

No. 11-182

In the Supreme Court of the United States

STATE OF ARIZONA, *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit**

**BRIEF OF *AMICI CURIAE* NATIONAL COUNCIL
OF LA RAZA, UNITED STATES HISPANIC
CHAMBER OF COMMERCE, THE HISPANIC
NATIONAL BAR ASSOCIATION, LOS
ABOGADOS HISPANIC BAR ASSOCIATION,
AND NATIONAL ASSOCIATION OF LATINO
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STATEMENT OF INTEREST

Amici National Council of La Raza et al. submit this brief in support of Respondent. *Amici* are deeply committed to protecting the rights of Latinos, promoting progress, and fighting discrimination.¹

National Council of La Raza ("NCLR") is the largest national Hispanic civil rights and advocacy organization in the United States. Through its network of nearly 300 affiliated community-based organizations ("CBOs"), NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico and the District of Columbia. NCLR's seventeen Arizona affiliates (the "Affiliates") will be adversely affected in numerous ways by the provisions of Arizona Senate Bill 1070 ("S.B. 1070") enjoined by the district court. Those provisions will create and/or exacerbate barriers to the Affiliates' efforts to provide essential health, education and social services to Hispanics, particularly to the citizens and lawful residents of Arizona who happen to reside in households that include undocumented persons.

The United States Hispanic Chamber of Commerce ("USHCC") actively promotes the economic growth and development of Hispanic entrepreneurs and represents the interests of nearly

¹ The parties have filed blanket consents to the filing of amicus briefs. No counsel for a party authored this brief in whole or in part and no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

3 million Hispanic-owned businesses in the United States that generate nearly \$400 billion in revenue annually. It also serves as the umbrella organization for more than 200 local Hispanic chambers in the United States and Puerto Rico. The USHCC understands the frustration over a broken immigration system, but fears that the enjoined provisions of S.B. 1070, by encouraging racial profiling of Latinos, will jeopardize community safety and the speedy recovery of our economy. The USHCC is particularly concerned about the added burdens that our merchants and entrepreneurs will face in the course of doing business when forced to defend their right to contribute to our society.

The Hispanic National Bar Association ("HBNA") is a nonprofit, nonpartisan, national professional association that represents the interests of all attorneys, judges, law professors, legal assistants and law students of Hispanic descent in the United States and Puerto Rico. The HNBA has 39 affiliated bars in various states across the country, including Arizona. The HNBA's continuing mission is to improve the study, practice and administration of justice for all Americans by ensuring the meaningful participation of Hispanics in the legal profession. The HNBA has a vested interest in the equal opportunity of Latinos to be free from unlawful discrimination and harassment. Members of the HNBA who practice in Arizona fear that if the enjoined provisions of S.B. 1070 are implemented, it will inhibit them from fully serving clients and vindicating their clients' legal rights. By causing many individuals of Hispanic descent to flee the State, these provisions of S.B. 1070 will cause cases to be delayed, held in abeyance or left unprosecuted,

thereby denying HNBA's clients a timely adjudication of their claims and rights.

Los Abogados Hispanic Bar Association ("Los Abogados") is the Arizona affiliate of HNBA. The primary purposes of Los Abogados are: (1) to enhance the quality of legal services provided to the community; (2) to educate the Hispanic community regarding its rights and remedies, as well as the availability of legal services; (3) to receive and administer funds for the promotion and advancement of the Hispanic legal profession within the State of Arizona; and (4) to aid in gathering, exchanging and disseminating facts and information relating to the business methods within the Hispanic legal profession. Los Abogados has a particular interest in this lawsuit because its members represent Latinos in the State of Arizona whose lives and legal representation are directly affected by the enjoined provisions of S.B. 1070.

The National Association of Latino Elected and Appointed Officials ("NALEO") Educational Fund is the leading national nonpartisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. The NALEO Educational Fund achieves its mission through integrated strategies that include increasing the effectiveness of Latino policymakers, mobilizing the Latino community to engage in civic life, and promoting policies that advance Latino civic engagement. The NALEO Educational Fund believes that state legislative measures, such as S.B. 1070, are grounded in discrimination against Latinos, and will perpetuate large-scale discrimination against Latinos and other newcomers.

INTRODUCTION AND SUMMARY

S.B. 1070 targets the state's Latino community, which comprises nearly 30% of Arizona's population.² The District Court's preliminary injunction has stayed the implementation of the most egregious sections of that statute. The judgment of the Ninth Circuit, upholding the injunction, should be affirmed for the following reasons:

- **Lifting the injunction will have a profound chilling effect on the ability of many Latino children to obtain an education.** Should the enjoined provisions of S.B. 1070 be allowed to take effect, many Latino families in Arizona will live under an increased fear that teachers, school administrators and police officers will be compelled to report information to the government that will call into question the immigration status of students and their families. These fears will dissuade affected Latino families from enrolling their children, and will convince some to

² This figure is based on the 2010 census. See Immigration Policy Ctr., *NEW AMERICANS IN ARIZONA: The Political and Economic Power of Immigrants, Latinos, and Asians in the Grand Canyon State* 1 (2012), http://immigrationpolicy.org/sites/default/files/docs/New_Americans_in_Arizona_2012.pdf ("The Latino share of Arizona's population ... [was] 29.8% (or 1,911,294 people) in 2010").

withdraw their children from school altogether.

- **Allowing the enjoined provisions of the statute to take effect will prevent affected Latinos from applying for federal benefits to which they are entitled and which they may desperately need.**
- **Overturning the injunction will lead to increased harassment and violence against Latinos.** Studies demonstrate that discrimination and hate crimes against immigrants rise sharply when laws with anti-immigrant animus and effect are enacted.
- **If the enjoined provisions of the law are allowed to take effect, Latinos will face a substantially increased risk of unconstitutional police action.** This concern is heightened by the United States Department of Justice Civil Rights Division's recently released report finding "reasonable cause to believe that" the Maricopa County Sheriff's Office already "engages in a pattern or practice of unconstitutional policing" against Latinos. The Justice Department's nearly three-year investigation documented widespread bias. If the enjoined provisions of S.B. 1070 are allowed to take effect, behavior such as that documented by the Justice Department's

report likely will continue and, indeed, worsen.

- **Overturning the injunction will harm not only Arizona's Latino-owned businesses, but businesses throughout the state.** A number of businesses have already seen a sharp decline in revenues because many in the Latino community are choosing either to flee the state or to stay at home rather than risk harassment by police whenever they venture out, such as to go shopping or dine at a restaurant. The impact of this decline has been substantial, and the situation will deteriorate further if the enjoined provisions of the statute are permitted to take effect. Latino immigrants are a substantial contributor to Arizona's economy. One recent report estimated that the purchasing power of Arizona's Latinos totaled \$33.9 billion in 2010. As a result, vacating the preliminary injunction will severely disrupt Arizona's economy at a time when the state's residents can ill afford it.

For these reasons and the reasons stated in Respondent's brief, the Court should uphold the preliminary injunction.

