that these rights were vigorously protected.” 2002 Evaluation at 19.

- In response to President Clinton’s directive, in 1995, the Immigration Verification Subgroup of the Interagency Working Group on Immigration [(the “Working Group”)] issued a report following “a lengthy consideration of complex issues related to discrimination and employment verification” and the report stated that any review of employment verification pilot programs should “address potential discrimination in the design of the pilots themselves” and “ensure that an effective evaluation mechanism was in place to determine whether the pilots led to discrimination.” 2002 Evaluation at 21.

- The Working Group Report also recommended that “pilot design should safeguard against prescreening of applicants prior to hire, selective or inconsistent implementation of the verification process, and

unauthorized use of verification information for the purpose of harassment or discrimination.”⁹ 2002 Evaluation at 22.

At the time they were issued, these reports, which highlighted the importance of addressing discrimination, were available to Congress. These reports were also identified and discussed in the 2002 Evaluation that Congress received before it last renewed the E-Verify program and maintained its voluntary nature in 2003.

In light of the historic concerns regarding discrimination, Congress specifically sought to target discrimination in the course of creating IIRIRA in 1996, which established E-Verify as an employment verification pilot program. Discrimination has always been a significant factor influencing Congress’ creation and management of the E-Verify program:

- One of the four primary goals of the IIRIRA pilot programs, including E-Verify, was to “reduce discrimination.” 2002 Evaluation at 28-29.

⁹ Also in 1995, the National Council of La Raza issued a major report entitled “Racing Toward Big Brother – Computer Verification, National ID Cards and Immigration Control.” The report indicated that discrimination was likely to result from a new verification system and that stronger labor law, border enforcement and assistance to major sending countries would be preferable to employer sanctions and “discriminatory and unproven verification systems.” 2002 Evaluation at 22.

- “[T]he potential impact of automated employment verification on discrimination was a topic frequently discussed prior to the implementation of the pilots.” 2002 Evaluation at 136.

B. Before Deciding To Keep E-Verify Voluntary And Temporary, Congress Considered The Discrimination That Might Result From E-Verify.

When Congress passed the December 2003 legislation that extended E-Verify for five years and maintained it as a voluntary, temporary program, it had the opportunity to review extensive analysis of discrimination that had already resulted from employers’ use of E-Verify as well as additional discrimination that could result from continued and expanded use of E-Verify. The 2002 Evaluation identified the different kinds of discrimination caused by E-Verify, including:

- **Pre-employment Screening of Job Applicants.** Though E-Verify forbids this practice, employers have stated that they “would prefer a verification system in which they determine work authorization before hiring employees” in order to avoid the cost associated with hiring and training an employee only to find out later that the employee is unauthorized to work. 2002 Evaluation at 114. Employers have incentive to prescreen and decline to hire any persons who receive tentative nonconfirmation, depriving those persons of their right to challenge the tentative nonconfirmation.

- **Tentative Nonconfirmation.** The E-Verify databases contain errors that disproportionately result in false tentative nonconfirmations for Latinos and Asians. *See* 2002 Evaluation at 137. The 2002 Evaluation found that many employers who used E-Verify either wrongfully restricted or suspended the employment of employees who had to contest tentative nonconfirmations. 2002 Evaluation at 117. “The Basic Pilot MOU prohibits the restriction of work assignments, pay cuts and other adverse actions against employees while they are contesting tentative nonconfirmations. However, employers do sometimes take adverse actions against employees who receive tentative nonconfirmations.” 2002 Evaluation at 117.

- **Inaccuracy of SSA and INS databases.** E-Verify uses databases containing either SSA or INS (now Department of Homeland Security, (“DHS”)) data. “Most Federal officials interviewed agreed that the efficient operation of the pilot program was hindered by inaccuracies and outdated information in the INS database.”¹⁰ 2002 Evaluation at 121.

¹⁰ With respect to errors in the SSA database, government studies estimate that 17.8 million of its records contain errors related to name, date of birth, or citizenship status, and 12.7 million of those records relate to U.S. citizens. The DHS databases contain similarly high error rates. *See* <http://www.immigrationpolicy.org/images/File/factcheck/EEVSbythenumbers04-08.pdf>; <http://www.socialsecurity.gov/oig/ADOBEPDF/audittxt/A-08-06-26100.htm>.

