

No. 11-182

IN THE
Supreme Court of the United States

STATE OF ARIZONA and JANICE K. BREWER, Governor
of the State of Arizona, in her official capacity,
Petitioners,
—v.—

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

**AMICUS CURIAE BRIEF OF THE UNITED MEXICAN
STATES IN SUPPORT OF RESPONDENT**

Of Counsel:

CARLA GORNIAC
CHRISTOPHER R. CLARK
BRANDON W. DUKE

HENRY L. SOLANO
Counsel of Record
DEWEY & LEBOEUF LLP
1301 Avenue of the Americas
New York, New York 10019
(212) 259-8000
hsolano@deweyleboeuf.com
Counsel for Amicus Curiae

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INTEREST OF THE *AMICUS CURIAE*

The United Mexican States (“Mexico”) herein expresses its grave concerns over sections 2(B), 3, 5(C), and 6 of Support Our Law Enforcement and Safe Neighborhoods Act (“SB 1070”), and underscores the importance of affirming the Ninth Circuit decision upholding the preliminary injunction order of the U.S. District Court for the District of Arizona.¹

Amicus’ deep interest flows from SB 1070’s significant and inappropriate burdens on the consistent and highly productive intergovernmental relations between Mexico and the United States of America (“U.S.”), interference with their joint strategic diplomatic interests, and encouragement of an imminent threat of state-sanctioned bias or discrimination. Mexico’s substantial and compelling interests also encompass ensuring that its citizens are accorded human and civil rights when present in the U.S., and their ethnicity is not used as basis for state-sanctioned acts of bias and discrimination.

This Court has routinely considered the interests of foreign governments as *amici curiae* to protect the rights of their citizens. *E.g.*, *Morrison v. Nat’l Austl. Bank*, 130 S. Ct. 2869, 2885-86 (2010); *Medellin v. Texas*, 552 U.S. 491 (2008).

¹ No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. The parties have consented to this filing. *See* Pet. Consent, Dec. 29, 2011; Resp’t Consent, Jan. 4, 2012.

Furthermore, under the Vienna Convention on Consular Relations (VCCR), to which both Mexico and the U.S. are signatories, Mexico has a right to protect the interests of its nationals within the limits of international law. VCCR, art. 5, Apr. 24, 1963, 596 U.N.T.S. 261. Mexico asserts this right because SB 1070 creates an imminent threat to the human and civil rights of its nationals, resulting not only in individual injury, but also in broader social and economic harms that undermine Mexico-U.S. relations.

The roots of cooperation between Mexico and the U.S. run deep. Their executive and legislative branches, almost every federal agency, and dozens of states and local governments collaborate directly with their counterparts across the border.² Consequently, the enactment of SB 1070 and its aftermath have been closely followed at the highest levels of the Mexican government,³ throughout Mexican society, as well as by Mexicans and Mexican-Americans in Arizona and the U.S. The issues raised herein are of great importance to the people of Mexico,⁴ including the mil-

² See Clare Ribando Seelke, *Mexico: Issues for Congress*, Cong. Research Serv., Feb. 15, 2012, at 13-37, <http://www.fas.org/sgp/crs/row/RL32724.pdf>.

³ See, e.g., Secretaría de Relaciones Exteriores (SRE), *Remarks by Foreign Secretary Patricia Espinosa on the Signing of Arizona Law SB 1070*, Apr. 23, 2010, http://portal3.sre.gob.mx/english/index.php?option=com_content&task=view&id=529&Itemid=9.

⁴ See Pew Global Attitudes Project, *Obama more popular abroad than at Home*, June 18, 2010, <http://pew-global.org/2010/06/17/obama-more-popular-abroad-than-at-home/> (noting “America’s favorable rating tumbling in Mexico in response to [SB 1070]”).

lions of Mexican workers, tourists and students regularly admitted to the U.S., those already present in the U.S., and those whose daily lives and jobs depend on international trade or are affected by immigration policies, emergency management, and cooperation against transnational organized crime.⁵ Given the extensive cooperation and exchange between the two governments and societies, it is essential that each country be able to approach intergovernmental discussions with a consistent front.

Mexico is not asserting a “heckler’s veto” over U.S. state or federal laws. *Cf. United States v. Arizona*, 641 F.3d 339, 383 (9th Cir. 2011)(Bea, J. dissenting). Mexico expressly and publicly “acknowledges the sovereign right of every country to decide on the public policies that should apply in their territory[,]”⁶ but it respectfully asserts its legitimate, substantial and compelling interests to protect the rights of its citizens and support the efforts of the U.S. federal government to ensure that diplomatic relations are not thwarted by the actions of individual states, herein Arizona.⁷

As highlighted by the Ninth Circuit, “Arizona’s law has created *actual* foreign policy problems of

⁵ See generally Off. of Immigr. Stat., *Yearbook of Immigration Statistics: 2010*, Aug. 2011, http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2010/ois_yb_2010.pdf.

⁶ *Remarks by Foreign Secretary Espinosa, supra* note 3.

⁷ This Court has expressly looked at evidence from foreign powers to determine the impact legislation may have on diplomatic relations. *See, e.g., Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 385 (2000); *Am. Ins. Assn. v. Garamendi*, 539 U.S. 396, 423-25 (2003).

a magnitude far greater than incidental.” *Arizona*, 641 F.3d at 353 (emphasis in original). Mexico attests that SB 1070 has caused harms that reach far beyond Arizona’s borders, and intrude into federal and international ground. SB 1070 adversely impacts Mexico-U.S. bilateral relations, as well as the rights and lives of Mexican citizens and other persons of Latin American descent in Arizona.

SUMMARY OF THE ARGUMENT

Mexico affirms that effective and consistent diplomatic relations with the U.S. depend on the countries' ability to conduct productive negotiations regarding a variety of matters of bilateral and international importance. Both nations weigh multiple competing interests in a wide array of areas and prioritize them in an effort to develop a coherent and effective foreign policy strategy. In direct opposition to this comprehensive approach, Arizona's misguided framing of the relationship as a singular issue (*i.e.*, an immigration policy of "attrition through enforcement" SB 1070 § 1) effectively truncates the countries' collaborative efforts to develop a comprehensive immigration framework and to engage in joint resolution of other key interests impacted by immigration.

Mexico and the U.S. recognize the importance of having a uniform immigration framework that ensures the secure, orderly, and legal movement of people into and across the U.S., as well as the enormous impact of migration policy on social, economic, intellectual, and security policy and collaboration.⁸ SB 1070 institutes an independent state immigration enforcement system that not only derails bilateral economic, social, border management, and security efforts, but also imperils efforts at a comprehensive solution for immigration policy.

⁸ Press Release, The White House, *Remarks by President Obama and President Calderón of Mexico at Joint Press Availability* (May 19, 2010), <http://www.whitehouse.gov/the-press-office/remarks-president-obama-and-president-calderon-mexico-joint-press-availability>.

Immigration is a priority for both countries, but it is by no means the only critical foreign policy concern. Mexico and the U.S. also collaborate in multiple areas including economic trade, tourism, law enforcement and security, use of natural resources, emergency management, and global and regional issues. Each issue impacts diplomatic relations as a whole, and is carefully considered to achieve the most productive overall results. *See* Decl. William J. Burns ¶ 11, July 29, 2011, *United States v. Alabama*, No. 2:11-cv-02746-SLB (N.D. Ala. Aug. 8, 2011) (“Burns Decl.”). Mexico cannot conduct effective negotiations with the U.S. when the foreign policy decisions of the federal governments are undermined by individual states. It is therefore essential to both nations that the interests of each country be expressed in “one voice.” *See Arizona*, 641 F.3d at 367.

The danger raised by SB 1070 is not theoretical. Even prior to going into effect, SB 1070 has already caused long-term harm to Mexico-U.S. relations. For example, in direct response to this law, the Mexican Senate postponed review of a cooperation agreement regarding emergency management,⁹ all Mexican border-state governors refused to attend the 2010 Mexico-U.S. Border Governor Conference,¹⁰ fourteen Mexican state

⁹ Ricardo Gómez & Elena Michel, *Senado congela acuerdo con EU por Ley Arizona* [Senate freezes agreement with U.S. due to Arizona law], *El Universal*, Apr. 27, 2010, <http://www.eluniversal.com.mx/notas/676153.html>.

¹⁰ Janice K. Brewer, *Letter to the Honorable Governors of the States of Baja California, Chihuahua, Coahuila, Nuevo Leon, Sonora and Tamaulipas*, XXVIII Border Governors Conference (June 30, 2010), *available at* <http://graph->

legislatures have condemned SB 1070,¹¹ and Mexico issued a travel warning for Arizona.¹²

SB 1070's impact has reached international bodies as well, exemplified by the condemning statements issued at the United Nation's 3rd World Conference of Speakers of Parliament,¹³ the United Nations Office of the High Commissioner for Human Rights,¹⁴ the Common Southern Market (MERCOSUR), the Union of South American Nations (UNASUR), the Central American Integration System (SICA), and the legislative branches of various countries.¹⁵

ics8.nytimes.com/packages/pdf/national/07governors/630brewerletter.pdf.

