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

BRIEF OF *AMICI CURIAE* CITIES, COUNTIES, THE UNITED STATES CONFERENCE OF MAYORS, AND THE NATIONAL LEAGUE OF CITIES IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICI CURIAE*[1]

Amici are counties, cities, and towns located throughout the United States, as well as the U.S. Conference of Mayors, a nonpartisan organization that represents cities within the United States with populations over 30,000, and the National League of Cities, the country's largest and oldest organization serving municipal governments, representing more than 19,000 United States cities and towns. Our local governments provide essential services to the residents of our jurisdictions, including funding, operating, and overseeing the local law enforcement agencies charged with responsibility for ensuring public safety within our communities. *Amici* have a substantial interest in the resolution of the question presented. Our cities and counties are home to some of the largest immigrant communities in the country. If the enjoined provisions of Arizona Senate Bill 1070 (hereinafter referred to as "SB 1070") are allowed to take effect, our law enforcement agencies' ability to carry out their core mission of ensuring public safety would be undermined. *Amici* include the Arizona cities of Tucson, Flagstaff, and San Luis, as well as the Mayor of the City of Phoenix. The Court's decision in this

[1] The parties have filed blanket consents to the filing of *amicus curiae* briefs. Pursuant to Rule 37.6, counsel for *amici curiae* affirm that no counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amici curiae* made a monetary contribution to fund the preparation or submission of this brief.

case will have a substantial and immediate effect on the ability of these cities' police departments to serve and protect city residents.

SUMMARY OF ARGUMENT

Through SB 1070, the State of Arizona has created a sweeping state immigration enforcement scheme that threatens the ability of local law enforcement agencies to protect public safety. In the wake of SB 1070's passage, several other states have enacted similar laws. *See* H.B. 497, 2011 Leg., Gen. Sess. (Utah 2011); H.B. 87, 2011 Gen. Assem., Reg. Sess. (Ga. 2011); H.B. 56, 2011 Leg., Reg. Sess. (Ala. 2011); S.E.A. 590, 117th Gen. Assem., Reg. Sess. (Ind. 2011); S.B. 20, 119th Gen. Assem., Reg. Sess. (S.C. 2011). The court of appeals' decision to affirm the district court's preliminary injunction has prevented implementation of the most problematic provisions of SB 1070: sections 2(B), 3, 5(C), and 6. A.R.S. §§ 11-1051(B); 13-1509(A); 13-2928(C); 13-3883(A)(5). These provisions require local law enforcement officers to, *inter alia,* investigate individuals' immigration status, detain all arrestees until their immigration status is verified, and enforce state laws that criminalize both the failure to carry alien registration documents and any attempt by an unauthorized alien to apply for or perform work in Arizona. A.R.S. §§ 11-1051(B), 13-3883(A)(5), 13-2928(C). Further, Section 6 authorizes law enforcement officers to make warrantless arrests whenever an officer has probable cause to believe that an individual has committed a public

offense that makes the person removable from the United States. A.R.S. § 13-1509(A).

These provisions significantly exceed the very narrow provisions of federal law pursuant to which local law enforcement agencies may participate in federal civil immigration enforcement. Congress has authorized such participation only under specific, limited circumstances and in an extremely narrow manner.[2] The court of appeals correctly recognized that the immigration enforcement scheme imposed by Sections 2(B), 3, 5(C), and 6 impermissibly expands the role of state and local governments in enforcing federal civil immigration law, rendering these provisions facially unconstitutional.

The requirements imposed upon local law enforcement agencies by Sections 2(B), 3, 5(C) and 6 of SB 1070 also interfere with those agencies' primary function: protection of public safety. If these provisions are allowed to take effect, local law enforcement agencies in Arizona will be forced to prioritize the enforcement of federal *civil* immigration law over significant threats to public safety occurring within their jurisdictions, thereby reducing the capacity of local law enforcement agencies to detect, investigate,

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[2] *See* 8 U.S.C. § 1357(g) (authorizing the federal government to enter into written agreements ("Section 287(g) agreements") with state or local agencies deputizing certain officials to enforce civil immigration law so long as those officials are supervised by federal authorities to ensure that their activities comply with federal law).

and prosecute serious *criminal* activity. These provisions further instruct local law enforcement agencies to enforce Arizona's immigration scheme through means that are unconstitutional, vague, impractical, and costly. The preliminary injunction granted by the district court and upheld by the court of appeals preserves local law enforcement's capacity to protect public safety, prevents local officials from being required to engage in unconstitutional conduct, and protects local jurisdictions from liability that could arise therefrom.