The 2002 Evaluation also devotes an entire chapter to the impact of E-Verify on discrimination, determining that there was evidence that E-Verify caused discrimination. In light of the uncertainty regarding the specific effect the program had on discrimination, Congress chose to keep E-Verify a temporary and voluntary program. The 2002 Evaluation identifies numerous concerns regarding the links between E-Verify and discrimination:

- “Many objections to verification of work authorization stem from the fear that employers will exploit the procedures to discriminate against noncitizens, foreign-appearing citizens, and members of specific ethnic groups.” 2002 Evaluation at 135.
- “[I]naccuracies in the SSA and INS databases could result in some work-authorized persons being incorrectly identified as not work-authorized. Since these persons would most likely be disproportionately foreign-born, this misidentification would result in unintentional discrimination against foreign-born employees.” 2002 Evaluation at 137.
- “[E]mployers could take adverse actions against employees who receive tentative nonconfirmations.” 2002 Evaluation at 137.
- “[I]f employers believe that verifying noncitizens through the Basic Pilot system is more burdensome than verifying citizens, the pilot may increase disparate treatment of noncitizens.” 2002 Evaluation at 137.
- “Since Hispanics and Asians are more likely than whites and blacks to be foreign-born, discrimination against foreign-born (or

foreign-appearing) individuals is likely to result in increased discrimination against Hispanics and Asians in particular, as well as against foreign-born individuals generally.” 2002 Evaluation at 137. “Among employers who said the pilot would make it less likely for employers to hire immigrants, the explanation most frequently mentioned (by approximately 40 percent of employers) was their reluctance to bear the cost of training individuals who later turn out to be non-work-authorized.” 2002 Evaluation at 138.

- Findings suggested “that some Basic Pilot employers are prescreening job applicants and then disproportionately denying employment to those receiving tentative nonconfirmations.” 2002 Evaluation at 140. “Since foreign-born employees are more likely than native-born employees to receive tentative nonconfirmations, pre-employment screening can be expected to result in discrimination....” 2002 Evaluation at 140. “There is...considerable evidence that basic Pilot employers are using the system to prescreen applicants. Employee rights are violated when employers fail to hire individuals with tentative nonconfirmations, because the employees are not given the opportunity to resolve the nonconfirmation. Since there are problems with the timeliness and accuracy of the INS database, it is reasonable to believe that unintentional discrimination against noncitizens results when employers prescreen.” 2002 Evaluation at 143.

- “The possibility that the Basic Pilot program could contribute to post-hiring discrimination has been of widespread concern.” 2002 Evaluation at 144. “One concern about post-hiring practices is that employers may take adverse actions against individuals who receive tentative nonconfirmations. Since individuals receiving tentative nonconfirmations are disproportionately foreign-born, the impact of these actions will be discriminatory even if the employer does not intend to discriminate.... [I]t is reasonable to conclude that failure to follow Basic Pilot procedures during the tentative nonconfirmation period has increased discrimination against foreign-born individuals compared to native-born individuals in the time immediately following hire.” 2002 Evaluation at 145.

While the 2002 Evaluation was unable to reach a definitive conclusion regarding E-Verify’s net effect on discrimination, as a result of all the evidence before it, Congress elected to extend E-Verify for only a temporary period without making participation mandatory. The continued voluntary and temporary nature of E-Verify reflects Congress’ intended method of addressing the potential for discrimination as well as other issues related to E-Verify. The Arizona Act thwarts Congress’ carefully considered policy choice that balances discrimination concerns against an interest in stemming illegal immigration; the Arizona Act would destroy this balance by making E-Verify participation mandatory and permanent.