¹¹ Congreso tabasqueño se suma contra la "Ley Arizona" [Tabasco's Congress Joins Against "Arizona Law"], Informador.com.mx, Mar. 16, 2012, <http://www.informador.com.mx/mexico/2012/363095/6/congreso-tabasqueno-se-suma-contra-la-ley-arizona.htm>.

¹² Current alert at SRE, *Guía del Viajero Mexicano* [Guide of the Mexican Traveler] (updated Mar. 7, 2012), <http://guiadelviajero.sre.gob.mx> (follow "Arizona, EUA").

¹³ CNN Wire Staff, *10 nations join Mexican opposition to Arizona law, politician says*, CNN.com, July 21, 2010, http://articles.cnn.com/2010-07-21/world/mexico.arizona.immigration.law_1_arizona-law-immigration-law-mexican-opposition?_s=PM:WORLD.

¹⁴ Press Release, Off. of the High Comm'r of Hum. Rts. (OHCHR), *Arizona: UN experts warn against "a disturbing legal pattern hostile to ethnic minorities and immigrants"*, United Nations (May 10, 2010), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10035&LangID=E>.

¹⁵ Assoc. Press, *Mercosur Trade Bloc Condemns Arizona Immigrant Law*, U-T San Diego, Aug. 3, 2010, <http://www.utsandiego.com/news/2010/aug/03/mercosur-trade-bloc-condemns-arizona-immigrant-law/>; Kiraz Janicke,

Further, SB 1070 strains diplomacy indirectly through its impact on trade crucial to both economies.¹⁶ Mexico and the U.S. actively engage in developing an advantageous multifaceted economic relationship,¹⁷ but their efforts are futile when the population is deterred from engaging in cultural and economic exchange. As noted by New

UNASUR Condemns Arizona Immigration Law, May 5, 2010, <http://venezuelanalysis.com/news/5332>; Press Release, Gen. Secretariat, Cent. Am. Integration Sys. (SICA), XXXV *Reunión Ordinaria de Jefes de Estado y de Gobierno de los Países Miembros del SICA* [XXXV Meeting of Heads of State and Governments of the Member Countries of SICA] (June 30, 2010), <http://www.sica.int/busqueda/Reuniones.aspx?IDItem=50407&IDCat=21&IdEnt=1&Idm=1&IdmStyle=1>; *Los parlamentos de México y Brasil rechazan ley SB 1070* [Parliaments of Mexico and Brazil Reject SB 1070], CNN Mexico, May 6, 2010, <http://mexico.cnn.com/nacional/2010/05/06/los-parlamentos-de-mexico-y-brasil-rechazan-ley-SB-1070>; *Congreso peruano rechaza Ley de Arizona contra migrantes latinos* [Peruvian Congress Rejects Arizona's Law Against Latin Migrants], *Diario Hoy*, May 3, 2010, <http://www.hoy.com.ec/noticias-ecuador/congreso-peruano-rechaza-ley-de-arizona-contra-migrantes-latinos-405937.html>; Presidencia de la República, *Aprobada resolución en rechazo a Ley Anti-inmigrante* [Resolution Rejecting Anti-Immigrant Law Approved], *El Ciudadano*, Apr. 27, 2010, http://www.elciudadano.gov.ec/index.php?option=com_content&view=article&id=12278:aprobada-resolucion-en-rechazo-a-ley-anti-inmigrante&catid=1:archivo&Itemid=29.

¹⁶ Remarks by Presidents Obama and Calderón, *supra* note 8.

¹⁷ J. F. Hornbeck, *U.S.-Latin America Trade: Recent Trends and Policy Issues*, Cong. Research Serv., Feb. 8, 2011, at 5-8, <http://www.fas.org/sgp/crs/row/98-840.pdf>; M. Angeles Villarreal, *U.S.-Mexico Economic Relations: Trends, Issues, and Implications*, Cong. Research Serv., Jan. 25, 2012, at 16-18, <http://www.fas.org/sgp/crs/row/RL32934.pdf>.

York City Mayor Michael Bloomberg, “this new law [SB 1070] sends exactly the wrong message to international companies and travelers” essential to the U.S. economy.¹⁸ The far-reaching harms of SB 1070 are evident in the refusal of private parties to engage in bilateral trade, including the cancelation of student exchange programs with the University of Arizona by two Mexican universities, and the decision of the World Boxing Council not to schedule Mexican boxers to fight in Arizona.¹⁹

Moreover, a scenario mirroring that which took place recently in Alabama, where similar provisions of such state’s immigration law have not been enjoined, serves as a concrete example of the harms to international commercial exchange that could occur in Arizona if the injunction order is reversed. In Alabama, the anticipated loss of foreign investment due to the arrest of two foreign employees of global automakers under HB 56 induced Governor Robert J. Bentley to publicly affirm “[w]e are not anti-foreign companies. We are very pro-foreign companies[.]”²⁰

¹⁸ Press Release, NYC.gov, Statement of Mayor Michael R. Bloomberg on the Signing of Immigration Bill in Arizona (Apr. 23, 2010), <http://www.nyc.gov/html/om/html/2010a/pr176-10.html>.

¹⁹ *Who Is Boycotting Arizona?*, AZ CENTRAL, Aug. 27, 2010, <http://www.azcentral.com/business/articles/2010/05/13/20100513immigration-boycotts-list.html>; Assoc. Press, *World Boxing Council: No Mexican fights in Arizona*, AZ CENTRAL, Apr. 29, 2010, <http://www.azcentral.com/sports/boxing/articles/2010/04/29/20100429world-boxing-council-no-mexican-fights-arizona.html>.

²⁰ Assoc. Press, *Alabama Governor to Foreign Biz: Don’t Worry About Immigration Law*, FoxNews Latino, Dec. 6, 2011, <http://latino.foxnews.com/latino/politics/2011/12/06/>

Strained diplomatic relations substantially impede the ability of Mexico and the U.S. to collaboratively develop, enhance, and maintain commercial exchange critical to their economies, especially along the border. Private parties' perception of strains on their ability to conduct cross-border exchange substantially weakens the success of diplomatic efforts. Mexico cannot productively collaborate with the U.S. to develop a mutually beneficial commercial relationship when their collaboration is effectively nullified by individual states.

In addition to its encroachment on bilateral collaborative efforts, SB 1070 injures Mexico's relationship with the U.S. by raising a grave risk of unfair targeting of its citizens (and other individuals of Latin American descent) in the enforcement of the law by Arizona officers. SB 1070 would require Arizona's officers to make a reasonable attempt to determine the immigration status of a person if the officer has "reasonable suspicion" to believe that such person "is an alien and unlawfully present in the United States." SB 1070 § 2(b). This is particularly alarming in light of Arizona Governor Janice K. Brewer's focus on what "an illegal immigrant looks like" when describing the criteria to be used under SB 1070 as basis to form a reasonable suspicion of a person's legal status.²¹ Mexico is deeply concerned about whether SB 1070 can be applied in a race-

alabama-governor-says-worries-that-immigration-law-will-drive-away-foreign/#ixzz1l3z5u54V.

²¹ CNN Wire Staff, *Arizona Governor Signs Immigration Bill*, CNN.com, Apr. 24, 2010, <http://www.cnn.com/2010/POLITICS/04/23/obama.immigration/index.html>.

neutral manner, and fears that its enforcement will lead to harassment of Mexican citizens and individuals of Latino appearance.

SB 1070 not only raises a high risk of violations of the rights of Mexican citizens under the U.S. Constitution, but also interferes with principles of international law. Justices of this Court have recognized that “statutes should not be interpreted to regulate foreign persons or conduct if that regulation would conflict with principles of international law.” *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 820 (1993)(Scalia, J., dissenting). The potentially arbitrary enforcement of SB 1070 directly conflicts with the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which provides that “migrant workers and members of their families shall have the right to liberty and security of person [and] . . . shall not be subjected individually or collectively to arbitrary arrest or detention.” G.A. Res. 45/158, art. 16, U.N. Doc. A/RES/45/158 (Dec. 18, 1990). While international sources may not be binding upon this Court, they remain relevant in evaluating Mexico’s concerns with respect to SB 1070’s regulation of foreign persons and their conduct in the U.S.

Discriminatory enforcement of the law has adverse legal, social, economic, and political implications. Mexico asserts its legitimate interest in ensuring that its citizens, regardless of their migratory status, are not deprived of their rights under the U.S. constitution and international law, or subjected to hostile attitudes or actions by U.S. state actors or the society at large.

In addition, Mexico is concerned about the potential impact of this discriminatory cross-deputization regime on the safety of its citizens. Research suggests that “requiring the police to act as immigration officers has a detrimental effect on police legitimacy[,]” and leads to chilling effects on crime reporting,²² “allow[ing] criminal activity to transpire unchecked.”²³ Consequently, enforcement of SB 1070 would further encroach on the rights of Mexican nationals by leaving Latin-American populations in Arizona unprotected from criminal activity.