ARGUMENT

S.B. 1070 is a misguided attempt to append new criminal penalties onto the federal immigration scheme and create a state immigration program that intrudes into an area of law committed exclusively to the federal government. In developing the federal framework, Congress was mindful of the injurious consequences that would befall immigrants and racial minorities if states and localities intruded into this federal domain. Congress barred states and localities from participating in most aspects of this enforcement scheme and imposed strict anti-discrimination provisions on all aspects of its enforcement. Thus, in deciding whether to overturn the injunction now in place, the Court should be cognizant of what the impact would be on Latinos, regardless of their immigration status. Because this recent surge of state and local anti-immigrant laws has been motivated by anti-Latino bias and has had an unlawful impact on Latinos,³ the *amici* herein, five preeminent Latino organizations, present the Court with a description of the impact lifting the injunction would have on Latinos.

³ *Cent. Ala. Fair Hous. Ctr., v. Magee*, __ F. Supp. 2d __, 2011 WL 6182334, at *26 (M.D. Ala. Dec. 12, 2011); *Keller v. City of Fremont*, Nos. 8:10CV270, 4:10CV3140, 2012 WL 537527, slip op. at *15 (D. Neb. Feb. 20, 2012).

**I. OVERTURNING THE PRELIMINARY
INJUNCTION WILL DEPRIVE LATINOS
OF ACCESS TO EDUCATION AND OTHER
BENEFITS.**

**A. Overturning The Preliminary
Injunction Will Deprive Latino Children
of Their Rightful Education.**

Lifting the injunction against Sections 2, 3, 5, and 6 of Arizona's S.B. 1070 (the "Enjoined Provisions") will deprive many Latino children of the ability to obtain an education.⁴ Should the Enjoined Provisions

⁴ The Enjoined Provisions of Sections 2, 3, 5, and 6 are the following:

- The provision of Section 2 of S.B. 1070 (Ariz. Rev. Stat. (hereafter "Ariz. Rev. Stat. Ann.") § 11-1051(B)) that was enjoined is the portion requiring an officer "for any lawful stop, detention or arrest" to make a "reasonable attempt . . . to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation. Any person who is arrested shall have the person's immigration status determined before the person is released."
- Section 3 of S.B. 1070 (Ariz. Rev. Stat. Ann. § 13-1509) creates a crime for the "willful failure to complete or carry an alien registration document."
- The provision of Section 5 of S.B. 1070 (Ariz. Rev. Stat. Ann. § 13-2928(C)) that was enjoined is the portion creating a crime for an unauthorized alien to solicit, apply for, or perform work.

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take effect, many Latino families in Arizona will live under an increased fear that teachers, school administrators and police officers assigned to patrol schools will divulge information to the government regarding the immigration status of students and their families.⁵ For example, public schools in Arizona are required to document the residence and educational history of each new student.⁶ Latino students who are (or who have family members who are) undocumented or otherwise "removable from the United States" will fear incurring inquiries or penalties under the Enjoined Provisions when they provide required enrollment information. Indeed, if the enrollment

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- Section 6 of S.B. 1070 (Ariz. Rev. Stat. Ann. § 13-3883(A)(5)) authorizes the warrantless arrest of a person where there is probable cause to believe the person "has committed any public offense that makes the person removable from the United States."

⁵ See, e.g., Pat Kossan, *Schools See Immigrant Families Departing*, THE ARIZ. REPUBLIC, May 28, 2010, at A1, <http://www.azcentral.com/news/articles/2010/05/28/20100528arizona-immigration-law-schools.html>; Meena Hartenstein, *Arizona Hispanics Flee State in Doves Before New Immigration Law S.B. 1070 Takes Effect in July*, N.Y. DAILY NEWS, June 11, 2010, <http://www.nydailynews.com/news/national/arizona-hispanics-flee-state-doves-immigration-law-s-b-1070-takes-effect-july-article-1.180202>; Sergio Quintana, *Immigrants Might Leave Arizona But Not The Country*, NPR, Aug. 27, 2010, <http://www.npr.org/templates/story/story.php?storyId=129400993>.

⁶ Ariz. Rev. Stat. Ann. § 15-828.

information reveals that the student once attended a school outside of the United States, it could be viewed as evidence that the student or someone in her family may be undocumented, which could lead those individuals to be targeted under the Enjoined Provisions.

Further, a separate provision of S.B. 1070 that was not enjoined makes it illegal for any governmental entity, such as a public school, to prohibit the transfer of immigration information to law enforcement agencies if permitted by federal law.⁷ Latinos will know that the information obtained from schools could ultimately provide the basis for deporting the student or someone in her family if the preliminary injunction of the other sections is lifted.⁸

Fears such as these led to concerns about possible immigration sweeps in Arizona schools shortly

⁷ Section 3 of S.B. 1070 (Ariz. Rev. Stat. Ann. § 11-1051(F)) (subject to limitations, providing that "officials or agencies of this state and counties, cities, towns and other political subdivisions of this state may not be prohibited or in any way be restricted from sending, receiving or maintaining information relating to the immigration status...").

⁸ The Family Educational Rights and Privacy Act of 1974 ("FERPA") (codified at 20 U.S.C. § 1232g) establishes privacy guidelines for the education records of schools that receive federal funding. FERPA prohibits schools from releasing so-called "directory information," which includes the student's place of birth and the last educational institution attended by the student, without the student's consent. See 20 U.S.C. § 1232g(a)(5); 34 C.F.R. § 99.3. Even so, a newly enrolled Latino student's refusal to disclose this information to law enforcement agencies could be viewed as evidence that the student or one of her parents may be in this country without permission.

after S.B. 1070's passage.⁹ If the injunction is lifted, that concern will resume. These fears will dissuade affected Latino families from enrolling their children and will convince some to withdraw their children from school altogether. Arizona schools already trail the national average in graduation rate.¹⁰ Lifting the injunction will thus effectively undermine this Court's ruling in *Plyler v. Doe*, 457 U.S. 202 (1982), in which the Court held that states may not bar children from public schools solely because of their immigration status or that of their parents.

If the Enjoined Provisions are allowed to take effect, Latinos will legitimately fear that encounters with police patrols in schools, or the checkpoints some state officials have set up to check the residency of students before they are allowed to board school buses,¹¹ could provide the basis for arrest and deportation of students or their family members. Parents in one Phoenix school district so feared these effects before the preliminary injunction that they asked the district to prohibit police officers assigned to

⁹ The University of Arizona, *Left Back: The Impact of SB 1070 on Arizona's Youth* 21-22 (2011), http://www.law.arizona.edu/depts/bacon_program/pdf/left_back.pdf.

¹⁰ Eugene Scott, *Arizona High-School Graduation Rate Rises, but Trails U.S.*, THE ARIZ. REPUBLIC, June 21, 2010, <http://www.azcentral.com/community/nephoenix/articles/2010/06/21/20100621arizona-high-school-graduation.html>.

¹¹ Craig Harris, *Ajo Students Must Prove Arizona Residency*, THE ARIZ. REPUBLIC, Aug. 22, 2010, <http://www.azcentral.com/news/articles/2010/08/22/20100822ajo-schools-arizona-tom-horne.html#ixzz0xRXrHvgi>.

patrol schools from complying with S.B. 1070's provisions.¹²

Latino students and parents may also fear interacting with teachers and school administrators. Following passage of S.B. 1070, educators reported that some Latino parents stopped attending parent-teacher conferences and other programs designed to engage parents in their children's education.¹³ These educators attributed the decline in parental involvement to fear and mistrust generated by S.B. 1070.¹⁴ If the Enjoined Provisions are allowed to take effect, parents will have additional cause for fear, and a further decrease in attendance can be expected.