C. Since Congress Last Extended E-Verify As A Voluntary And Temporary Program, The Risk Of Discrimination Remains High.

Concerns regarding discrimination resulting from E-Verify were well-founded; subsequent analysis of E-Verify confirms that discrimination continues to be a concern today.¹¹

Follow-up study of E-Verify performed by Westat for INS (now DHS), has recently confirmed that discrimination potentially caused or exacerbated by E-Verify remains a significant concern.¹² According to a subsequent evaluation of the Basic Pilot Program/E-Verify in 2007, “[t]esting on a pilot basis was considered important because of the limitations of Federal data for verification purposes, the potential for workplace discrimination and privacy violations, and practical logistical considerations about larger scale implementation.”¹³

¹¹ Subsequent federal studies may be relevant in determining whether a federal law preempts a state’s action. In *Geier*, for example, the U.S. Supreme Court considered a 1995 analysis of airbag-related injuries (the “U.S. Dept. of Transportation, National Highway traffic Safety Administration, National Accident Sampling System Crashworthiness Data System 1991-1993”) in determining whether a 1984 Federal Motor Vehicle Safety Standard, promulgated by the Department of Transportation under a 1966 federal law, preempted a state tort claim. *Geier* at 878.

¹² Although Congress has had multiple opportunities to make E-Verify participation mandatory for employers since last extending the program in 2003, it has declined to pass such legislation, most recently in 2007. *See* H.R. 4437, Title VII, 109th Cong. (2005); S. 2611, Title III, 109th Cong. (2006); S. 1348, Title III, 110th Cong. (2007); H.R. 19, 110th Cong. (2007).

¹³ An electronic copy of the 2007 Evaluation may be found on the website of U.S. Citizen and Immigration Services at:
www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d

(continued...)

Findings of the Web Basic Pilot Evaluation (“2007 Evaluation”) ER 654. These problems continue to plague E-Verify. For example, the most recent evaluation of E-Verify observed that, while federal databases used for verification had improved, “further improvements are needed, especially if the Web Basic Pilot Program becomes a mandated national program. . . Most importantly, the database used for verification is still not sufficiently up to date to meet the IIRIRA requirement for accurate verification, especially for naturalized citizens.” ER 639. Erroneous tentative nonconfirmation rates, owing not to lack of work authorization, but to database deficiencies, remain a critical shortcoming of E-Verify and source of potential discrimination. As a result of these errors, many individuals authorized to work—most notably naturalized citizens—suffer discrimination because they are falsely classified as not authorized. Addressing these problems “will take considerable time and will require better data collection and sharing between SSA, USCIS and the U.S. Department of State than is currently the case.” ER 644.

Congress has historically considered discrimination resulting from employer sanctions and from employers’ use of E-Verify a significant and important issue. Workers who look and sound foreign suffer discrimination

(...continued)

1a/?vgnextoid=89abf90517e15110VgnVCM1000004718190aRCRD&vgnnextchannel=a16988e60a405110VgnVCM1000004718190aRCRD.

when employers face sanctions for employing unauthorized workers and are forced to participate in programs like E-Verify.

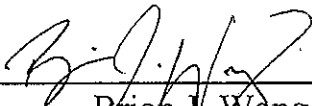
When Congress passed IRCA and put in place employer sanctions for employment of unauthorized workers, Congress addressed its discrimination concerns by including anti-discrimination provisions in IRCA. Moreover, when Congress established the E-Verify program, it made the program temporary and voluntary. In light of evidence showing continued E-Verify-related discrimination, Congress has kept E-Verify temporary and voluntary to this day. If the Arizona Act is allowed to stand, a permanent and mandatory E-Verify program will result in the very discrimination Congress sought to eliminate. The Arizona Act would undermine Congress' intent to address discrimination resulting from use of E-Verify. Therefore, the Arizona Act is preempted by federal law.

CONCLUSION

For the reasons state above, the amici curiae respectfully submit that the judgment should be reversed.

Dated: April 9, 2008.