Mexico is also concerned about the dangerous patchwork created by SB 1070 and similar “copycat” laws. Several U.S. states have introduced, and continue to introduce, immigration bills similar to SB 1070. However, while these laws are all characterized as “copycat anti-immigration laws,” their provisions differ significantly from state to state.²⁴ These differences create a complex and perilous legal patchwork across the U.S., making it nearly impossible for Mexican nationals to understand their rights and obligations in each U.S. state, and significantly harming the ability of the federal governments to address immigration concerns and other bilateral issues in a comprehensive manner. Mexico’s concerns with SB 1070 should be analyzed in light of the increased harm to its bilateral relations with the U.S., and the

²² Liana Maris Epstein & Phillip Atiba Goff, *Safety or Liberty?: The Bogus Trade-Off of Cross-Deputization Policy*, 11 Analyses of Soc. Issues & Pub. Pol’y 314, 319 (2011).

²³ *Id.* at 321.

²⁴ See *infra* Section III, nn.81-82 for differences among the state laws.

heightened risks faced by its citizens when confronted with not one, but several state laws inconsistent not only with each other, but also with U.S. federal laws and policy regarding the treatment of foreign nationals. *See* Burns Decl. ¶ 10.

The cooperation and exchange between the governments and societies of Mexico and the U.S. is extensive, and the impact of SB 1070 on such relationship is great. Accordingly, it is essential that each country be able to approach diplomacy with a consistent front. Mexico respectfully submits that SB 1070, and the patchwork of “copycat” laws spurred by its enactment, adversely impact Mexico-U.S. bilateral relations, as well as Mexican citizens and other people of Latin American descent present in Arizona. Accordingly, Mexico asserts that the preliminary injunction of sections 2(B), 3, 5(C), and 6 of SB 1070 is fully warranted to avoid further harm to Mexico-U.S. relations.

ARGUMENT

I. SB 1070’s Intrusion in International Affairs Impedes Effective Diplomatic Collaboration

This Court has long made clear that “state actions that directly interfere[] with the operation of a federal program” are preempted.²⁵ *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968, 1971 (2011). SB 1070 directly interferes with federal immigration policy, because it impedes effective and consistent diplomatic relations.

In order to conduct effective diplomatic negotiations with the U.S., other countries need and depend on consistent and reliable relations regarding a variety of matters of bilateral and international importance. Mexico and the U.S. collaborate in a wide array of areas, including immigration, trade, tourism, law enforcement and security, use of natural resources, emergency management, and global and regional issues. The governments of both countries weigh multiple competing interests in the numerous arenas of their bilateral relationship, and prioritize them in an effort to develop a coherent and effective foreign policy strategy. Each issue impacts diplomatic relations as a whole and is carefully considered in an effort to achieve the most productive overall results. *See* Burns Decl. ¶11 (regarding the efforts and unique ability of the

²⁵ *See also* The Federalist No. 42 (James Madison)(concerning regulation of intercourse with foreign nations)(“If we are to be one nation in any respect, it clearly ought to be in respect to other nations.”); The Federalist No. 4 (John Jay)(concerning dangers from foreign force and influence).

U.S. federal government to “weigh[] multiple competing considerations and choos[e] among priorities in order to develop an overall foreign policy strategy that will most effectively advance U.S. interests and values”).²⁶ Mexico relies upon this consideration and weighing of U.S. interests in order to conduct diplomatic relations on the various bilateral matters impacted by immigration law. It is therefore essential to both nations that the interests of each country be expressed in “one voice.” *See Arizona*, 641 F.3d at 367.

In direct opposition to this uniform program, SB 1070 undermines the U.S. government’s comprehensive approach of weighing and prioritizing multiple competing interests, and thereby “endanger[s] [the] ability to negotiate international arrangements and to seek bilateral, regional or multilateral support across a range of . . . non-immigration concerns.” Burns Decl. ¶ 14. As conveyed by U.S. Secretary of State Hillary Clinton, even prior to going into effect, SB 1070 was already straining Mexico-U.S. relations.²⁷ Mexico’s ambassador to the U.S. Arturo Sarukhan explained that SB 1070 “threatens to poison the well from which our two nations have found and

²⁶ See also, Mary D. Fan, *Rebellious State Crimmigration Enforcement and the Foreign Affairs Power*, 89 Wash. U. L. Rev. *1, at *5 (forthcoming 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1996022 (“This oft-proffered argument [that states are merely enforcing federal laws] misses the point that the national executive’s crimmigration prosecutorial policies must balance much more complex factors, including foreign policy, in determining the optimal level of enforcement.”).

²⁷ See *Meet the Press with Secretary Clinton* [Transcript], May 2, 2010, <http://secretaryclinton.wordpress.com/2010/05/02/meet-the-press/>.

should continue to find inspiration for a joint future of prosperity, security, tolerance and justice.”²⁸ Through SB 1070, Arizona directly interferes with the U.S. government’s ability to conduct foreign affairs.

The danger raised by SB 1070 is not theoretical. As a direct result of this law, the Mexican Senate postponed review of a cooperation agreement regarding emergency management of natural disasters and accidents.²⁹ Mexican senators expressly noted not being “in the mood to enter into a cooperation agreement with a country that has harmed us through the approbation and signature of Arizona’s SB 1070.”³⁰ The agreement was not ratified by the Mexican congress until 2011, after Sections 2(B), 3, 5(C), and 6 had been enjoined.³¹ Similarly, due to SB 1070, all six Mexican border-state governors refused to attend the 2010 Mexico-U.S.

²⁸ Arturo Sarukhan, *Boosting Competitiveness*, May 2010, at 2, <http://www.embassyofmexico.org/mexicodispatch/MexicoDispatchMay10.pdf>.

²⁹ Gómez, *supra* note 9.

³⁰ Senator Luis Alberto Villarreal declared that the senate determined not to ratify the agreement “toda vez que no están en el ánimo de suscribir un acuerdo de cooperación con un país que nos ha agraviado a partir de la aprobación y la firma de la Ley SB 1070 de Arizona.” *Id.*

³¹ SRE, *Decreto Promulgatorio del Acuerdo entre México y Estados Unidos sobre Cooperación en la Administración de Emergencias en Casos de Desastres Naturales y Accidentes* [Decree Enacting the Agreement Between The Government of The United States of America and The Government of The United Mexican States on Emergency Management Cooperation in Cases of Natural Disasters and Accidents], Mar. 18, 2011, Global Info. Network, <http://www.glin.gov/> (search “245266”).

Border Governor Conference hosted by Arizona.³² The conference had to be cancelled by Governor Brewer, and then relocated to New Mexico, over the boycott of Governors Brewer and Perry.³³ Furthermore, the legislatures of fourteen Mexican states have condemned the law.³⁴

SB 1070's impact has reached international bodies as well. In July 2010, the governments of Bolivia, Cuba, Ecuador, Ghana, Guatemala, Micronesia, Panama, Senegal, Turkey and Uruguay, and the Parliamentary Assembly of the European Council joined Mexico in a declaration at the United Nation's 3rd World Conference of Speakers of Parliament condemning SB 1070.³⁵ Furthermore, the United Nations Office of the High Commissioner for Human Rights issued a statement condemning Arizona for a "disturbing pattern of legislative activity hostile to ethnic minorities and immigrants."³⁶ The members of MERCOSUR, UNASUR, SICA, and the legislative branches of Brazil, Ecuador, and Peru similarly expressed their objections to SB 1070.³⁷ *See also,*

³² Brewer, *Letter to the Honorable Governors*, *supra* note 10.

³³ Marc Lacey, *Border Governors Conference Under Way, Minus Most Governors*, N.Y. Times, Sept. 20, 2010, <http://thecaucus.blogs.nytimes.com/2010/09/20/border-governors-conference-under-way-minus-most-u-s-governors/>.

³⁴ *See Congreso tabasqueño*, *supra* note 11.

³⁵ CNN Wire Staff, *10 nations join Mexican opposition to Arizona law*, *supra* note 13.

³⁶ OHCHR, *supra* note 14.

³⁷ *Mercosur Trade Bloc Condemns Arizona Immigrant Law*, *supra* note 15; Janicke, *supra* note 15; Gen. Secretariat, SICA, *supra* note 15; *Los parlamentos de México y*

Burns Decl. ¶9 (regarding harm of Alabama’s similar immigration law to U.S. standing in regional and multilateral bodies).

Effective and consistent diplomacy with the U.S. depends on the countries’ ability to conduct productive negotiations regarding a variety of matters of bilateral and international importance. Arizona’s SB 1070 truncates the countries’ ability to cooperate by attempting to couch the complexity of bilateral negotiations into a one-issue matter. Mexico cannot effectively collaborate with the U.S. to address inherently international and border-specific matters, such as immigration, trade, and emergency cooperation, if U.S. political subdivisions establish their own requirements conflicting with the U.S. government’s efforts, priorities, and commitments.

A. SB 1070 Will Severely Hinder Mexico-U.S. Trade

Mexico is greatly concerned with the repercussions of SB 1070 on trade and commercial relations with the U.S. and Arizona. Growth in U.S.-Latin American trade has historically outpaced all other regions,³⁸ and Mexico is the second largest buyer of U.S. exports worldwide.³⁹ The interaction of labor markets, tourism, business travel, and student migration is of great impor-

Brasil rechazan ley SB 1070, supra note 15; Congreso peruano rechaza Ley de Arizona, supra note 15; Presidencia de la República, supra note 15.