Finally, the enjoined provisions of SB 1070 wrongly suggest to the public that the enforcement of federal civil immigration law is the responsibility of local officials, and that basic constitutional principles do not apply when those officials are enforcing these laws. If laws such as SB 1070 are allowed to take effect, immigrants – whether they are naturalized citizens, lawful permanent residents, visa holders, or undocumented individuals – will become deeply distrustful of local law enforcement officials. Such distrust will have long-term deleterious effects on the ability of local governments nationwide to protect the health and safety of all residents within their jurisdictions.

In reviewing the court of appeals' decision, *amici* urge this Court to consider not only the bases relied upon by the court of appeals in declaring the enjoined sections of SB 1070 unconstitutional, but also the practical effect that implementing these provisions

would have on the ability of local law enforcement agencies to ensure public safety.

ARGUMENT

I. THE ENJOINED PROVISIONS OF SB 1070 IMPERMISSIBLY USURP SCARCE LOCAL RESOURCES THAT SHOULD BE DEVOTED TO PUBLIC SAFETY.

The court of appeals properly held that the enjoined provisions of SB 1070 facially conflict with Congress's plenary authority to regulate immigration. These same provisions also impermissibly undermine local law enforcement agencies' ability to protect public safety. By requiring local law enforcement officers to devote significant time and resources to the enforcement of federal civil immigration law and newly-created state immigration crimes, the enjoined provisions of SB 1070 would force localities to divert scarce resources from the most pressing threats to public safety occurring in their jurisdictions.

Section 2(B)'s requirement that local law enforcement officers investigate individuals' immigration status is particularly troubling. This provision obligates local law enforcement officers to make a "reasonable attempt" to determine the immigration status of any person whom they have stopped, detained, or arrested if the officer has a "reasonable suspicion . . . that the person is an alien and is unlawfully present

in the United States." A.R.S. § 11-1051(B). If implemented, this provision would require officers to spend significant time and resources investigating the immigration status of persons with whom they come into contact. Although the statute purports to allow officers not to investigate immigration status when doing so would be impractical or would "hinder or obstruct an investigation," these exceptions are so vague that as a practical matter, during the vast majority of detentions, officers would be required to make this inquiry in order to comply with the law.

Amici can attest that the time required for officers to make even a "reasonable attempt" to determine an individual's immigration status can be substantial; local officers will typically be required to contact federal officials and to wait for those officials to make a determination and provide a response.[3] Although

[3] Under Section 2(B) of SB 1070, A.R.S. § 11-1051(B), a person is presumed not to be "unlawfully present" if he or she can provide a valid Arizona driver's license, a valid tribal enrollment card, or a valid government-issued ID card for which "proof of legal presence in the United States" is a prerequisite. Where such identification cannot be produced – *e.g.*, when a pedestrian is stopped and is not carrying identification, or when a motorist from New Mexico (or any other state that does not require confirmation of lawful immigration status to obtain a driver's license) produces his or her state-issued driver's license – local law enforcement officers will often have to contact federal authorities and wait for a response. Even when local law enforcement officers in Arizona can verify an individual's immigration status by accessing the federal government's immigration databases pursuant to 8 U.S.C. § 1357(g) rather than contacting federal officials, the volume of inquiries that SB

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the federal government has a statutory obligation to "respond to an inquiry by a . . . local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual," it is under no obligation to provide a *timely* response. 8 U.S.C. § 1373(c). In the experience of many *amici*, response times by the federal government's immigration-related agencies vary widely. As the federal government stated in its brief to the court of appeals, because many individuals do not appear in federal databases, lengthy verification processes are often necessary to ascertain citizenship or immigration status. Brief for Appellee at 56, *United States v. Arizona*, 641 F.3d 339 (9th Cir. 2011) (No. 10-16645). Moreover, the requests for determinations of immigration status mandated by Section 2(B) will strain federal resources, *id.* at 49-51, and as a result, local law enforcement officers will likely experience even longer delays waiting for the federal government to respond to their requests.