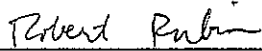
PILLSBURY WINTHROP
SHAW PITTMAN LLP
KEVIN M. FONG
BRIAN J. WONG

By: 

Brian J. Wong

Attorneys for Amicus Curiae
Lawyers' Committee for Civil Rights
of the San Francisco Bay Area

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS OF THE SAN
FRANCISCO BAY AREA
ROBERT RUBIN

By:  BTW

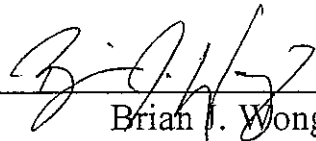
Robert Rubin

Attorneys for Amici Curiae
Lawyers' Committee for Civil Rights
of the San Francisco Bay Area, *et al.*

CERTIFICATE OF COMPLIANCE PURSUANT TO
FED. R. APP. P. 32(A)(7)(C) AND
CIRCUIT RULE 32-1 FOR CASE NUMBERS 07-17272, 07-17274, 08-15357,
08-15359, 08-15360

I certify that, pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached amicus brief with appendix is proportionately spaced, has a typeface of 14 points and contains 6,412 words.

Dated: April 9, 2008.



Brian J. Wong

APPENDIX

Asian American Justice Center

The Asian American Justice Center (“AAJC”) is a national non-profit, non-partisan organization whose mission is to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. Collectively, AAJC and its Affiliates the Asian American Institute, the Asian Law Caucus, and the Asian Pacific American Legal Center of Southern California have over 50 years of experience in providing legal public policy, advocacy, and community education on discrimination issues. AAJC has advanced its longstanding concern for the protection of rights of immigrants – a significant proportion of whom are Asian Americans – by educating policymakers and the general public on the need for fair and humane immigration laws and filing briefs in relevant cases before the courts.

Asian American Legal Defense Education Fund

The Asian American Legal Defense and Education Fund (“AALDEF”), founded in 1974, is a non-profit organization based in New York City. AALDEF defends the civil rights of Asian Americans nationwide through litigation, legal advocacy and dissemination of public information. Throughout its long history, AALDEF has protected the rights of Asians and other immigrants to be free from discrimination based on race and ethnicity as well as immigrant status.

Arizona Advocacy Network

The Arizona Advocacy Network Foundation (“AzANF”) promotes social, economic, racial and environmental justice by connecting and building power among activists and leaders in those fields, and by leading efforts for electoral justice and increased civic participation. AzANF builds coalitions, conducts research, organizes communities, registers thousands voters, and lobbies elected officials at the local, state, and national levels to build a progressive future for Arizona.

In response to Arizona's climate of intolerance, AzANF has led efforts to expose and condemn racial profiling and harassment of people perceived to be of Latino heritage. AzANF is known for challenging unscrupulous employers for mistreatment of workers. AzANF has a clear interest in ensuring that no worker is mistreated or abused.

Arizona Hispanic Community Forum

The Arizona Hispanic Community Forum ("AHCF") is an advocacy organization that coalesces with other organizations on civil and human rights issues. The mission of the AHCF is to empower Hispanic communities: to work towards active participation with policy-making bodies at all levels of the public and private sectors; to become involved in local state and national issues impacting the Hispanic community; to educate, promote and preserve Hispanic history, language, cultures, customs, and contributions; to increase opportunities and improve the quality of life for Hispanics; to defend, preserve and protect rights of Hispanics under the law; to educate and ensure that the public and private sector provide equal access and fair treatment for Hispanics. AHCF is committed to protecting immigrant workers who are the targets of workplace abuses.

Asian Pacific American Legal Center

The Asian Pacific American Legal Center of Southern California ("APALC") was founded in 1983 and is the largest non-profit public interest law firm devoted to the Asian American community. APALC provides direct legal services to indigent members of our community and uses impact litigation, policy advocacy, community education and leadership development to obtain, safeguard and improve the civil rights of Asian Americans. APALC's civil rights litigation has covered a broad range of issues such as: race and national origin discrimination (e.g., advocating for monolingual clients victimized by unscrupulous business practices), access to higher education (e.g., advocating for Pilipino, Latino and African American high school students denied entry to UC Berkeley), immigration and naturalization (e.g., representing naturalization applicants delayed in the citizenship process), language rights (e.g., challenging English-only ordinances and policies) and garment workers' rights (e.g., representing low-wage workers in their claims against corporate retailers and labels). In addition, APALC has a long history of advocating on issues

affecting immigrants, including immigration policy, and thus has a strong interest in the outcome of this case.