³⁸ Hornbeck, *supra* note 17, at 1.

³⁹ Villarreal, *supra* note 17, at 1.

tance to both economies.⁴⁰ By ignoring crucial bilateral concerns, the harms caused by SB 1070 stretch beyond immigration and negatively impact the rich economic ties between the countries.⁴¹

The economic benefits of immigration for border states are even greater. The gross domestic product (“GDP”) of the combined border states was over \$3.6 trillion, and represents 24% of the aggregate GDP of Mexico and the U.S.⁴² In fact, “only the United States, Japan, China and Germany have a GDP larger than the border region.”⁴³

Arizona is no exception. Each day approximately 65,000 Mexicans are admitted into Arizona, where they spend an average of \$7.35 million daily.⁴⁴ The positive economic impact of persons who settle in the state is even larger. A University of Arizona study concluded that the consumer spending power of immigrant-headed households in Arizona totaled \$10.5 billion in 2004, supported approxi-

⁴⁰ *Remarks by Presidents Obama and Calderón, supra* note 8; Tamar Jacoby, *Immigration Nation*, 85 Foreign Affairs 50, 54-58 (2006).

⁴¹ See *supra* Section I for a discussion of SB 1070’s harms.

⁴² Andrew Selee, *et al.*, *The United States and Mexico: More than Neighbors*, Woodrow Wilson Institute for Scholars, Sept. 2010, at 39-41, <http://www.wilsoncenter.org/publication/more-neighbors>.

⁴³ *Id.* at 41.

⁴⁴ Vera Pavlakovich-Kochi & Alberta H. Charney, *Mexican Visitors to Arizona*, Econ. & Bus. Research Ctr., Dec. 2008, http://ebr.eller.arizona.edu/research/mexican_visitors_to_arizona_2007_08.pdf.

mately 66,500 full-time jobs, accounted for \$10.2 billion in state economic output, and generated approximately \$776 million in tax revenues.⁴⁵

Over 15 million people live in towns, counties, and municipalities in the Mexico-U.S. border area,⁴⁶ including numerous families with members residing on both sides of the border. In 2010, approximately 168 million people were admitted into the U.S. through the Mexico-U.S. border, of which 22.5 million crossed into Arizona.⁴⁷ The ties at the border are strong, making the bi-national area a single community.⁴⁸

⁴⁵ Approximately \$6.1 billion from naturalized citizens and \$4.4 billion from non-citizens. Judith Gans, *Immigrants in Arizona: Fiscal and Economic Impacts*, Udall Ctr. for Stud. in Pub. Pol’y, U. of Ariz, at 39-43 (June 2008), <http://udallcenter.arizona.edu/immigration/publications/impactofimmigrants08.pdf> (last year for which data is available).

⁴⁶ See, *supra* note 42, at 39.

⁴⁷ U.S. Dep’t Transp., *Border Crossing/Entry Data*, Aug. 2011, http://www.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BC_Index.html (follow “Click here to query data.” Select Port Location “Southern Border Ports;” Year “2010;” Month “Annual Summary;” Port Name “Aggregate All Southern Border Ports;” and Measure “Train Passengers,” “Bus Passengers,” “Personal Vehicle Passengers” and “Pedestrians.” Then, deselect “Aggregate All Southern Border Ports;” and select Arizona ports).

⁴⁸ See Maria Markham & Nadia Diaz Funn, *Strengthening Southwest Border and Native Families: Portfolio Reflection 2008*, at 4 (2009)(recognizing a “U.S.-Mexico common community, or ‘Fronterismo’”), <http://www.aecf.org/KnowledgeCenter/Publications.aspx?pubguid={F6277698-B0B6-4C1C-8636-CC7DE28BA967}>.

To enhance economic trade, Mexico and the U.S. have pursued trade liberalization through multi-lateral, regional, and bilateral negotiations, resulting in multifaceted economic relationships.⁴⁹ Governor Brewer has recognized the importance of collaboration between the two countries, stating: “The U.S. and Mexico share the busiest international border in the world, and it is imperative that we foster and grow this bi-national partnership.”⁵⁰ Diplomacy is crucial to such efforts. SB 1070 impedes collaboration by pushing “nations that work together and trade” to “mutual recrimination, which has been so useless and damaging in previous times.”⁵¹

Strained diplomatic relations substantially impede the ability of Mexico and the U.S. to jointly develop, enhance, and maintain commercial exchange critical to the border and both economies. Those bilateral efforts are meaningless when the population and business communities on both sides of the border are discouraged from engaging in trade and economic exchange. As noted by New York City Mayor Bloomberg, “as a country, America will be badly hurt if more

⁴⁹ Hornbeck, *supra* note 17, at 5-8; Villarreal, *supra* note 17, at 16-18.

⁵⁰ Border Governors Conference News, *Border Governors Meet to Discuss Pressing Issues*, Sept. 4, 2009, http://www.bordergovernors2010.org/2010_Governors_Conference/news.asp.

⁵¹ Press Release, The White House, *Remarks by President Calderón of Mexico at Official Arrival Ceremony* (May 19, 2010), <http://www.whitehouse.gov/the-press-office/remarks-president-calder-n-mexico-official-arrival-ceremony>. See also *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 770 (2004)(removing blockade to cross-border trucking).

states follow Arizona's lead, . . . Foreign investment and tourism are critical to our national economy, and this new law sends exactly the wrong message to international companies and travelers."⁵²

Concrete examples of SB 1070's far-reaching harms include the cancellation by the National Autonomous University of Mexico and the Autonomous University of San Luis Potosi of their student exchange programs with the University of Arizona, and the determination of the World Boxing Council not to schedule Mexican boxers to fight in Arizona.⁵³ Just recently, the American Educational Research Association issued an announcement regarding its decision not to hold any meetings in Arizona or Georgia until their respective immigration laws are repealed.⁵⁴ Sim-

⁵² NYC.gov, *supra* note 18. See also A. Elena Lacayo, *The Wrong Approach: State Anti-Immigration Legislation in 2011*, at 9-11 (2012), http://www.nclr.org/images/uploads/publications/The_Wrong_Approach_Anti-ImmigrationLeg.pdf (noting businessmen opposition to SB 1070 and "copycat" bills).

⁵³ *Who Is Boycotting Arizona?*, *supra* note 19; Assoc. Press, *World Boxing Council*, *supra* note 19. See also Lacayo, *supra* note 52, at 7-8, 18-19 (listing the approximately \$1.5 billion cost of SB 1070 to Arizona and similar costs to other states).

⁵⁴ Press Release, Am. Educ. Research Ass'n, *Georgia Immigration Law Leads AERA to Relocate 2013 Annual Meeting From Atlanta to San Francisco* (Feb. 2012), <http://www.aera.net/Publications/AERAHighlights/February2012/GeorgiaImmigrantLawRelocation/tabid/12587/Default.aspx>; see also Robert McClendon, *Group canceling Mobile meeting: Immigration law affected sense of safety, comfort*, Press-Register, Mar. 5, 2012, http://blog.al.com/live/2012/03/medical_group_explains_why_it.html (regarding a

ilarly, SB 1070 has raised obstacles to tourism, as exemplified by the travel warning issued by Mexico on April 27, 2010 (and still in effect) alerting travelers that the enactment of SB 1070 shows “an adverse political atmosphere for migrant communities and for all Mexican visitors.”⁵⁵ A similar alert has been issued for Alabama regarding the potentially prejudicial effects due to several sections of HB 56 going into effect.⁵⁶

A scenario mirroring that which took place recently in Alabama, where similar provisions of HB 56 have not been enjoined, serves as a concrete example of the harms to international commercial exchange that could occur in Arizona if the injunction order is reversed. In Alabama, a German manager of Mercedes-Benz was arrested for not having a U.S. driver’s license in his possession while driving a rental car.⁵⁷ The anticipated impact on foreign investment due to such arrest and a similar detention of a Japanese employee of Honda led Governor Bentley to reassure the foreign business community and publicly affirm “[w]e are not anti-foreign companies. We

similar conference relocation out of Alabama by a national medical organization).

⁵⁵ Assoc. Press, *Mexico issues travel alert over new Arizona law*, USA Today, Apr. 27, 2010, http://www.usatoday.com/travel/news/2010-04-27-mexico-travel-alert-arizona-immigration-law_N.htm; SRE, *Guía del Viajero*, *supra* note 12.

⁵⁶ *Id.* (follow “Alabama, EUA”).