Section 2(B)'s requirement that local officials verify the immigration status of "[a]ny person who is arrested . . . before the person is released" is equally burdensome. A.R.S. § 11-1051(B). The court of appeals properly rejected Petitioners' suggestion that officers are only mandated to verify the immigration status of an arrestee if the officers have a reasonable

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1070 will generate will inevitably require significant time and resources.

suspicion that the individual lacks valid immigration status. *United States v. Arizona*, 641 F.3d at 347. Section 2(B)'s language makes clear that any time local law enforcement agencies arrest an individual, regardless of whether there is reason to suspect that the person is undocumented, they must verify the arrestee's immigration status. It further requires that arrestees be detained until their civil immigration status is verified even if this would prolong their detention well beyond the point at which they would otherwise have been released. By requiring prolonged detentions, Section 2(B) raises serious constitutional concerns, as set forth in Section II.3, *infra*. The extended detention of arrestees will also result in the expenditure of significant local resources, occupying officers' time and tying up space in jails and other holding facilities. Indeed, many of the persons likely to be detained pursuant to this provision will be minor offenders who otherwise would be cited and immediately released. As the district court noted in its order issuing the preliminary injunction, the City of Tucson alone arrested and immediately released 36,821 people in fiscal year 2009. *United States v. Arizona*, 703 F. Supp. 2d 980, 995 (D. Ariz. 2010). Local law enforcement agencies simply cannot perform the civil immigration-related investigations required by Section 2(B) without significantly reducing the time and resources currently allocated to the essential mission of maintaining safe communities.

Implementation of Sections 3, 5(C), and 6 will similarly deplete resources needed to protect public

safety. By creating new state crimes related to immigration status, Sections 3 and 5(C) would require law enforcement officers in Arizona to investigate and prosecute individuals engaged in conduct that does not threaten public safety. Devoting the time and financial resources necessary to take action whenever an individual suspected of being an unauthorized immigrant is found without federal immigration registration papers, applies for a job, or performs work, will inevitably require agencies to devote less time and resources to investigating and prosecuting other existing state crimes.[4] Similarly, Section 6

[4] As former Chief of Police for the City of San Luis, Arizona stated in a declaration filed in a related challenge to SB 1070, the statute

> requires me to divert department resources away from serious crimes not only to conduct immigration-status inquiries but to arrest persons who pose no threat to public safety. Under the new law, my officers must arrest any person who fails to carry alien registration documents or who cannot prove his or her legal status. . . . [T]he Yuma County Jail is located in the northern part of the City of Yuma and the time to transport a person, book that person, and travel back to the City [of San Luis] takes the officer out of the city for anywhere from 3 to 3 ½ hours. There are times [when] there is only one officer on patrol for a city of 32 square miles. This means the city is unprotected for the time needed to book into the Yuma County Jail.

Escobar v. Brewer, No. CV 10-00249-SRB (D. Ariz. June 29, 2010), Plaintiff-Intervenors Cities of Flagstaff, Tolleson, San Luis and Somertons' Motion for Preliminary Injunction, Exhibit B at ¶ 11 ("Declaration of Flores"). Similarly, former Chief of Police of Flagstaff Arizona, Brent Cooper, stated that in order to make the arrests required under Section 3, the Flagstaff Police

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authorizes local law enforcement officers to effect a warrantless arrest where officers have probable cause to believe an individual has committed a "public offense that makes the person deportable from the United States," A.R.S. § 13-3883(A)(5), creating further means through which scarce local resources will be spent on activities that are the province of federal immigration authorities.

The consequences of diverting law enforcement resources from public safety functions to federal civil immigration enforcement can be seen in Maricopa County, Arizona, where the local Sheriff's Office ("Office") has engaged in civil immigration enforcement, including conducting "immigration sweeps" targeting undocumented immigrants, since at least 2006. A 2008 study by the Goldwater Institute found that in the period since the Office initiated these