Centro Legal, Inc.

Centro Legal, Inc. is a tax-exempt 501(c)(3) nonprofit community law office that was established in 1981 with the mission of empowering Latinos through legal advocacy. As the largest Latino legal institution in the Midwest, Centro Legal's civil legal services safeguard the well-being of disadvantaged Latinos by addressing issues of immigration and naturalization, domestic violence, employment and housing discrimination and exploitation, predatory lending and other consumer issues.

Centro Legal believes that one of its primary responsibilities is to work towards changing the systems that are inequitable to Latinos and immigrants. In recent years, Centro Legal has maintained a comprehensive scheme to deal with anti-immigrant, unconstitutional and unlawful policies and practices by DHS and ICE. The agency has played a pivotal role in exposing the harmful effects of their enforcement strategies when it filed two federal complaints related to the Swift raids in Worthington, Minnesota and the home-raids in Willmar, MN this past year. Both lawsuits are against the U.S. Government and charge violations of discrimination and violations of the Fourth and Fifth Amendments of the U.S. Constitution. The pattern of these individual's claims also strongly suggests the need for continued litigation to resolve federal Constitutional rights violations including those that target and harm workers against abuses by their employers.

Immigration Equality

Immigration Equality (formerly The Lesbian and Gay Immigration Rights Task Force, Inc. ("LGIRTF")) is a national organization that works to end discrimination in immigration law against those in the gay, lesbian, bisexual, and transgender community and immigrants who are living with HIV or AIDS. Incorporated in 1994, Immigration Equality seeks to help those affected by these discriminatory practices through education, outreach, advocacy and the maintenance of a nationwide resource network and a heavily trafficked website. Immigration Equality also runs a pro bono asylum program and

provides technical assistance and advice to hundreds of attorneys nation-wide on sexual orientation, transgender and HIV- based asylum matters. Immigration Equality is particularly concerned by the Arizona statute because any use of outdated databases disproportionately affects transgender immigrants whose names and gender markers in old databases often conflict with their corrected gender and/or legal name.

La Raza Centro Legal

La Raza Centro Legal is a community-based legal organization dedicated to empowering Latino, immigrant and low-income communities of San Francisco to advocate for their civil and human rights. La Raza Centro Legal combines legal services, organizing, advocacy, and social services to build grassroots power and alliances towards creating a movement for a just society. La Raza Centro Legal was founded in 35 years ago in 1973. La Raza Centro Legal since its inception has provided direct legal services, policy advocacy, and civil rights advocacy on behalf of immigrants. Since 1990, La Raza Centro Legal has operated its Workers Rights Project which advocates for the rights of low-income workers, the majority of whom are immigrant workers. La Raza Centro Legal specifically has focused on the rights of immigrant workers who are targets of workplace abuses. La Raza Centro Legal has a profound interest in protecting immigrant workers who are the targets of workplace abuses.

Legal Aid Society-Employment Law Center

The Legal Aid Society – Employment Law Center (“LAS-ELC”) is a San Francisco-based nonprofit public interest law firm that, for over 35 years, has litigated on behalf of the workplace rights of communities of color, women, individuals with disabilities, and the working poor. LAS-ELC has special expertise in the area of immigrant workers’ rights, having litigated cases such as *Contreras v. Corinthian Vigor Ins. Brokerage, Inc.*, 25 F. Supp. 2d 1053 (N.D. Cal. 1998) and 103 F. Supp. 2d 1180 (N.D. Cal. 2000); *Singh v. Jutla*, 214 F. Supp. 2d 1056 (N.D. Cal. 2002); and *Rivera v. NIBCO, Inc.*, 364 F.3d 1057 (9th Cir. 2004), *cert. denied*, 544 U.S. 905 (2005). In particular, LAS-ELC has been involved in numerous cases in which employers have improperly attempted to reverify or otherwise impermissibly inquire into the immigration status of their employees in contravention of the Immigration Reform and Control Act of 1986 (IRCA).