⁵⁷ Assoc. Press, *Mercedes Manager from Germany Arrested on Alabama Immigration Charge*, Nov. 18, 2011, <http://www.timesfreepress.com/news/2011/nov/18/mercedes-manager-germany-arrested-alabama-immigrat/?breaking-news>.

are very pro-foreign companies[.]”⁵⁸ *See also*, Burns Decl. ¶9 (regarding harm of Alabama’s similar immigration law to the ability of the U.S. to “negotiate and implement favorable trade and investment agreements”). Furthermore, as exemplified by the events in Alabama, if SB 1070 takes effect, Mexican citizens, regardless of their immigration status, will be rightly afraid to visit Arizona for work or pleasure out of concern that they will be subject to unlawful police scrutiny and detention.⁵⁹

The ability of Mexico and the U.S. to collaboratively develop, enhance, and maintain commercial exchange critical to both economies is severely weakened by tense diplomatic relations. Economic trade is further compromised if international business persons and entities feel threatened when conducting business with the U.S. Mexico cannot effectively work with the U.S. to develop a mutually beneficial commercial relationship if their joint resolutions are effectively nullified by the actions of individual states.

B. SB 1070 Derails Efforts Toward a Uniform Legal Migration Framework

With over 11 million nationals in the U.S., Mexico has a significant interest in ensuring the secure, orderly, and legal movement of its citizens in and through the U.S. Similarly, the Obama Administration has recognized the need for col-

⁵⁸ Assoc. press, *Alabama Governor to Foreign Biz*, *supra* note 20.

⁵⁹ *See* Lacayo, *supra* note 52, at 7-8 (listing Arizona’s \$769 million tourism-related revenue loss).

laboration with Mexico as one of its five guiding immigration principles.⁶⁰ Safe and orderly migration conditions can only be achieved through comprehensive, nationwide U.S. immigration policy. As this Court has affirmed, “[w]e recognize . . . the Nation’s need to ‘speak with one voice’ in immigration matters.” *Zadvydas v. Davis*, 533 U.S. 678, 700 (2001).

Immigration is regularly a principal discussion topic at bilateral meetings of the U.S. and Mexican presidents, and it was especially so shortly after the enactment of SB 1070. As President Obama acknowledged, both countries share the responsibility to address the issue, with Mexico’s efforts to create jobs and the U.S.’s efforts to “fix our broken immigration system[.]”⁶¹ Both presidents believe that SB 1070 is a “misdirected effort” to address immigration concerns.⁶²

The effects of Mexico-U.S. migration on labor markets, tourism, business travel, and education is of great importance to both countries.⁶³ Mexican citizens comprised the highest percentage (28%) of the 160 million tourists, business travelers, specialty workers, and students admitted into the U.S.

⁶⁰ The White House, *Immigration*, <http://www.whitehouse.gov/issues/immigration> (last visited June 10, 2010).

⁶¹ *Remarks by Presidents Obama and Calderón*, *supra* note 8.

⁶² *Id.*

⁶³ *Id.* (highlighting Calderón’s U.S. education to exemplify the benefits of intellectual exchange); *see also* Jacoby, *supra* note 40, at 54-58 (noting that foreign labor has complemented, not competed with, the U.S. labor force).

in 2010.⁶⁴ It is due to the economic, social, intellectual, and security benefits of international collaboration that Mexico and the U.S. recognize the importance of having a national immigration framework that ensures the secure, orderly, and legal movement of people into and across the U.S.⁶⁵ SB 1070 institutes an independent state immigration enforcement system that not only derails bilateral economic, social, and security efforts, but also imperils efforts at a comprehensive solution for immigration policy.

C. SB 1070 Impedes Collaborative, Holistic Border Management

Effective bilateral collaboration is particularly crucial to the communities on the Mexico-U.S. border. As noted by President Obama, “there are enormous flows of trade and tourists and people along the border region; the economies are interdependent[.]”⁶⁶ As discussed above, the economic benefit of collaborative economic trade, comprehensive immigration policy, cooperative emergency management, and consistent law enforcement policies (including regarding transnational organized crime) are critical to the highly interdependent border area.⁶⁷ Accordingly, on May 19, 2010,

⁶⁴ Randall Monger & Megan Matthews, *Nonimmigrant Admissions to the United States: 2010*, Dep’t of Homeland Sec. Off. of Immigr. Stat., Aug. 2011, at 1, 4, http://www.dhs.gov/xlibrary/assets/statistics/publications/ni_fr_2010.pdf.

⁶⁵ *Remarks by Presidents Obama and Calderón*, *supra* note 8.

⁶⁶ *Id.*

⁶⁷ See *supra* Section I.A.

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

Mexico and the U.S. entered into the Declaration by The Government Of The United States Of America and The Government Of The United Mexican States Concerning Twenty-First Century Border Management to strengthen collaboration regarding economic trade, tourism, and against criminal organizations.⁶⁸

The presidents of both nations believe that collaboration is essential to ensure that immigration reform “does not have an adverse impact on the economies of [the border] regions.”⁶⁹ The widespread benefits of international collaboration to the border regions are another reason why Mexico and the U.S. recognize the importance of addressing bilateral issues, including immigration

⁶⁸ Press Release, The White House, *Declaration by The Government Of The United States Of America and The Government Of The United Mexican States Concerning Twenty-First Century Border Management* (May 19, 2010), <http://www.whitehouse.gov/the-press-office/declaration-government-united-states-america-and-government-united-mexican-states-c>.

⁶⁹ *Remarks by Presidents Obama and Calderón*, *supra* note 8.

policy, through comprehensive diplomatic negotiations that prioritize a wide array of concerns. Contrary to this inclusive approach, SB 1070 institutes a state immigration enforcement system that impedes crucial border management collaboration at the national level.⁷⁰ Mexico and the U.S. cannot cooperatively manage border issues, when states interfere with bilateral goals.

II. SB 1070 Poses a Risk of Harassment By Law Enforcement to Mexican Citizens

Discriminatory enforcement of the law has adverse legal, social, economic, and political implications. Mexico has a legitimate interest in ensuring that its citizens, regardless of their migratory status, are not deprived of international and constitutional protections or subjected to hostile attitudes or actions by U.S. state actors or the society at large. *See Hines v. Davidowitz*, 312 U.S. 52, 64 (1941) (“One of the most important and delicate of all international relationships, recognized immemorially as a responsibility of a government, has to do with the protection of the rights of a country’s own nationals when those nationals are in another country.”).

Although section 2(B) provides that officers “may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States and Arizona Constitution[,]” Mexico is deeply concerned that the application of SB 1070

⁷⁰ Exemplified by the refusal of Mexican governors to attend the 2010 Border Governor Conference. *See Brewer, Letter to the Honorable Governors*, *supra* note 10.

by Arizona’s officers—who will be required to make a reasonable attempt to determine the immigration status of a person if the officer has “reasonable suspicion” to believe that such person “is an alien and is unlawfully present in the United States”—could lead to the harassment of Mexican citizens and individuals of Latino appearance alike. SB 1070 § 2(B). In light of the continuous growth of the Hispanic and Mexican-American population in the U.S.,⁷¹ Mexico is concerned and simply unsure how SB 1070 can be applied in a race-neutral manner.

While Latino appearance is not a proper factor for law enforcement, SB 1070 impliedly encourages the use of race, color, or national origin in implementing SB 1070’s immigration provisions. This is confirmed by the public rhetoric of Arizona’s governor (the chief elected officer and civilian head of law enforcement) and of other state officials. In discussing the criteria to be used as reasonable suspicion of a person’s legal status in the U.S. under SB 1070, Governor Brewer focused on the physical appearance of “illegal immigrants,” stating: “I do not know what an illegal immigrant looks like. I can tell you that there are people in Arizona that assume they know what an illegal immigrant looks like.”⁷² Giving state police the authority to simply create a description of “what an illegal immigrant looks like” will

⁷¹ Pew Hispanic Ctr., *Census 2010: 50 Million Latinos: Hispanics Account for More Than Half of Nation’s Growth in Past Decade*, Mar. 24, 2011, <http://pewhispanic.org/files/reports/140.pdf>.

⁷² CNN Wire Staff, *Arizona Governor Signs Immigration Bill*, *supra* note 21.

inevitably lead to appearance-based arrests and the harassment of Mexicans legally present in the U.S., giving Mexico justified cause for concern.

In 2000, the Ninth Circuit held that the “use of race and ethnicity for such purposes [as a criterion in government decision-making] has been severely limited.” *United States v. Montero-Camargo*, 208 F.3d 1122, 1143 (9th Cir. 2000)(citing *Adarand Constructors v. Peña*, 515 U.S. 200 (1995); and *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989)). The circuit court acknowledged that “[t]he Hispanic population of the nation and of the Southwest and Far West in particular, has grown enormously—at least five-fold in the four [border] states referred to in the Supreme Court’s decision [Arizona, California, New Mexico and Texas].” *Montero-Camargo*, 208 F.3d at 1133-34 n.22. The court noted that even in circumstances where race “may be considered when the suspected perpetrator of a specific offense has been identified as having such an appearance[,]” persons of a particular racial origin may not be stopped and questioned because of such appearance. *Id.* at 1134 n.22. Accordingly, the Ninth Circuit explained that even at border check stops,

at this point in our nation’s history, and given the continuing changes in our ethnic and racial composition, Hispanic appearance is, in general, of such little probative value that it may not be considered as a relevant factor where particularized or individualized suspicion is required. . . in determining which particular individuals among the vast Hispanic populace should be stopped by law enforcement officials on the lookout for illegal aliens.