Statistical and other evidence demonstrates that some parents withdrew their children from school in anticipation of, and following passage of, S.B. 1070.¹⁵ Pima County elementary school enrollment appears to have declined between 8% and 10% from the 2009-2010

¹² Sadie Jo Smokey, *Residents Demand That District Defy Migrant Law*, THE ARIZ. REPUBLIC, May 8, 2010, at B1, <http://www.azcentral.com/community/phoenix/articles/2010/05/08/20100508arizona-immigration-law-phoenix-school-district.html>.

¹³ *Left Back*, *supra* note 8, at 22-23.

¹⁴ *Id.* at 22 ("[P]arents are just—they're a little afraid to come to school. They're not quite sure if they can trust [educators] completely.").

¹⁵ Although there may have been additional reasons for Latinos to withdraw their children from school, "in most cases, SB 1070 was the last straw, the determinative factor that led to a decision to leave the state." *Id.* at 9.

to 2010-2011 school-years.¹⁶ A charter school in Arizona administered by NCLR affiliate Luz Social Services saw four Latino students withdraw during the summer of 2010 because of S.B. 1070, while Balsz Elementary District lost 70 students in the month prior to the signing of S.B. 1070, an attrition rate that school officials say is unprecedented.¹⁷

Concerns that S.B. 1070 will adversely impact the ability of Latino children to obtain an education are well founded. One Arizona school district voted to oppose S.B. 1070 in court because of concerns about its ability to comply with *Plyler v. Doe* in light of the unconstitutional provisions of S.B. 1070.¹⁸ And the United States Department of Justice together with the United States Department of Education took the unusual step of jointly providing nationwide guidance to schools and local officials after becoming "aware of student enrollment practices that may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents' or guardians'

¹⁶ *Id.* at 17 (reporting that in Pima County, Arizona student enrollment fell after passage of S.B. 1070 and that the decline was "particularly acute" among children enrolled in English as a second language classes).

¹⁷ Hartenstein, *supra* note 5. Similarly, Alhambra elementary schools predicted that the statute would drive out 200 to 300 students over the summer. *Ibid.*

¹⁸ Letter from Manuel Isquierdo, Superintendent, Sunnyside Unified School Dist., to Sunnyside District Families (June 14, 2010), <http://www.sunnysideud.k12.az.us/sites/default/files/ImmigrationLetter061410.pdf> (providing reasons why the Sunnyside Unified School District opposes S.B. 1070).

actual or perceived citizenship or immigration status."¹⁹

The preliminary injunction appears to have alleviated some of the expected decline in enrollment. For example, the Mesa School District expected to see a drop of over 2,000 students due in large part to S.B. 1070.²⁰ After the injunction issued, however, the district lost only a few hundred students.²¹ If the Enjoined Provisions are allowed to take effect, school districts will likely face a precipitous additional decline in enrollment as Latinos who took a wait-and-see attitude flee Arizona or pull their children from school for the reasons outlined above.²²

Moreover, this exodus may not be limited to students who are undocumented immigrants. Many

¹⁹ Letter from Thomas E. Perez, Ass't Attorney Gen., Civil Rights Div., U.S. Dep't of Justice *et al.*, to "Colleague" (May 6, 2011), <http://www.justice.gov/crt/about/edu/documents/plyler.php> (accompanied by guidance contained in a fact sheet and FAQ).

²⁰ Michelle Reese, *Mesa School District Begins Discussion on How to Handle 2,400-Student Loss*, E. VALLEY TRIBUNE, Sept. 22, 2010, http://www.eastvalleytribune.com/local/article_a25e098c-bdcf-11df-8209-001cc4c03286.html (superintendent estimated that about two-thirds of the student loss may be associated with S.B. 1070).

²¹ Michelle Reese, *Unexpected Enrollment Increase Boosts Pay at Gilbert Schools*, E. VALLEY TRIBUNE, Nov. 1, 2011, http://www.eastvalleytribune.com/local/gilbert/article_7f539ebc-04ae-11e1-adc6-001cc4c03286.html.

²² *Left Back*, *supra* note 8, at 8-9.

families are blended in their immigration status,²³ so U.S. citizen children who have a parent or sibling who is undocumented may also be removed from schools, or families may choose to leave Arizona so that their children can get educated without fear.

Administrators warn that a substantial decline in enrollment will reduce the amount of funding these schools receive, without a commensurate reduction in fixed costs.²⁴ Such attrition could so exacerbate recent budget cuts that schools will be unable to provide basic educational services, such as tutoring and maintaining class sizes at appropriate levels.²⁵ This will reduce the resources available to all students remaining in these schools.

Allowing the Enjoined Provisions to take effect will also undermine the federal effort to ensure children receive proper nutrition through the National School Lunch Program ("NSLP"), which provides lunch, breakfast, and an afterschool snack, to economically disadvantaged students at little or no cost.²⁶ Latino

²³ Ray Suarez, *The Fight Against S.B. 1070*, Jul. 19, 2010, http://www.huffingtonpost.com/ray-suarez/the-fight-against-sb1070_b_650927.html.

²⁴ Kossan, *supra* note 5 (school administrators note that, e.g., losing 10 students at one grade level will not necessarily reduce fixed costs, such as saving a teacher's salary or reducing the district's property maintenance costs); Ronald Hansen, *Will SB 1070 Help or Hurt Economy?*, THE ARIZ. REPUBLIC, July 11, 2010, at A1.

²⁵ Kossan, *supra* note 5.

²⁶ U.S. Dep't of Agric., National School Lunch Program Fact Sheet, *available at*

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students will lose access to a program that provides basic nutritional needs if they are withdrawn from school because the injunction is overturned.²⁷

B. Overturning The Preliminary Injunction Will Deprive Latinos Of Other Essential Benefits.

Overturning the injunction will deprive Latinos of the ability to access other federal public benefits, for similar reasons. Federal law entitles non-citizens, regardless of their immigration status, to receive emergency Medicaid assistance, participate in immunization programs and the NSLP, receive testing and treatment for communicable diseases, and accept certain forms of disaster relief.²⁸ Moreover, federal law makes

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<http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf>.

²⁷ Latinos represent both a high proportion and a large total number of economically disadvantaged youth that rely on the NSLP for daily meals. See Feeding America, *Map the Meal Gap 2011: Highlights of Findings* 17-18 (2011), http://feedingamerica.org/hunger-in-america/hunger-studies/map-the-meal-gap/~media/Files/research/map-meal-gap/ExecutiveSummary_MaptheMealGap_Final.ashx; see also John Faherty, *Arizona Immigrant Students Find Way Together, Without Families*, THE ARIZ. REPUBLIC, Dec. 4, 2011, <http://www.azcentral.com/arizonarepublic/news/articles/2011/12/04/20111204los-boys-package.html> (reporting on Latino students who received school-provided breakfast and lunch five days a week).

²⁸ 8 U.S.C. §§ 1611(b)(1)(D), 1621(b)(1-4).

certain additional benefits, such as Section 8 housing assistance, available to households that include undocumented immigrants.²⁹ In providing these benefits, Congress intended to offer certain protections to all immigrants.

Allowing the Enjoined Provisions to take effect, however, will cause many affected Latinos not to apply for the federal benefits to which they are entitled and may desperately need. Many will fear that providing personal information to government personnel, or persons they perceive may communicate that information to the government, will identify them or their family members as undocumented immigrants and expose them to the inquiries and penalties created by the Enjoined Provisions. There is evidence that fear of S.B. 1070 resulted in this very harm before the injunction was put into place.³⁰ Overturning the injunction will

²⁹ See 24 C.F.R. § 5.520 (assistance for mixed households that include members who are ineligible for benefits is prorated according to the number of eligible members).