Los Abogados Hispanic Bar Association

Since its inception in 1976, Los Abogados Hispanic Bar Association has created meaningful social and political change and remains a leading voice on legal issues. It is an organization of Arizona lawyers, judges, professors and students dedicated to promoting public awareness of the legal issues affecting the Hispanic community and challenging those legal issues when appropriate.

National Center for Lesbian Rights

The National Center for Lesbian Rights (“NCLR”) is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender (“LGBT”) people and their families through litigation, public policy advocacy, and public education. In 1994, NCLR established a national project dedicated to immigration issues. Since that time, NCLR’s Immigration Project has made significant legal and policy gains for LGBT immigrants. NCLR has also provided free legal assistance to thousands of immigrants nationwide through our national intake service and free monthly legal clinics in the San Francisco Bay Area, as well as through direct representation of LGBT immigrants in impact and individual cases. NCLR works in coalition with immigrant advocacy groups nationwide to protect immigrants from discrimination and mistreatment.

National Council of La Raza

The National Council of La Raza (“NCLR”) – the largest national Hispanic civil rights and advocacy organization in the United States – works to improve opportunities for Hispanic Americans. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas – assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families. Founded in 1968, NCLR is a private, nonprofit, nonpartisan, tax-exempt organization headquartered in Washington, DC. NCLR serves all Hispanic subgroups in all regions of the

country and has operations in Atlanta, Chicago, Los Angeles, New York, Phoenix, Sacramento, San Antonio, and San Juan, Puerto Rico.

NCLR believes that making the Basic Pilot/E-Verify program mandatory without serious attention to the reliability of data or the protections available to workers would expand a highly unreliable program at a serious cost to U.S. citizens and lawful workers. Research on the Basic Pilot/E-Verify program shows that: (1) database errors would deny lawful workers -- including U.S. citizens -- their right to work; (2) data entry errors would affect all types of workers, but would acutely impact workers with "ethnic" names; (3) employer misuse of the system would penalize lawful workers before they have a chance to correct their records; and (4) such program would result in large-scale discrimination against workers who are perceived to be "foreign." In light of those findings, massively scaling up this flawed program without extensive standards for the quality of data and vigorous worker protections would have dangerous consequences for U.S. citizens and lawful workers, and would be especially harmful to Latino workers.

National Employment Law Project

The National Employment Law Project ("NELP") is a non-profit legal organization with over 30 years of experience advocating for the employment and labor rights of low-wage and immigrant workers. In partnership with community groups, unions, and proactive public agencies, NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the full protection of employment laws, regardless of an individual's immigration status as an immigrant. NELP's areas of expertise include the workplace rights of documented and undocumented immigrant workers under federal employment and labor laws. NELP has litigated and participated as *amicus* in numerous cases addressing the rights of immigrant workers under the Fair Labor Standards Act and the National Labor Relations Act, state workers compensation and other acts. NELP also provides legal assistance to labor unions and immigrant worker organizations regarding the rights of immigrant workers in relation to the Bureau of Immigration and Customs Enforcement, formerly the Immigration and Naturalization Service, and state and local law enforcement.