Id. at 1135. *See also*, *United States v. Swindle*, 407 F. 3d 562, 569-70 (2d Cir. 2005) (“race, when considered by itself and sometimes even in tandem with other factors, does not generate reasonable suspicion for a stop”); *United States v. Collins*, 532 F.2d 79, 85-86 (8th Cir. 1976)(same); *United States v. Avery*, 137 F.3d 343, 354 (6th Cir. 1997) (“the reasonable suspicion requirement for an investigative detention cannot be satisfied when the sole factor grounding suspicion is race”).

In fact, the 2010 census establishes that minorities represent more than half of the population in Washington D.C., Hawaii, New Mexico, California and Texas, and at least a third of the population in 17 states, including Arizona.⁷³ Hispanics represent 16% of the overall population of the U.S. (over 50 million), and at least 20% of the population of Arizona, California, Colorado, Florida, Nevada, New Mexico, and Texas.⁷⁴ Being Latino has as much to do today with being a U.S. citizen as it does with being an immigrant. Nonetheless, “the speed demanded by [cross-deputization immigration] policing could lead to an increase in stereotyping and heuristic processing[.]” and thus, “[t]he association between Latino and undocumented immigration has the potential to become an automatic linkage.”⁷⁵ Mexico is rightly con-

⁷³ Karen R. Humes, *et al.*, *2010 Census Briefs, Overview of Race and Hispanic Origin: 2010*, Mar. 2011, at 18, <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

⁷⁴ Sharon R. Ennis, *et al.*, *2010 Census Briefs: The Hispanic Population: 2010*, May 2011, at 1, 6, <http://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf>.

⁷⁵ Epstein, *supra* note 22, at 318. *See also*, Fan, *supra* note 26, at *16-*21 (asserting that state immigration enforcement laws create a caste system).

cerned about the latent discriminatory effect of SB 1070 on its citizens, which echoes past discrimination of different groups.⁷⁶ Given the growing numbers of the Hispanic population, it is imperative that immigration enforcement be carried out in a way that is fair to all individuals regardless of their ethnic origin.

SB 1070 encourages an unacceptable risk of unfair and disproportionate targeting of Latin-Americans, which in immigration enforcement a federal judge found indistinguishable from “the former practice of Southern peace officers who randomly stopped black pedestrians to inquire, ‘Hey, boy, what are you doin’ in this neighborhood?’” *United States v. Zapata-Ibarra*, 223 F.3d 281, 285 (5th Cir. 2000)(Wiener, J., dissenting).⁷⁷ SB 1070 promotes negative stereotypes about Latin American appearance⁷⁸ and encourages pri-

⁷⁶ Fan, *supra* note 26, at *26-*31 (comparing the impetus behind SB 1070 to the impetus behind the nineteenth century laws against “the vilified alien ‘Chinaman’[,]” and noting the unconstitutionality of such laws due to their impact on foreign relations).

⁷⁷ See Joan W. Howarth, *Representing Black Male Innocence*, 1 J. Gender, Race & Just. 97, 106 (1997)(“The stereotype that all Latino’s are ‘foreigners’ of suspicious immigration status influences immigration law.” Similarly, “the deeply imbedded idea of a frightening Black man has some influence on every person in America. . .”).

⁷⁸ See Int’l Fed’n for Hum. Rts., *United States—Mexico Walls, Abuses, and Deaths at the Borders*, Mar. 11, 2008, <http://www.fidh.org/IMG/pdf/USAMexiquemigran488ang.pdf> (“Personally, I have felt offended and harassed by the attitude they (Border Patrol) have toward me because of my dark appearance. . . . My family members that are white . . . are never questioned or detained.”).

vate persons to target Mexicans.⁷⁹ Additionally, SB 1070 will prevent Mexican citizens, afraid of harassment, from traveling into Arizona.⁸⁰

In addition to the imminent risk of violations of the rights of Mexican citizens under the U.S. Constitution, SB 1070 conflicts with principles of international law protecting the rights of foreign nationals in host countries. As noted by Justices of this Court, “statutes should not be interpreted to regulate foreign persons or conduct if that regulation would conflict with principles of international law.” *Hartford Fire Ins. Co.*, 509 U.S. at 820 (Scalia J., dissenting); *see also*, *FNC Bank v. Banco Para el Comercio*, 462 U.S. 611, 623 (1983)(recognizing that international law “is part of our law”)(quoting *The Paquete Habana*, 175 U.S. 677, 700 (1900)). The potentially arbitrary enforcement of SB 1070 directly conflicts with international law. In particular, SB 1070 is contrary to the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which provides that “migrant workers and members of their families shall have the right to liberty and security of person [and] . . . shall not be

⁷⁹ See, e.g., Smita P. Nordwall & Elliot Blair Smith, *Mexico Threatens to Sue Arizona Ranchers*, USA Today, May 3, 2000, at 19A (regarding armed Arizona ranchers using unjustified force to arrest Mexicans crossing their land); Lacayo, *supra* note 52, at 17; Kevin R. Johnson, *How Did You Get to be Mexican? A White/Brown Man’s Search for Identity*, at 46 (1999)(regarding distrust of law enforcement caused by the mistaken killings and brutal torture of black men due to New York City police’s use of racial profiling).

⁸⁰ See Lacayo, *supra* note 52, at 7-8 (listing Arizona’s \$769 million tourism-related revenue loss).

subjected individually or collectively to arbitrary arrest or detention.” G.A. Res. 45/158, art. 16, U.N. Doc. A/RES/45/158 (Dec. 18, 1990). As further evidence that SB 1070 conflicts with international law principles, the United Nations Office of the High Commissioner for Human Rights felt compelled to condemn Arizona for a “disturbing pattern of legislative activity hostile to ethnic minorities and immigrants.”⁸¹ While international sources may not be binding upon this Court, they remain relevant in evaluating SB 1070’s intrusion in foreign policy and Mexico’s concerns with respect to the statute’s regulation of foreign persons and their conduct in the U.S.

Furthermore, Mexico is concerned about the impact of this potentially discriminatory cross-deputization regime on the safety of its citizens. Research suggests that “requiring the police to act as immigration officers has a detrimental effect on police legitimacy[,]” and leads to chilling effects on crime reporting by both Whites and Latinos.⁸² This “allows criminal activity to transpire

⁸¹ OHCHR, *supra* note 14; *see also*, Burns Decl. ¶ 35 (stating that the policy to address unlawful presence in the U.S. through civil removals rather than criminal and punitive measures “is a policy that is understood internationally, that is consonant with multilateral resolutions expressing the view that an individual’s migration status should not in itself be a crime, and that is both important to and supported by foreign governments”).

⁸² Epstein, *supra* note 22, at 319; *see also* Phillip Atiba Goff, *et al.*, *Deputizing Discrimination?*, Consortium for Police Leadership in Equity, May 27, 2010, <http://www.citizensfortaxfairness.org/pdf/Immigration%20-%20Burbank%20Study%205-27-10.pdf>; Fan, *supra* note 26, at *18-*19.

unchecked.”⁸³ See also, *Brown v. City of Oneonta*, 221 F.3d 329, 339 (2d Cir. 2000) (“Law enforcement officials should always be cognizant of the impressions they leave on a community, lest distrust of law enforcement undermine its effectiveness.”). Mexico has a strong interest in ensuring that its citizens are protected from discrimination and crime, and that its collaborative efforts with the U.S. regarding transnational organized crime are not encumbered by the actions of individual states. As President Obama stated, SB 1070 threatens “to undermine basic notions of fairness that we cherish as Americans, as well as the trust between police and our communities that is so crucial to keeping us safe.”⁸⁴

Discriminatory enforcement of the law has adverse social, legal, economic, and political implications. Mexico has a legitimate interest in ensuring that its citizens, regardless of their migratory status, are not deprived of their rights under the U.S. Constitution and international law or subjected to hostile attitudes or actions by U.S. state actors or the society at large.

⁸³ Epstein, *supra* note 22, at 321 (noting also that “non-White officers,” who play crucial liaison roles within their communities, would be more likely to quit if cross-deputation immigration laws are enacted).

⁸⁴ Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N.Y. Times, Apr. 23, 2010, <http://www.nytimes.com/2010/04/24/us/politics/24immig.html>.

III. SB 1070 Dangerously Leads to a Patchwork of Laws that Heightens the Harms of SB 1070 to Effective Diplomatic Relations

SB 1070 has spurred a plethora of “copycat” legislation, leading to a dangerous patchwork of inconsistent immigration laws, and impeding effective and consistent diplomatic relations. Arizona’s SB 1070, Alabama’s HB 56, Georgia’s HB 87, Indiana’s SB 590, Utah’s HB 497, South Carolina’s SB 20, and the other state bills spurred by the avalanche of “copycat” legislation create a dangerous patchwork of inconsistent state immigration laws that fail to consider the careful balance of foreign relations concerns of both countries, and nullify the comprehensive range of tools for regulating entry and enforcement in the context of the multifaceted relationship.