³⁰ Nicholas Riccardi, *New Arizona Law Worries Immigrants*, L.A. TIMES, Jan. 1, 2010, at 16 (reporting on two children who are United States citizens, but did not apply for Medicaid because of the fear generated by S.B. 1070 and noting that a volunteer with Border Action Network reported that "one of her neighbors had been deported after seeking Medicaid for her U.S.-born children"). In fact, fear of S.B. 1070 appears to have caused some immigrants to go so far as to avoid seeking emergency medical attention. *Ibid.* (reporting on a pregnant Latina who feared seeking medical attention for a potentially serious condition because of S.B. 1070's reporting requirement); Daniel Gonzalez, *Senate Bill 1070: 1 Year Later*, THE ARIZ. REPUBLIC, Apr. 23, 2011, at A1,

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reignite this fear and thus undermine Congress's intent to provide certain basic services to all, regardless of immigration status, thereby potentially causing harm to some of the very persons these benefits were intended to assist.

II. OVERTURNING THE PRELIMINARY INJUNCTION WILL INCREASE THE RISK OF UNCONSTITUTIONAL POLICING AND SUBJECT LATINOS TO RACIAL PROFILING AND OTHER CIVIL RIGHTS VIOLATIONS.

Prior experience teaches that it is often a "disastrous and expensive" mistake to involve local police in immigration enforcement because such efforts may foster widespread racial profiling and other civil rights violations.³¹ Recent history provides significant

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<http://www.azcentral.com/12news/news/articles/2011/04/23/20110423arizona-immigration-law-impact-year-later.html> (interviewing an undocumented Latino man who suffered a severe workplace injury, but would not seek medical attention because of S.B. 1070's reporting requirement).

³¹ Craig E. Ferrell, Jr., *Immigration Enforcement: Is It a Local Issue?*, 71 *The Police Chief* (Feb. 2004); see also ACLU of North Carolina and UNC Chapel Hill Immigration & Human Rights Policy Clinic, *The Policies and Politics of Local Immigration Enforcement Laws – 287(g) Program in North Carolina* 43-47 (2009), <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf>; Trevor Gardner II & Aarti Kohli, *The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program* 4-5 (2009), http://www.law.berkeley.edu/files/policybrief_irving_FINAL
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evidence why the Enjoined Provisions will lead to unconstitutional discrimination if they are implemented.

If the Enjoined Provisions are allowed to take effect, Latinos will face a substantial risk of unconstitutional policing. This conclusion is supported by the United States Department of Justice Civil Rights Division's recently released report (the "DOJ Report"), finding "reasonable cause to believe that [the Maricopa County Sheriff's Office ("MCSO")] engages in a pattern or practice of unconstitutional policing" against Latinos.³² That nearly three-year investigation documented widespread bias. The DOJ Report found that MCSO "engages in racial profiling of Latinos; unlawfully stops, detains, and arrests Latinos; and unlawfully retaliates against individuals who complain about or criticize MCSO's policies or practices."³³ MCSO targeted people who primarily spoke Spanish or were "dark-skin[ned]."³⁴ In light of MCSO's behavior, the Department of Homeland Security ("DHS")

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.pdf (finding "compelling evidence" of "aggressive" racial profiling of Latinos by Irving, TX police officers after they began participating in the criminal alien program).

³² See Letter from Thomas E. Perez, Ass't Attorney Gen., Civil Rights Div., U.S. Dep't of Justice, to Bill Montgomery, Maricopa Cnty. Attorney, Arizona (Dec. 15, 2011), http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf ("DOJ Report"). The MCSO oversees law enforcement for the most populous section of Arizona, including Phoenix.

³³ *Id.* at 2.

³⁴ *Id.* at 8, 11.

terminated MCSO's authority to assist federal officials in civil immigration violations.³⁵ In addition, a federal judge recently enjoined MCSO from "detaining any person based solely on knowledge, without more, that the person is in the country without lawful authority" because of allegations of similar civil rights violations.³⁶

The DOJ Report's findings include racial profiling of Latinos during traffic stops, some of which appear to be pretextual.³⁷ This conduct likely will increase if police officers are instructed under Section 2 to inquire into immigration status during stops.³⁸

³⁵ Press Release, U.S. Dep't of Homeland Sec., Statement by Secretary Napolitano on DOJ's Findings of Discriminatory Policing in Maricopa County (Dec. 15, 2011), <http://www.dhs.gov/ynews/releases/20111215-napolitano-statement-doj-maricopa-county.shtm>; Randal C. Archibold, *Immigration Hard-Liner Has His Wings Clipped*, N.Y. TIMES, Oct. 7, 2009, at A14, <http://www.nytimes.com/2009/10/07/us/07arizona.html>. See also 8 U.S.C. § 1357(g) (The Immigration and Nationality Act, § 287(g), allows the U.S. Attorney General to delegate immigration enforcement functions to specified state and local law enforcement agencies).

³⁶ *Melendres v. Arpaio*, No. CV-07-2513, 2011 WL 6740711-PHX-GMS, slip op. at *22 (D. Ariz. Dec. 23, 2011).

³⁷ DOJ Report, *supra* note 32, at 6, 18.

³⁸ Nor is the danger limited to Maricopa County. Police departments in other Arizona counties, including Cochise County and Pinal County, have also engaged in troubling behavior. See Jim Meyers and Ashley Martella, *Ariz. Sheriff: Feds Order Release of Illegals to Phony Up Numbers*, NEWSMAX.COM, May 9, 2011, <http://www.newsmax.com/Headline/LarryDever-BorderPatrol-Immigration-Arizona/2011/05/06/id/395500> (reporting that Cochise County Sheriff Dever stated that
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Section 2 of S.B. 1070 requires law enforcement to inquire into the immigration status of those an officer has "reasonable suspicion" to suspect are undocumented.³⁹ However, the statute is silent as to what constitutes a basis for reasonable suspicion. This invites officers to use impermissible proxies such as language or physical characteristics as such basis, despite the statutory language that local and state officers and agencies "may not consider race, color, or national origin in the enforcement of this subsection except to the extent permitted by the United States or Arizona constitution."⁴⁰

The DOJ Report also found that MCSO engaged

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"illegals are committing 'heinous crimes' across America every day," and called "claims that the federal government should be solely responsible for controlling illegal immigration 'balderdash'"); Bill Hess, *Sheriff Says Feds Being Unrealistic*, WILLCOXRANGENEWS.COM, Feb. 23, 2011, http://www.willcoxrangeneews.com/news/article_1643d7c4-3a86-5160-8b4e-5f72489c00c0.html (reporting that Pinal County Sheriff Babeu stated that "the federal government is trying 'to put us in some kind of a trance or brainwash us'").

³⁹ S.B. 1070 § 2(B) (Ariz. Rev. Stat. Ann. § 11-1051(B)).