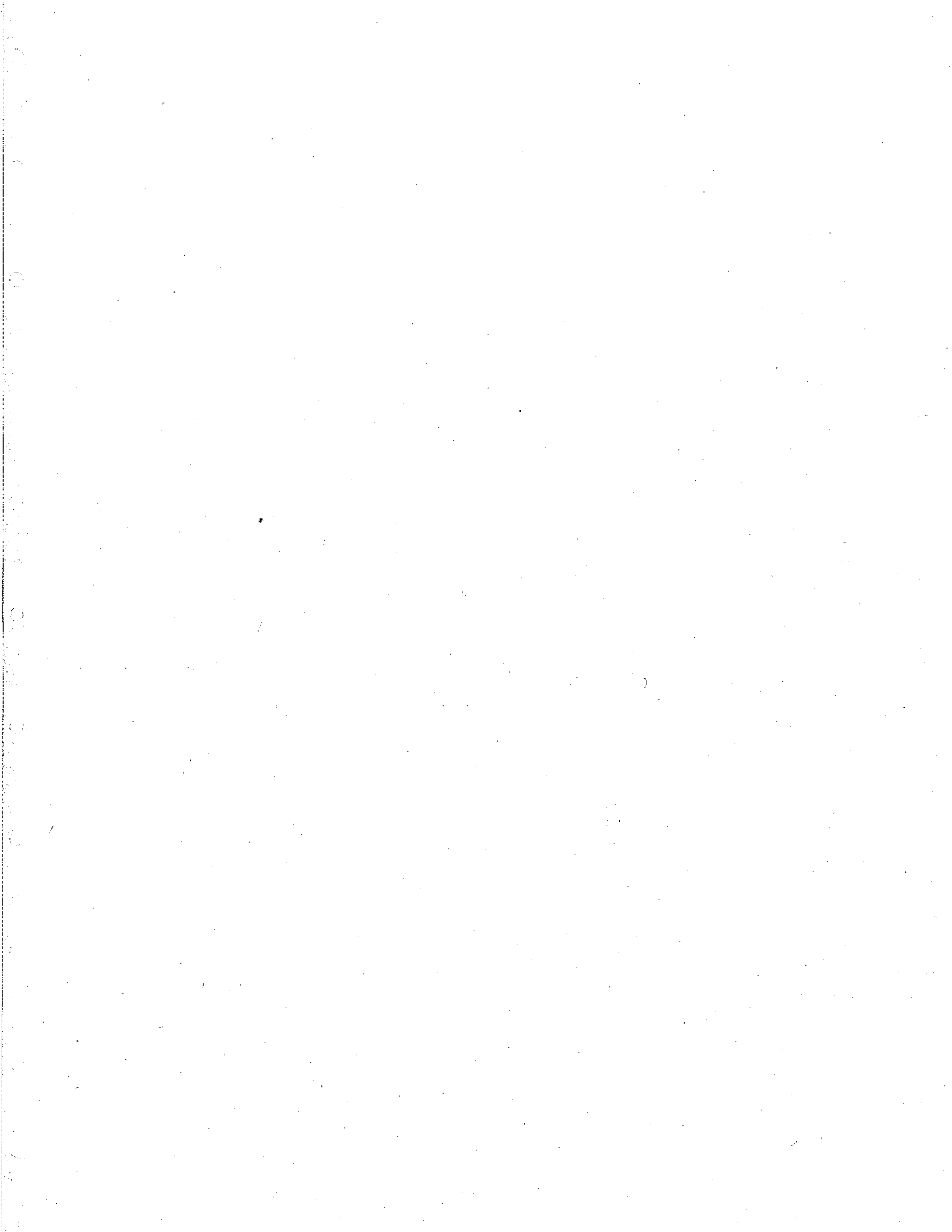
NELP has an interest in the outcome of this case because the Arizona statute undermines labor standards rights for immigrant and all workers by permitting employers to discriminate against immigrants with impunity.

Southern Poverty Law Center

Founded in 1971 and located in Montgomery, Alabama, the Southern Poverty Law Center has litigated numerous civil rights cases on behalf of victims of discrimination. Although the Center's work is concentrated in the South, its attorneys appear in courts throughout the country to ensure that all people receive equal and just treatment under federal and state law.

Women's Employment Law Center

The Women's Employment Rights Clinic ("WERC") of Golden Gate University School of Law is an in-house clinical education program in which faculty and students provide free and low cost legal services, and advise, counsel and represent clients in a variety of employment-related matters. WERC regularly assists immigrant workers with claims of unpaid wages, discrimination and harassment, and has represented workers in situations where the employer reported the worker to immigration authorities in retaliation for the assertion of statutory rights to unpaid wages. WERC also represented the lead plaintiff in a pattern and practice case prosecuted by the Equal Employment Opportunity Commission addressing classwide sexual harassment of immigrant female farm workers.



PROOF OF SERVICE BY MAIL

I, Thomas E. Morgan, the undersigned, hereby declare as follows:

I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop Shaw Pittman LLP in the City of San Francisco, California.

My business address is 50 Fremont Street, San Francisco, CA 94105-2228. My mailing address is 50 Fremont Street, P. O. Box 7880, San Francisco, CA 94120-7880.