During 2011, nearly two thirds of U.S. states introduced a “copycat bill” and, while the majority of the bills were not enacted by the end of the 2011 legislative session, the attempts continue in several states.⁸⁵ Although these laws are all characterized as “copycat anti-immigration laws,”

⁸⁵ For example, on March 14, 2012, Mississippi’s House adopted HB 488, a bill that would require state officers to verify the immigration status of persons arrested, upon “reasonable suspicion” that such person is “an alien and is unlawfully present” in the U.S. HB 488 § 2(2); Mississippi Legislature, *House Bill 488* (Mar. 15, 2012), <http://billstatus.ls.state.ms.us/2012/pdf/history/HB/HB0488.xml>. See also e.g., Seth Hoy, *More States Introduce Costly Immigration Enforcement Bills in 2012*, ImmigrationImpact.com, Feb. 3, 2012, <http://immigrationimpact.com/2012/02/03/more-states-introduce-costly-immigration-enforcement-bills-in-2012/>; Lacayo, *supra* note 52, at 9-10.

their provisions differ significantly from state to state.⁸⁶ These differences create a complex and perilous legal patchwork. Various states are also introducing immigration bills that are not entirely modeled after Arizona’s SB 1070.⁸⁷ As a result, such legislative agendas have resulted in a mix of disparate laws across the U.S., creating an environment of uncertainty, making it nearly impossible for Mexican nationals to understand their rights and obligations in each U.S. state, and significantly harming the ability of the federal governments of both nations to address issues of international importance. As noted by Deputy Secretary of State William J. Burns regarding Alabama’s HB 56, when an individual state law “is considered in the context of the unprecedented surge in state legislative efforts to create state-specific immigration enforcement policies, each of these threats is significantly magnified and several additional concerns arise[,]” including states “mak[ing] it substantially more difficult for foreign nationals to understand their rights and obligations, rendering them more vulnerable to discrimination and harassment[,]” and “creat[ing] a cacophony as well as confusion regarding U.S.

⁸⁶ For example, Utah’s bill mandates all officers to inspect the identification documents of everyone they stop, detain or arrest, whereas Arizona and Alabama’s bills only require that officers inspect such documents if they have “reasonable suspicion” to believe the person is in the country unlawfully. HB 497 §§ 3-4; SB 1070 § 2; HB 56 § 12. Georgia’s bill authorizes the verification only if officers have “probable cause to believe that a suspect has committed a criminal violation[.]” HB 87 § 8.

⁸⁷ For example, unlike SB 1070, Alabama’s HB 56 regulates education, enforceability of contracts, and apartment rentals. HB 56 §§ 8, 27-28.

immigration policy, and thereby undermin[ing] the United States ability to speak with one voice in the immigration area, with all its sensitive foreign policy implications.” Burns Decl. ¶ 10.

As the Ninth Circuit recognized, “the threat of 50 states layering their own immigration enforcement rules on top of INA also weighs in favor of preemption.” *Arizona*, 641 F.3d at 354; *see also Bonito Boats v. Thunder Craft Boats*, 489 U.S. 141, 161 (1989)(finding that state patent laws “could pose a substantial threat” to the federal patent system’s goals). President Obama reaffirmed the importance of avoiding this immigration patchwork, stating: “It is a mistake for states to try to do this piecemeal. We can’t have 50 different immigration laws around the country.”⁸⁸ As noted in connection with the enactment of Georgia’s HB 87, Mexico stresses that “[t]he vision promoted by [SB 1070] goes against the principles of shared responsibility, trust and mutual respect under which the federal governments of Mexico and the United States have determined to work to address shared challenges in North America.”⁸⁹

⁸⁸ Jeremy Redmon, *Obama Blasts Georgia’s Bill Targeting Illegal Immigrants*, Cox Newspapers, Apr. 28, 2011, <http://timesfreepress.com/news/2011/apr/28/obama-blasts-georgia-bill-targeting-illegal-immigr/>. *See also*, Keith Cunningham-Parmeter, *Forced Federalism: States as Laboratories of Immigration Reform*, 62 Hastings L. J. 1673 (2011)(concluding that states are inadequate to enact immigration-related reform, because their statutes “cannot help answer the most important questions that dominate the national debate over immigration reform”).

⁸⁹ *See* SRE, *The Mexican Government Regrets the Enactment of HB 87 in Georgia*, May 13, 2011, <http://www.consulmexatlanta.org/HB87GEORGIA/PressSRE157.pdf>.

Mexico has a legitimate interest in supporting U.S. efforts to prevent its states from affecting bilateral relations. The roots of cooperation between Mexico and the U.S. run deep and wide. The executive and legislative branches of the two countries, almost every federal agency, and dozens of states and local governments collaborate directly with their counterparts across the border.⁹⁰ Because the bilateral cooperation is extensive, it is essential for Mexico-U.S. diplomatic relations that each country is able to approach discussions with a consistent front.

“[T]he interest of the cities, counties and states, no less than the interests of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference.” *Hines*, 312 U.S. at 63 (1941). SB 1070 poses an imminent threat to Mexico-U.S. bilateral relations. Mexico has a compelling interest in consistent relations among nations, and in the Court upholding the order preliminarily enjoining sections 2(B), 3, 5(C), and 6 of SB 1070.

⁹⁰ See Seelke, *supra* note 2, at 13-27.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* respectfully requests that this Court affirm the April 11, 2011 decision of the Ninth Circuit upholding the July 28, 2010 preliminary injunction order of the U.S. District Court for the District of Arizona.

Respectfully submitted,

HENRY L. SOLANO

Counsel of Record

DEWEY & LEBOEUF LLP

1301 Avenue of the Americas

New York, New York 10019

(212) 259-8000

hsolano@deweyleboeuf.com

Counsel for Amicus Curiae

Of Counsel:

CARLA GORNIK

CHRISTOPHER R. CLARK

BRANDON W. DUKE

Exhibit A

This is Google's cache of <http://www.bordergovernors2010.org/news.asp>. It is a snapshot of the page as it appeared on Feb 28, 2012 01:23:05 GMT. The [current page](#) could have changed in the meantime. [Learn more](#)

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XXVIII Border Governors
Conference Cancelled

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Governor Brewer meets with the former Chair of the Border Governors Conference in preparation of the XXVIII Border Governors Conference

 Governors Natividad and Brewer

Arizona Governor Brewer and former Nuevo Leon Governor Natividad Gonzalez Paras met in numerous occasions to discuss the responsibilities of the Chair and Co-Chair of the XXVII Border Governors Conference in Monterrey, Nuevo Leon.

During these meetings, Governor Brewer was brought to date on a very important binational plan that was unveiled during the conference known as the [Strategic Guidelines of the Competitive and](#)

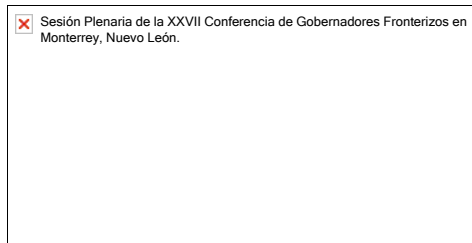
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[Sustainable Development of the U.S.-Mexico Transborder Region](#). This plan delineates the needs of the border region, and will serve as the mapguide for local, state and federal stakeholders to address such needs.

Governor Brewer will bring this plan to life at the XXVIII Border Governors Conference in Phoenix, Arizona on September 8-10, 2010, by implementing policy initiatives under the four policy areas introduced within the plan: [Competitiveness](#), [Sustainability](#), [Security](#) and [Quality of Life](#).

Border Governors Meet to Discuss Pressing Issues:

Competitiveness, Sustainability, Security, and Quality of Life top initiatives during this visit



**XXVII Border Governors
Conference plenary session in
Monterrey, Nuevo Leon**

Monterrey, Nuevo Leon, Mexico —U.S. and Mexico border governors convened this week in Monterrey, Nuevo Leon, Mexico for the XXVII Border Governors Conference (BGC), the largest binational annual venue, which brings together border leaders to address and resolve some of the most important issues affecting the United States and Mexico. This annual conference allows border governors to present to the federal governments in Washington, D.C. and Mexico City a uniform voice for the borderlands.

Arizona Governor Janice K. Brewer was forced to cancel her planned trip to Monterrey as a constitutionally mandated Sept. 5th deadline on action for state budget bills presented to her last week by the Arizona Legislature loomed. She was represented by Joe Kanefield, General Council to Governor Brewer and by Margie Emmermann, Governor Brewer's Policy Advisor for Mexico and Latin America and Executive Director of the Arizona Mexico Commission.

"The Border Governors Conference provides an excellent forum for bilateral cooperation in addressing key issues affecting the U.S.-Mexico border region at a local, state and federal level," said Vice Chair and Arizona Governor Janice K. Brewer. "The U.S. and Mexico share the busiest international border in the world, and it is imperative that we foster and grow this binational partnership. The BGC provides this opportunity. I am incredibly disappointed to have missed this year's event, but look forward to hosting next year's conference in Arizona."