⁴⁰ *Ibid.* Particularly troubling is the fact that the original language of S.B. 1070 § 2(B), as enacted, stated that officers or agencies "may not *solely* consider race, color, or national origin" (emphasis added). The word "solely" was deleted by H.B. 2162. See David A. Selden, et al., *Placing S.B. 1070 and Racial Profiling Into Context, and What S.B. 1070 Reveals About the Legislative Process in Arizona*, 43 ARIZ. ST. L.J. 523 (2011). The current versions of Sections 3 and 5 contain similar language. See S.B. 1070 §§ 3(C), 5(C) (Ariz. Rev. Stat. Ann. §§ 13-1509(D), 13-2928(C)).

in unconstitutional behavior in connection with business raids, typically detaining everyone present within the vicinity, sometimes for "extended periods of time ... without specific evidence of criminal activity."⁴¹ The state crimes created by Sections 3 and 5, and the warrantless arrests authorized by Section 6, will provide increased opportunities and statutory validation for such behavior.

Section 6's "probable cause" requirement carries the same threat of racial profiling as does Section 2's "reasonable suspicion" standard with respect to permitting warrantless arrest based on a belief that the person committed a public offense that makes the person "removable from the United States" – an exceptionally complex federal-law determination.⁴² Compounding this problem, Section 6 does not contain the constitutional assurances of the other sections.⁴³

Law enforcement officers themselves, including the sheriffs of three out of four of Arizona's border counties, have drawn attention to these risks. Pima County Sheriff Clarence Dupnik derided the argument that officers could enforce S.B. 1070 without "adopt[ing] racial profiling as an enforcement tactic."⁴⁴

⁴¹ DOJ Report, *supra* note 32, at 18; see also *Arizona Sheriff Office Pays Out Over Migrant Raid*, BBC MOBILE, July 8, 2011, <http://www.bbc.co.uk/news/world-us-canada-14086554> (MCSO paid \$200,000 to two Hispanic men unlawfully detained during anti-migrant raid in 2009).

⁴² S.B. 1070 § 6(A) (Ariz. Rev. Stat. Ann. § 13-3883(A)).

⁴³ S.B. 1070 § 6 (Ariz. Rev. Stat. Ann. § 13-3883).

⁴⁴ Forrest Carr & Steve Nunez, *The Dupnik Rebellion: Pima's Top Cop Says 'No' to SB 1070*, KGUN9, Apr. 28, 2010,

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Sheriff Dupnik stated, "If I tell my people to go out and look for A, B, and C, they're going to do it. They'll find some flimsy excuse like a tail light that's not working as a basis for a stop, which is a bunch of baloney."⁴⁵ Yuma County Sheriff Ralph Ogden asked simply, "What is reasonable suspicion?"⁴⁶ Santa Cruz County Sheriff Tony Estrada explained, "Immigration law and immigration status are complex, and my officers are not experts in immigration matters. There is a real risk that determining a person's immigration status will result in that person's prolonged and unlawful detention, violating that person's constitutional and civil rights and further subjecting the department to liability."⁴⁷ And the Phoenix Police Chief, Jack Harris, warned that "[w]hen you get a law that leads a state down this path, where the enforcement is targeted to a particular segment of the population, it's very difficult not to profile."⁴⁸

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<http://www.kgun9.com/features/immigrationwatch/122888219.html>.

⁴⁵ *Ibid.*

⁴⁶ Stephanie A. Wilken, *Brewer Signs Immigration Bill*, THE YUMA SUN, Apr. 23, 2010, <http://www.yumasun.com/articles/law-57974-ogden-yuma.html>. Ogden also stated that "some of the language in the bill is 'a little disconcerting' about how an officer may identify someone as being in the country legally or not."
Ibid.

⁴⁷ Decl. of Tony Estrada, *United States v. Arizona*, 2:10-cv-01413-SRB, (D. Ariz., filed Jul. 6. 2010), at 5.

⁴⁸ Michael Sheridan, *Cops: Arizona's Anti-Illegal Immigration Law Mandates 'Racial Profiling'*, N.Y. DAILY NEWS, May 18, (cont'd)

Civil rights violations under the Enjoined Provisions appear to be inevitable, even under the best of circumstances, and even with oversight and training.⁴⁹ State and local agencies are required to undergo federal training and oversight when they join the program run by United States Immigration and Customs Enforcement (the "287(g) program").⁵⁰ Clearly, participation in this program did not prevent the Maricopa County Sheriff's Office from engaging in

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2010,
http://www.nydailynews.com/news/national/2010/05/18/2010-05-18_police_arizonas_antiillegal_immigration_law_mandates_racial_profiling.html.

⁴⁹ See Decl. of Tony Estrada, *supra* note 47, at 5 ("No amount of training prescribed by Arizona Governor Brewer will sufficiently prepare my officers to become experts on immigration law and immigration enforcement. The immigration laws are complex, and I am concerned that the state training will not equip my officers with the necessary knowledge and expertise that would allow them to reasonably suspect when someone is in the country unlawfully or has committed a public offense that makes them removable.").

⁵⁰ The 287(g) program currently requires local law enforcement to receive four weeks of training from Immigration and Customs Enforcement officers on immigration law and procedures. The U.S. Immigration and Customs Enforcement Academy sets standards and testing for the program, as well. See U.S. Dep't of Homeland Security, Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act (2010), <http://www.ice.gov/news/library/factsheets/287g.htm>.

racial profiling.⁵¹ Nor did it prevent several other local law enforcement agencies that participated in the 287(g) program from doing the same.⁵² A report by DHS's Office of the Inspector General found that many state and local agencies enrolled in the 287(g) program are being investigated or sued for civil rights

⁵¹ The Department of Justice found that "most of the [MCSO] deputies and supervisors we interviewed in January 2011, including those routinely engaged in immigration enforcement policing, either stated that they had never received [anti-biased policing] training or that they had little to no recollection of what the training was about." DOJ Report, *supra* note 32, at 12.

⁵² Jennifer M. Chacon, *A Diversion of Attention? Immigration Courts and the Adjudication of Fourth and Fifth Amendment Rights*, 59 DUKE L.J. 1563, 1618 (2010) ("[R]acial profiling . . . has a long history of surfacing when local law enforcement becomes engaged in immigration enforcement."); Tennessee Immigrant and Refugee Rights Coalition, *Citations/Warrants for No Drivers License by Ethnicity and Race: Comparing the Year Prior to 287(g) and the Year Following 287(g)* (2008), http://www.tnimmigrant.org/storage/misc/No_Drivers_License_1_year_overview%206-2008.pdf (noting a statistically significant increase in arrests of Latinos for driving without a license after implementation of 287(g) program); Daniel C. Volk, *Police Join Feds to Tackle Immigration*, STATELINE.ORG, Nov. 27, 2007, <http://www.stateline.org/live/details/story?contentId=259949> (58 percent of motorists stopped by 287(g)-trained officers were Latino even though Latinos make up less than two percent of the local population); Andria Simmons, *Is Sheriff a Hero or Racial Profiler?*, ATLANTA J. CONST., Oct. 12, 2009, at 1A (noting numerous accounts of racial profiling by Atlanta officers).

violations.⁵³ The most recent DHS report found that continued efforts to implement prior recommendations were needed, and included thirteen new recommendations, largely related to oversight and review of the 287(g) program.⁵⁴ These facts demonstrate that even with training and continuous oversight by federal authorities, local law enforcement agencies will abridge core constitutional protections when they attempt to enforce immigration laws. Permitting the Enjoined Provisions to take effect would lead to severe consequences.