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Department "must pay the necessary jail booking fees and other costs associated with those people's detention." *Escobar v. Brewer*, No. CV 10-00249- SRB (D. Ariz. June 29, 2010), Plaintiff-Intervenors Cities of Flagstaff, Tolleson, San Luis and Somertons' Motion for Preliminary Injunction, Exhibit A at ¶ 11 ("Declaration of Cooper"). *See also United States v. Arizona*, 703 F. Supp. 2d 980 (D. Ariz. 2010) (No. 10-CV-01413), Plaintiff's Motion for a Preliminary Injunction and Memorandum of Law in Support Thereof, Exhibit 9 at ¶ 7 ("Declaration of Villaseñor") (Chief Villaseñor of Tucson noting that the increased rates of incarceration mandated by SB 1070 will have serious financial consequences for the city because "[t]he Sheriff of Pima County charges the City $200.38 for the first day and $82.03 for any subsequent day of jail for misdemeanor and petty offenses.").

activities, crime rates have risen, the number of investigations leading to arrests has declined, and response times for 911 calls have been more than twice the County's stated goal. CLINT BOLICK, GOLDWATER INSTITUTE, MISSION UNACCOMPLISHED: THE MISPLACED PRIORITIES OF THE MARICOPA COUNTY SHERIFF'S OFFICE 3-10 (2008); *see also* Conor Friedersdorf, *The Best Case Against Arizona's Immigration Law: The Experience of Greater Phoenix*, THE ATLANTIC, May 18, 2010. The report's author concluded that because the Sheriff's Office "has diverted resources away from basic law-enforcement functions to highly publicized immigration sweeps, which are ineffective in policing illegal immigration and in reducing crime generally," its "effectiveness has been compromised for the past several years by misplaced priorities that have diverted it from its mission." *Id.* at 1. These effects occurred despite significant increases to the budget of the Maricopa County Sheriff's Office during the relevant time period. *Id.* at 7.

In sum, the court of appeals' decision to affirm the district court's injunction prohibiting implementation of Sections 2(B), 3, 5(C), and 6 of SB 1070 ensures that law enforcement agencies in Arizona will not be forced to prioritize the enforcement of federal civil immigration law over the protection of public safety.

II. SECTION 2(B) OF SB 1070 IMPOSES VAGUE AND UNWORKABLE REQUIREMENTS THAT EFFECTIVELY COMPEL LOCAL OFFICIALS TO VIOLATE THE CONSTITUTION AND THEREBY CREATES POTENTIAL LIABILITY FOR LOCALITIES.

If allowed to take effect, Section 2(B) threatens to expose Arizona localities and officials to substantial potential liability. The provision provides no basis upon which local officials should determine whether they have reasonable suspicion that an individual is "an alien and unlawfully present" in the United States, and will require local officials to detain individuals in violation of the United States Constitution. Although the court of appeals did not address the civil rights violations that would occur if Section 2(B) were implemented, *amici* urge this Court to consider these and other problems that would result if the preliminary injunction were lifted.

1. Local Law Enforcement Officials Cannot Adequately Determine Whether an Individual Is "Unlawfully Present" in the United States.

Section 2(B) compels local officers to attempt to determine the immigration status of any individual who is stopped, arrested, or detained "where reasonable suspicion exists that the person is an alien and is unlawfully present" in the United States.

A.R.S. § 11-1051(B). Yet it fails to provide any guidance regarding the factors upon which an officer should rely to establish reasonable suspicion. The Arizona Legislature appears to have left such determinations within the discretion of local law enforcement officials. While local law enforcement officials have expertise in identifying and analyzing facts that suggest an individual has engaged in criminal conduct, they do not have the specialized expertise needed to identify and analyze facts that might support reasonable suspicion that an individual is unlawfully present in the United States in violation of complex federal civil immigration laws.

Local law enforcement officers are trained to determine whether an individual has engaged in criminal activity based on facts the officers can readily observe or obtain, such as witnessing the commission of a crime, analyzing forensic evidence from a crime scene, or evaluating informant or witness testimony. Analyzing whether a person is "unlawfully present" in the United States, by contrast, requires application of a complex scheme of federal statutory and regulatory law to an individual's unique circumstances (*e.g.*, the person's country of birth, the date and method of entry into the country, conduct while residing in the United States, any prior adjudications of immigration status by a federal agency or court, etc.). Local officials do not have the training necessary to interpret and apply this complex statutory

and regulatory scheme.[5] Nor do they have the ability during a stop, arrest, or detention to identify critical facts that would permit them to distinguish between individuals with lawful status and those who may be "unlawfully present."

2. Profiling Based on Race, Ethnicity, National Origin, and Language or Accent Will Occur if the Preliminary Injunction Is Lifted.