During this year's conference, the *Strategic Guidelines for the Competitive and Sustainable Development of the U.S.-Mexico Transborder Region* was unveiled. This initiative proposes and outlines in detail an ambitious development strategy for the U.S.-Mexico border region through 2030. It's non-binding for participant border states and its purpose is to serve as a mechanism for cooperation and coordination in the transborder region. This report developed a unified vision for the region centered on four strategic guidelines where the transborder region will be:

- Competitiveness – a space where innovation, knowledge, entrepreneurialism, and synergistic cooperation will engender a competitive economy
- Sustainability – home to sustainable economies and societies committed to protecting biodiversity and nature
- Security – a secure place for residents, businesses and visitors as a result of coordinated effort between Mexico and the U.S. to fight crime and protect the people living in the region
- Quality of Life – a place of opportunity where residents will have access to more and better education, healthcare and housing

During the conference, Arizona led the way in the establishment of *Public-Private Partnerships* that will help border states meet the long-term infrastructure needs, particularly when it comes to ports of entry and their connectivity to the federal highway systems. Through the BGC, the U.S. and Mexico federal governments were asked to explore the possibility of creating special grants or incentives to promote this program along the border and within all industry sectors.

An agreement, *Partnership with the Council of State Governments*, was signed by the Border Governors Conference Border Security Work Table, the Conference of Western Attorney Generals, the Council of State Governments – WEST, and the U.S.-Mexico State Alliance Partnership that will further strengthen the relationship with the Council of State Governments by directing the BGC worktables to work closely

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with them to maximize resources, jointly manage projects and work collectively to address issues of mutual concern. This will set the stage for a strong partnership for Arizona when we host the upcoming conference. Each year, the conference is hosted by border state on a rotating basis. In 2010, it will be hosted by Arizona where it will become chair of the XXVIII Border Governors Conference. More details will be made available on our Web site in 2010.

Participants who attended this year's Border Governors Conference included Secretary of Foreign Relations for Mexico Patricia Espinosa; U.S. Dept. of Homeland Security, Border Czar, Alan Bersin; Gil Kerlikowske, Drug Czar; U.S. Ambassador to Mexico Carlos Pascual; Mexican Ambassador to the U.S. Arturo Sarukhan; Deputy Assistant Secretary for U.S. Immigration and Customs Enforcement John Torres; Nuevo Leon Gov. Natividad Gonzalez; New Mexico Gov. Bill Richardson; Tamaulipas Gov. Eugenio Hernandez Flores; Coahuila Gov. Humberto Moreira Valdes; Chihuahua Gov. Jose Reyes; Sonora Gov. Eduardo Bours Castelo; Baja California Gov. Jose Guadalupe Osuna Millan; Mr. Victor Carrillo, Stand-in for Texas Gov. Rick Perry, and Mr. Ricardo Martinez, Stand-in for California Gov. Arnold Schwarzenegger.

Border Governors Representatives

Visit Washington D.C. to Address Border Priorities:

Competitiveness, Sustainability, Security, and Quality of Life top initiatives during this visit

 Border governors representatives visit Washington D. C.

Washington, D.C. — On behalf of their respective governors, U.S. and Mexico border governors' representatives fulfilled their annual commitment in meeting with the U.S. federal government to address pressing issues along the U.S.-Mexico border region and convened an outreach visit to the nation's capitol. This visit allows for the Border Governors Conference to present to the U.S. federal government a uniform voice for the transborder region.

Margie A. Emmermann, XXVIII Border Governors Conference (BGC) Technical Secretariat and Conference Coordinator, represented Arizona Governor Janice K. Brewer, XXVIII BGC Chair, led the delegation through an intense 3-day meeting agenda, meeting with federal agencies and with Capitol Hill.

"The Border Governors Conference (BGC) has been in the forefront of the U.S.-Mexico bilateral relationship in addressing issues affecting both nations, and BGC recognizes the need to further collaborate with the federal government to implement immediate and efficient policies that impact the competitiveness of the border region" said Ms. Emmermann. "BGC offers the opportunity to bring a unified voice to federal entities on behalf of the region, and our message to the federal government during this trip was to develop policies to create a more competitive, sustainable and secure border region that can offer quality of life to its border residents."

The border states developed a list of priorities that were addressed throughout their federal visits aligned within four strategic areas: Competitiveness, Sustainability, Security and Quality of Life.

- Funding for Ports of Entry Infrastructure and additional staffing at all ports of entry
- Focused programs to reduce border wait times in both north- and south-bound directions
- Foster joint planning for U.S.-Mexico border infrastructure
- U.S.-Mexico Fund to promote the competitiveness of the region based on knowledge, science, technology and innovation.
- Establishment of Homeland Security Technology Incubator for technologies developed in the U.S.-Mexico border region
- Establish a BGC Advisory Council designed to create smart border projects such as SBINet and Project 28
- Expand use of E-Trace and Operation Gunrunner to enhance security efforts
- The formalization and ratification of a compact for cross-border emergency response
- Increase federal action to assist in securing U.S. borders
- Promote programs for energy efficiency
- Expand programs that will enhance management of shared water resources
- Exchange of Transboundary Environmental Impact Assessment (TEIA) findings
- Increase funding to fight tuberculosis in the border region
- Continue and expand funding to develop a robust joint infectious disease surveillance, epidemiology and laboratory network in the U.S.-Mexico border region
- Promote programs that foster green sources of energy and energy conservation
- Promote the exploration and production of low cost domestic energy sources
- Increase Funding for substance abuse services in the border region

The BGC Representatives initiated their 3 day visit with a meeting with Administrator Victor Mendez,

Federal Highway Administration; Ambassador Arturo Sarukhan, Mexican Embassy in the U.S.; and it culminated in a meeting with the new Customs and Border Protection Commissioner Alan Bersin. Additionally, we met with the Department of Transportation, Department of Justice – Bureau of Alcohol, Tobacco, and Firearms, Department of Health and Human Services, Department of Labor, U.S. Environmental Protection Agency, Department of Agriculture – Rural Development, Council of Environmental Quality, Department of Homeland Security, General Service Administration, Department of State, National Science Foundation, Woodrow Wilson Institute, and the Congressional Border Caucus.

U.S. - Mexico Hot Topics

✖ Divider

[Merida 2.0: A New Phase in U.S.-Mexico Security Cooperation](#)

By [Dora Beszterczey](#)
Published: March 26, 2010

[United States-Mexico Partnership: A New Border Vision](#)

U.S. Department of State

Responding to a growing sense that the military-led fight against drug trafficking organizations has failed to curb violence across our southern border, the United States and Mexico formally announced a shift in their counternarcotics strategy last week. The “[new stage](#)” in bilateral cooperation will aim to strengthen civilian law enforcement institutions and rebuild communities crippled by poverty and crime. [more...](#)

Mexico and the United States have a shared interest in creating a 21st century border that promotes the security and prosperity of both countries. The U.S. and Mexican governments have launched a range of

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Published: March 23, 2010

initiatives that challenge the traditional view of “hold the line” and are developing a framework for a new vision of 21st century border management. [more...](#)

Exhibit B

ISSUES

Civil Rights
 Defense
 Disabilities
 Economy
 Education
 Energy & Environment
 Ethics
 Family
 Fiscal Responsibility
 Foreign Policy
 Health Care
 Homeland Security
Immigration
 Poverty
 Rural
 Seniors & Social Security
 Service
 Taxes
 Technology
 Urban Policy
 Veterans
 Women
 Additional Issues

Immigration

Progress

- The President signed the [Children's Health Insurance Program Reauthorization Act](#), which provides quality health care to 11 million kids – 4 million who were previously uninsured – and removes barriers preventing legal immigrant children from being covered.
- The [American Recovery and Reinvestment Act](#) provides over \$400 million in funds to strengthen security and infrastructure for ports of entry on the Southwest border.

Guiding Principles

President Obama believes that our broken immigration system can only be fixed by putting politics aside and offering a complete solution that secures our border, enforces our laws, and reaffirms our heritage as a nation of immigrants. He believes our immigration policy should be driven by our best judgment of what is in the economic interest of the United States and what is in the best interest of the American worker. President Obama recognizes that an orderly, controlled border and an immigration system designed to meet our economic needs are important pillars of a healthy and robust economy.

Strengthen Border Control

President Obama will protect the integrity of our borders by investing in additional personnel, infrastructure, and technology on the border and at our ports of entry.

Improve Our Immigration System

President Obama will fix the dysfunctional immigration bureaucracy and enable legal immigration so that families can stay together.

Remove Incentives to Enter Illegally

President Obama will remove incentives to enter the country illegally by preventing employers from hiring undocumented workers and enforcing the law.

Bring People Out of the Shadows

President Obama supports a system that allows undocumented immigrants who are in good standing to pay a fine, learn English, and go to the back of the line for the opportunity to become citizens.

Work with Mexico

President Obama will promote economic development in Mexico to decrease the economic desperation that leads to illegal immigration.

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the Rose Garden.

The President speaks out on comprehensive immigration reform and the recently-passed law in Arizona at a celebrating in

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24 Service Members Who Became Americans Today



members.

Secretary of Homeland Security Janet Napolitano talks about her naturalization ceremony today with service

January 27, 2010 11:23 PM EDT

Putting Washington at the Service of the Middle Class



Union Address.

Deputy Chief of Staff Mona Sutphen gives a run-down of some key policy points in the President's State of the

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President Barack Obama

Vice President Joe Biden

First Lady Michelle Obama

Dr. Jill Biden

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