⁵³ U.S. Dep't of Homeland Sec., Office of Inspector General, *The Performance of 287(g) Agreements* (2010), http://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf. The report describes how one state agency improperly engaged in "random street operations" to target "minor offenses and violations of local ordinances," even though the 287(g) program does not allow state and local agencies to perform such operations. *Ibid.* In addition, the report found incidents of immigrants being arrested for federal immigration violations without prior arrests on state or local charges, which is prohibited under the 287(g) program. *Ibid.*

⁵⁴ U.S. Dep't of Homeland Sec., Office of Inspector General, *The Performance of 287(g) Agreements FY 2011 Update* (2011), http://www.oig.dhs.gov/assets/Mgmt/OIG_11-119_Sep11.pdf.

III. OVERTURNING THE PRELIMINARY INJUNCTION WILL FOSTER DISCRIMINATORY ANIMUS AGAINST LATINOS.

A. Overturning the Preliminary Injunction Will Increase the Risk of and Opportunity for Harassment.

It is clear that S.B. 1070 has already had a significant polarizing effect.⁵⁵ This divisive influence will be deepened and sharpened if the Enjoined Provisions of S.B. 1070 take effect.

The Enjoined Provisions create the inference – and perhaps the expectation – that many Latinos are in Arizona illegally because these provisions were intended to authorize and even require law enforcement to pursue immigration enforcement against a class of persons who are largely Latino.⁵⁶

⁵⁵ *State Must Find Way to Bridge Its Ethnic Divide*, THE ARIZ. REPUBLIC, June 7, 2010, <http://www.azcentral.com/arizonarepublic/opinions/articles/2010/06/07/20100607mon1-07editorial.html> ("Latinos living legally in this state feel unwanted. Latino citizens outside the state believe they are unwelcome here. We have created an ethnic divide that could last for years."); Ronald J. Hansen and Sean Holstege, *Poll: Debate over New Arizona Immigration Law May Heighten Racism in State*, THE ARIZ. REPUBLIC, Aug. 2, 2010, <http://www.azcentral.com/news/election/azelections/articles/2010/08/02/20100802immigration-racial-profiling.html> ("Nearly half of Arizonans also believe the immigration debate has revealed racial problems" in Arizona).

⁵⁶ U.S. Census Bureau, *supra* note 2; see also Press Release, State of Arizona, Statement of Governor Jan Brewer (April
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Enforcement of these provisions will likely give rise to increased investigations, raids and arrests of Latinos, even when there is no legitimate ground for such actions.

Overturing the injunction will foster insidious methods of harassment. The enjoined provision of Section 2 requires law enforcement to investigate the immigration status of anyone subject to a "lawful stop, detention, or arrest," provided reasonable suspicion exists that the individual is "unlawfully present."⁵⁷ This provision could transform routine enforcement of local ordinances into carefully targeted immigration raids.

For instance, a simple complaint to the police, regardless of its legitimacy, that a homeowner or business owner of Latino descent has violated local ordinances regarding excessive noise or parking restrictions could trigger an investigation into the owner's immigration status.⁵⁸ This could be accomplished by simply making a few carefully

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23, 2010),

http://azgovernor.gov/dms/upload/PR_042310_StatementByGovernorOnSB1070.pdf ("We cannot delay while the destruction happening south of our international border creeps its way north.").

⁵⁷ S.B. 1070 § 2 (Ariz. Rev. Stat. Ann. § 11-1051(B)).

⁵⁸ See *supra* note 32, at 3 (finding "a number of instances" where "immigration-related crime suppression activities were initiated" from tips with no criminal activity, but simply referring "to individuals with 'dark skin' congregating in one area, or individuals speaking Spanish at a local business").

worded allegations – again, whether legitimate or not – such as that the supposed violator recently arrived from Mexico, rarely speaks English or seems afraid to go out in public.⁵⁹ Reinstating this provision will thus arm anti-immigrant vigilantes with a powerful weapon of intimidation and harassment, allowing them to report their Latino neighbors and co-workers, or anyone of Latino descent they happen to dislike, to the police.

If the injunction against Section 3 is overturned,⁶⁰ Arizona law would subject even lawful immigrants to detention and interrogation for failing to carry alien registration documentation.⁶¹ It is thus foreseeable, if Sections 2 and 3 are given effect, that a complaint about a simple ordinance violation, even if baseless and motivated by ill will, could result in detention and interrogation of lawful immigrants who are not carrying documentation at the moment the police, who are instructed to inquire

⁵⁹ *Latino Leaders Outraged by Arizona Sheriff's Illegal Immigration Tip Hotline*, AP, July 26, 2007, <http://www.foxnews.com/story/0,2933,290861,00.html> (discussing a hotline created for people to report information about suspected illegal immigrants in the community).

⁶⁰ S.B. 1070 § 3 (Ariz. Rev. Stat. Ann. § 13-1509) (creating a crime for the "willful failure to complete or carry an alien registration document").

⁶¹ *Ibid.*; cf. *Fresno Born Man Detained in Arizona; Claims Racial Profiling*, ABC LOCAL, April 28, 2010, <http://abclocal.go.com/kfsn/story?section=news/local&id=7409929> (Arizona police required a truck driver to have his wife obtain his birth certificate in California before they would release him from jail).

into immigration status under Section 2, arrive to investigate the complaint.

Similar danger to individuals of Latino descent exists if the injunction is overturned as to Section 6, which authorizes warrantless arrest if there is probable cause to believe a person "has committed any public offense that makes the person removable from the United States."⁶² If Section 6 is given effect, anti-immigration vigilantes can tailor complaints based on discriminatory animus so as to potentially trigger warrantless arrests by police untrained in the complexities of immigration law.⁶³

B. Overturning the Preliminary Injunction Will Increase the Risk of Physical Violence.

The Enjoined Provisions of S.B. 1070 also threaten Arizona's Latino residents with a heightened risk of physical violence. Studies demonstrate that hate crimes against immigrants tend to rise sharply when anti-immigrant laws are enacted.⁶⁴ For example,

⁶² S.B. 1070 § 6 (Ariz. Rev. Stat. Ann. § 13-3883(A)(5)).

⁶³ See, e.g., DOJ Report, *supra* note 32, at 11-12.

⁶⁴ Leadership Conference on Civil Rights, *Cause for Concern: Hate Crimes in America* (1997), http://www.empowermentzone.com/hate_rpt.txt. The U.S. Commission on Civil Rights recently voted unanimously to hold a hearing "to look into the civil rights impact of state-enacted immigration enforcement laws." See Press Release, U.S. Commission on Civil Rights, U.S. Civil Rights Commission to Hold 2012 Briefing on the Civil Rights Impact of State Immigration Laws (Nov. 21, 2011), http://www.usccr.gov/press/2011/PR_11-21-11_Briefing.pdf.

a dramatic increase in violence against Latinos occurred following passage of California's Proposition 187.⁶⁵ There is evidence that S.B. 1070 is having similar effects.

Shortly after its passage, two men wearing camouflage outfits shot at and wounded several Latino immigrants near a border town in southern Arizona.⁶⁶ The murder of a third-generation, native-born American Latino man in Phoenix was also linked to S.B. 1070's passage.⁶⁷ Allowing the Enjoined

⁶⁵ Leadership Conference on Civil Rights, *supra* note 63. California Proposition 187 was a 1994 ballot initiative designed to create a state-run citizenship screening system in order to prohibit illegal immigrants from using health care, public education, and other social services in California. The law was struck down. See *LULAC v. Wilson*, 997 F. Supp. 1244 (C.D. Cal. 1997).