I am familiar with Pillsbury Winthrop Shaw Pittman LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence placed in interoffice mail is deposited with the United States Postal Service with first class postage thereon fully prepaid on the same day it is placed for collection and mailing.

On April 9, 2008 at 50 Fremont Street, San Francisco, California, I served copies of the attached **MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF** to each of the addressees on the **Attached Service List** by inserting them in addressed, sealed envelopes clearly labeled to identify the persons being served, and placing them in interoffice mail, following ordinary business practices.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th day of April, 2008 at San Francisco, California.

Thomas E. Morgan

Service List, Docket Numbers: 07-17272, 07-17274, 08-15357, 08-15359, 08-15360

DANIEL POCHODA
ACLU Foundation of Arizona
P.O. Box 17148
Phoenix, AZ 85011

PAUL F. ECKSTEIN
JOEL W. NOMKIN
CHARLES A. BLANCHARD
Perkins Coie Brown & Bain P.A.
2901 North Central Avenue
Post Office Box 400
Phoenix, AZ 85001

LUCAS GUTTENTAG
JENNIFER C. CHANG
American Civil Liberties Union Foundation
Immigrants' Rights Project
39 Drumm Street
San Francisco, CA 94111

OMAR C. JADWAT
American Civil Liberties Union Foundation
Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004

STEPHEN P. BERZON
JONATHAN WEISSGLASS
REBECCA SMULLIN
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108

BURT M. RUBLIN
DAVID A. SELDEN
JULIE A. PACE
DOUGLAS L. FLITTER
Ballard Spahr Andrews
& Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103

KRISTINA CAMPBELL
CYNTHIA VALENZUELA
Mexican American Legal Defense and
Educational Fund
634 S. Spring Street, 11th Floor
Los Angeles, CA 90014

LINTON JOAQUIN
MONICA T. GUIZAR
KAREN C. TUMLIN
National Immigration Law Center
3435 Wilshire Blvd., Suite 2850
Los Angeles, CA 90010

Attorneys for Plaintiffs/Appellants
Valle del Sol, Inc., Chicanos Por La Causa, Inc., and Somos America

DAVID A. SELDEN
JULIE A. PACE
Ballard Spahr Andrews
& Ingersoll, LLP
3300 North Central Avenue, Suite 1800
Phoenix, AZ 85012

OF COUNSEL:
ROBIN S. CONRAD
SHANE BRENNAN
National Chamber Litigation Center, Inc.
1615 H Street, N.W.
Washington, DC 20062

Attorneys for Plaintiffs/Appellants Arizona Contractors Association, Inc.,
and Chamber of Commerce of the United States of America, *et al.*

PAUL F. ECKSTEIN
JOEL W. NOMKIN
CHARLES A. BLANCHARD
Perkins Coie Brown & Bain P.A.
2901 North Central Avenue
Post Office Box 400
Phoenix, AZ 85001

Attorneys for Plaintiff/Appellant Wake Up Arizona! Inc.

Mary O'Grady - Solicitor General
Christopher A. Munns - Assistant Attorney
General
Office of the Attorney General
1275 West Washington
Phoenix, AZ 850007-2926

Roger William Hall
BUCKLEY KING
2020 N. Central Avenue, Suite 1120
Phoenix, AZ 85004

Michael Jay Lessler
COCONINO COUNTY ATTORNEY'S OFFICE
110 E Cherry St
Flagstaff, AZ 86001-4627

Georgia A. Staton
Eileen Dennis GilBride
JONES SKELTON & HOCHULI PLC
2901 North Central Ave, Ste 800
Phoenix, AZ 85012

Daniel S. Jurkowitz
PIMA COUNTY ATTORNEY'S OFFICE
32 N Stone Ave, Ste 2100
Tucson, AZ 85701

Chris Myrl Roll
PINAL COUNTY ATTORNEY'S OFFICE
PO Box 887
Florence, AZ 85232

William J. Kerekes
YUMA COUNTY ATTORNEY'S OFFICE
250 W 2nd St, Ste G
Yuma, AZ 85364

Attorneys for Defendants/Appellees, Criss Candelaria, *et al.*