⁶⁶ Brian Pryor, *Group of Illegal Immigrants Shot at, 1 Wounded Near Rio Rico*, KGUN9, June 14, 2010, <http://web.archive.org/web/20100712080652/http://www.kgun9.com/Global/story.asp?S=12648810>.

⁶⁷ See, e.g., Michael Kiefer and Richard Ruelas, *Neighbor Found Guilty in Man's Shooting Death*, THE ARIZ. REPUBLIC, April 14, 2011, <http://www.azcentral.com/news/articles/2011/04/14/20110414arizona-man-guilty-for-killing-neighbor.html>. Gary Kelley was convicted of murdering Juan Varela. "Kelley was drunk on the morning of May 6, when he approached Varela to talk about S.B. 1070. The discussion heated up, and Kelley was heard using derogatory racial epithets like 'wetback.'" Initial reports also said that Kelley shouted "Hurry up and go back to Mexico, or you're gonna die," before he shot Varela. In addition, the Southern Poverty Law Center noted a general increase in violence against Latinos during the summer of 2010. Larry Keller, *Anti-Latino Hate Crimes Seen from Baltimore to Arizona*,

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Provisions to take effect would exacerbate these problems by encouraging and reinforcing the cultural suspicion that all Latinos are undocumented immigrants and criminals.⁶⁸

This is particularly dangerous because of the likelihood that fewer Latinos will report criminal activity, including their own victimization, for fear of facing inquiries about their own immigration background or drawing attention to another family member. Latinos in Arizona will fear being detained and investigated under Section 2 of the law. Even those who are citizens or documented aliens will fear erroneous warrantless arrest under Section 6 by police officers who lack training regarding immigration laws. The Department of Justice, for example, observed that "MCSO ... has created a 'wall of distrust' between MCSO officers and Maricopa County's Latino residents – a wall of distrust that has significantly compromised MCSO's ability to provide police protection to Maricopa

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HATEWATCH, Aug. 23, 2010,
<http://www.splcenter.org/blog/2010/08/23/anti-latino-hate-crimes-seen-from-baltimore-to-arizona/>.

⁶⁸ In February 2011, a militant border vigilante was sentenced to death for the May 30, 2009 Pima County murders of a Latino man and his nine-year-old daughter. The vigilante believed the man was a drug dealer and planned to steal from him in order to fund her radical border patrol organization. Dean Schabner, *Border Vigilante Shawna Forde Sentenced to Death for Home Invasion*, ABC NEWS, Feb. 22, 2011,
<http://abcnews.go.com/US/minutemen-vigilante-shawna-forde-sentenced-death-deadly-arizona/story?id=12976687>.

County's Latino residents."⁶⁹ This fear and distrust may also explain why, although hate crimes have risen in Arizona, reports of hate crimes against Latinos have dropped: Latinos are afraid to report these crimes because of the exposure associated with doing so.⁷⁰

One Pima County high school student explained:

I know a lot of people who are scared of the cops now. I know a lot of people who know that [crimes] have happened, and they just don't do anything because they're scared. They just don't call [the police], or I hear them say, "I'm not going to mess with them."⁷¹

The resulting harm to Latinos and to the general public cannot be exaggerated. If a substantial portion of the population fears and distrusts the police, the essential relationship between the police and those they are meant to protect is distorted and a valuable

⁶⁹ DOJ Report, *supra* note 32, at 2. The term "wall of distrust" was actually coined by an MCSO deputy "to describe the adverse effect of MCSO's immigration law enforcement policies on the relationship between MCSO and the Latino community." *Id.* at 2, n.2.

⁷⁰ JJ Hensley, *Racial Hate Crimes Surge 39% in Phoenix*, THE ARIZ. REPUBLIC, Nov. 17, 2011, <http://www.azcentral.com/news/articles/2011/11/16/20111116phoenix-racial-hate-crimes-surge.html> (reporting that "experts ... attribute [the increase] to heightened tensions following Senate Bill 1070").

⁷¹ *Left Back*, *supra* note 8, at 21. That same student stated that, short of witnessing a sexual assault, she likely would not report a crime to the police because of fear engendered by S.B. 1070. *Ibid.*

investigative tool is diminished.⁷²

The Phoenix Police Department acknowledges that mistrust due to S.B. 1070 appears to have hampered police efforts and aided criminals.⁷³ In

⁷² As one Tucson police officer explained, "You have to build relationships and I've done that. [Latinos] trust me now.... [S.B. 1070] is going to break down everything I've [done] to let people know that officers are good, that we're here to protect you." Paloma Esquivel, *Two Police Officers Combat Arizona Immigration Law*, L.A. TIMES, May 6, 2010, <http://articles.latimes.com/2010/may/06/nation/la-na-officer-escobar-20100507>. The International Association of Chiefs of Police and the Major Cities Chiefs Association have made similar policy statements regarding the substantially detrimental effect that fear of immigration inquiries has on policing efforts. See Lynn Tramonte, Immigration Policy Center, *Debunking the Myth of "Sanctuary Cities"* 6 (2011), http://immigrationpolicy.org/sites/default/files/docs/Community_Policing_Policies_Protect_American_042611_update.pdf.

⁷³ *Supra* note 30 (cautioning that the police cannot know when people fail to report crimes, but acknowledging that "there is a perception that it has" happened); see also Samuel Murillo, *A Neighborhood Demonstrates the Negative Effects of Extreme Laws* (translated), LA VOZ ARIZ., Nov. 12, 2010, <http://www.lavozarizona.com/lavoz/noticias/articles/2010/11/12/20101112UnBarrio.html> ("The problem now,' says police officer Manuel Valenzuela, 'is that many Hispanics do not dare call the police when they are victims.' According to the officer, criminal groups have taken advantage of the situation of immigrants to rob and extort money knowing how vulnerable they are and that they will not dare to speak out for fear." (translated)); Tramonte, *supra* note 71, at 10 (Austin's police chief opined, "Ultimately, we will all suffer from Arizona's foolhardy and shortsighted approach to dealing with illegal immigration.

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one case, two men were bound, gagged and kidnapped from a Phoenix home in full view of a woman and a small child. Fearing an inquiry into her immigration status, the woman delayed calling police for over two hours. No witnesses were willing to cooperate in the investigation into the crime.⁷⁴ As of September 2010, a mere five months after S.B. 1070 was passed, the Phoenix Police Department had experienced at least a half dozen instances where victims were reluctant to come forward and report a serious crime, such as kidnapping or rape, including some instances where victims went to California to report a crime instead of reporting the crime to Arizona law enforcement.⁷⁵

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Arizona has essentially declared open season for criminals to target illegal immigrants and their families.").

⁷⁴ Rudabeh Shahbazi, *Victims Reluctant to Help in Investigations Due to SB 1070*, ABC15, Sept. 15, 2010, http://www.abc15.com/dpp/news/region_phoenix_metro/central_phoenix/victims-reluctant-to-help-in-investigations-due-to-sb-1070. One student, a citizen, recalled her parents' refusal to report a late 2010 robbery for fear of an immigration inquiry by police. *Left Back, supra* 8, at 21.

⁷⁵ Shahbazi, *supra* note 74.

IV. OVERTURNING THE PRELIMINARY INJUNCTION WILL CAUSE SIGNIFICANT HARM TO LATINO BUSINESSES AND ARIZONA'S ECONOMY.

Many Latinos targeted by frivolous complaints and harassment will yield to pressure and leave the State or stay home, if only to avoid harassment.⁷⁶ Indeed, reports indicate that Latinos – both those with and without lawful status – have been steadily leaving Arizona.⁷⁷

Arizona's Latino-owned and Latino-targeted businesses have seen the ill effects resulting from the fear created by S.B. 1070.⁷⁸ These businesses

⁷⁶ See *supra* note 5; Southern Poverty Law Center, *Attacking the Constitution: State Legislators for Legal Immigration & the Anti-Immigrant Movement* 5 (2011) <http://www.splcenter.org/get-informed/publications/attacking-the-constitution-slli-and-the-anti-immigrant-movement> ("Populist anger over the issue of immigration has helped the number of hate groups expand by more than 65% since 2000 and also has fueled the appearance of hundreds of vigilante civilian border patrol groups").

⁷⁷ See, e.g., BBVA Research, *Mexico Migration Outlook* 11 (2011) (estimating that 89,000 Mexican immigrants left Arizona between 2007 and late 2011).

⁷⁸ Tim Gaynor, *Arizona Immigration Law Hits Latino Businesses*, REUTERS, May 11, 2010, <http://www.reuters.com/article/idUSTRE64A4EY20100511> (noting that business at one Latino restaurant fell 40 percent after the law was signed and that a car dealer is worried he will go out of business because Latinos are reluctant to drive cars out of fear they will be pulled over
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have seen a sharp decline in revenues because many in the Latino community are choosing to either flee the State or stay at home rather than risk harassment by police every time they venture out, such as to go shopping or dine at a restaurant.⁷⁹ The

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and interrogated about their immigration status); Emanuella Grinberg, *Latino Businesses Feel Pinch of New Immigration Law*, CNN, April 28, 2010, <http://www.cnn.com/2010/US/04/28/arizona.immigration/index.html?hpt=C1> (noting impact of S.B. 1070 on local businesses and including quote from taco shop owner Hector Manrique that on the Friday that S.B. 1070 was signed, "the streets just went empty. Usually on Friday, Saturday, and Sunday, we're packed. But this weekend was empty like I'd never seen it before."); Emanuella Grinberg, *Specter of Arizona Immigration Law Slowly Drains Economy*, CNN, July 28, 2010, http://articles.cnn.com/2010-07-28/us/arizona.immigration.economy_1_immigration-law-unemployment-rate-industrial-warehouse?_s=PM:US (noting that one owner of a seafood business catering to Latinos believes that the decrease in business is a result of the fact that Latinos have "effectively gone into hiding amid concerns that they may have to leave the state as soon as the bill becomes law").

⁷⁹ Dan Zeiger, *Is SB 1070 Causing Latinos to Leave Arizona?*, E. VALLEY TRIBUNE, July 24, 2010, http://www.eastvalleytribune.com/arizona/immigration/article_c5b6e470-96b6-11df-9fd9-001cc4c03286.html (noting several Latino-focused businesses who experienced a sharp decline after S.B. 1070 was signed into law); see also DOJ Report, *supra* note 32, at 6 (finding that in Maricopa County "Latino drivers were between four to nine times more likely to be stopped than similarly situated non-Latino drivers"); *Left Back*, *supra* note 8, at 7, 9.

impact of this decline has been substantial.⁸⁰ This already dire situation will likely deteriorate even more if the Enjoined Provisions are permitted to take effect.

These economic consequences are not limited to businesses that are owned by or cater to Latinos. Immigrants provide a huge financial benefit to Arizona's economy.⁸¹ One recent report estimated that the purchasing power of Arizona's Latinos totaled \$33.9 billion in 2010.⁸² The Arizona legislation targeting Latinos already has produced

⁸⁰ Daniel Gonzalez, *Arizona Immigration Law, A Look at Bill's Impact One Year Later*, THE ARIZ. REPUBLIC, Apr. 23, 2011, <http://www.azcentral.com/news/election/azelections/articles/2011/04/23/20110423arizona-immigration-law-impact-year-later.html> (noting one account that sales of eggs to Latino-focused grocery stores had dropped 20 percent); *Left Back*, *supra* note 8, at 11. The fear has hurt more than just traditional businesses. See Zeiger, *supra* note 78 (discussing the impact of S.B. 1070 on churches, noting that one church had summer events cancelled "because families were either afraid to travel across the state or afraid to be gone from their children").

⁸¹ See *supra* note 2, at 1 ("The state's immigrant workers contributed \$2.4 billion in state tax revenue in 2004, while immigrant-headed households commanded \$10.5 billion in consumer spending power that supported roughly 66,500 full-time jobs.").

⁸² *Id.* at 2-3 (noting that "Arizona's 52,667 Latino-owned businesses had sales and receipts of \$8 billion and employed 54,530 people in 2007, the last year for which data is available," and that "[u]nauthorized immigrants in Arizona paid \$443.2 million in state and local taxes in 2010").

an adverse economic impact throughout the state.⁸³ As a result, in addition to the other harmful effects, overturning the preliminary injunction would severely disrupt Arizona's economy at a time when Arizona's residents can ill afford it.⁸⁴

⁸³ Richard A. Oppel Jr., *Arizona, Bowing to Business, Softens Stand on Immigration*, N.Y. TIMES, Mar. 18, 2011, at A15, http://www.nytimes.com/2011/03/19/us/19immigration.html?_r=1 (reporting that "60 state business leaders this week blamed last year's bill for boycotts, canceled contracts, declining sales and other economic setbacks"); see also Amanda J. Crawford, *Arizona: A Raging Debate on Immigration*, BUSINESSWEEK, Oct. 27, 2011, <http://www.businessweek.com/magazine/arizona-a-raging-debate-on-immigration-10272011.html> (reporting that "executives of PetSmart, Banner Health, Intel, and dozens of other Arizona employers ... helped defeat a slate of immigration bills pending in the statehouse. Business leaders said they feared the measures, which included denying state citizenship to the children of illegal migrants, would deepen Arizona's black eye from a 2010 immigration enforcement law that sparked a 16-month national boycott and, according to one study, will cost the state more than \$250 million related to lost convention business.").

⁸⁴ See Philip E. Wolgin and Angela Maria Kelley, Center for American Progress, *Your State Can't Afford It: The Fiscal Impact of States' Anti-Immigrant Legislation* (2011), http://www.americanprogress.org/issues/2011/07/pdf/state_immigration.pdf (economic effects of laws like S.B. 1070 include the economic damage of being perceived as hostile, the economic burden of implementing these laws, and the expense of associated legal fees); see also Marshall Fitz and Angela Kelley, Center for American Progress, *Stop the Conference: The Economic and Fiscal Consequences of Conference Cancellations Due to Arizona's S.B. 1070* (2010), http://www.americanprogress.org/issues/2010/11/az_tourism.html (analyzing the economic impact of backlash against S.B. 1070).

CONCLUSION

Overturning the preliminary injunction of the relevant provisions of Sections 2, 3, 5 and 6 of S.B. 1070 will cause irreparable harm to Arizona's Latino community by denying them access to essential benefits; subjecting them to pervasive harassment and racial profiling; threatening their physical safety; and having a significant adverse impact on Arizona's economy. The pernicious effects of these provisions pose too great a risk to Arizona's Latino community to be allowed to take effect without full judicial review. *Amici* respectfully request this Court to uphold the decision of the Ninth Circuit.

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