Amici do not believe that Section 2(B) of SB 1070 can be enforced in a constitutional manner. There simply is no sound way for local law enforcement officers to tell by simple observation whether an individual may be unlawfully present in the country.

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[5] *See* Declaration of Flores at ¶ 9 ("[M]y officers are not experts in immigration matters. There is a real risk that determining a person's immigration status will, therefore, result in his or her prolonged detention, potentially violating that person's constitutional and civil rights and further subjecting the department to liability."); Declaration of Cooper at ¶ 10 ("Because of the complexity of immigration law, it will require a great deal of training to sufficiently prepare my officers to become experts in immigration enforcement. Developing the necessary expertise will also take time away from the officers' ability to pursue violent criminals."); Declaration of Villaseñor at ¶ 6 ("[M]y officers . . . are not at all familiar with [what constitutes] reasonable suspicion as to immigration status, not being trained in Federal immigration law. Despite the executive order of Arizona Governor Jan Brewer to the contrary, [the] Arizona Peace Officer Standards and Training board has not been able to clearly define for Arizona's law enforcement officers what is reasonable suspicion regarding immigration status.").

Accordingly, if Section 2(B) of SB 1070 is implemented, factors such as race, ethnicity, level of English proficiency, or national origin are likely to form the basis for determinations of whether reasonable suspicion exists that an individual is unlawfully present, in violation of the Constitution. *See, e.g., Whren v. United States*, 517 U.S. 806, 813 (1996) ("[T]he Constitution prohibits selective enforcement of [ ] law[s] based on considerations such as race."); *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975) (an individual's "Mexican appearance" is not a sufficient basis, by itself, to provide reasonable suspicion for a stop or brief questioning); *United States v. Manzo-Jurado*, 457 F.3d 928, 937 (9th Cir. 2006) ("[A]n individual's inability to understand English" does not give rise to reasonable suspicion that an individual is in the country illegally); *Chavez v. Illinois State Police*, 251 F.3d 612, 635 (7th Cir. 2001) ("[U]tiliz[ing] impermissible racial classifications in determining whom to stop, detain, and search . . . would amount to a violation of the Equal Protection Clause of the Fourteenth Amendment.").

Although SB 1070 purportedly limits the extent to which an officer may rely upon race, color, or national origin to support reasonable suspicion that a person is "unlawfully present," as a practical matter, the law does not prevent reliance on these factors. Unless local agencies adopt the impossibly burdensome approach of requiring officers to contact federal authorities to determine the immigration status of *every* person stopped, arrested, or detained statewide,

each such encounter would require an officer (a) to engage in potentially unconstitutional conduct by relying upon observable factors such as race, ethnicity, or level of English proficiency, or (b) to ignore SB 1070's mandate that immigration status be verified during these encounters. Thus, if Section 2(B) were allowed to take effect, local officials would be put in the untenable position of either acting in an unconstitutional manner or violating state law, in either case subjecting local law enforcement agencies to liability.[6]

[6] In fact, SB 1070 itself expressly authorizes private lawsuits against local law enforcement agencies that fail to enforce federal civil immigration law in a sufficiently zealous manner. Section 2(H) allows any "person who is a legal resident" of Arizona to sue in Arizona superior court to challenge an official's or agency's adoption or implementation of "a policy that limits or restricts the enforcement of federal immigration laws . . . *to less than the full extent permitted by federal law*." A.R.S. § 11-1051(H) (emphasis added). If a court finds that an entity has failed to perform the immigration-related investigations required under SB 1070, it is required to order the entity to pay civil penalties ranging from five hundred dollars to five thousand dollars "for each day that the policy has remained in effect after the filing of an action." *Id.* Of particular concern is the fact that lawsuits brought pursuant to Section 2(H) will require state court judges, who have no experience interpreting federal civil immigration laws, to determine whether a local law enforcement agency's policy, written or otherwise, limits or restricts its officers' ability to pursue enforcement of federal immigration laws to the maximum extent possible.

3. Implementation of Section 2(B)'s Requirement That Arrestees' Immigration Status Be Determined Prior to Release Would Expose Law Enforcement Agencies to Liability.

As noted above, Section 2(B) requires local law enforcement officers to verify the immigration status of "[a]ny person who is arrested . . . before the person is released," A.R.S. § 11-1051(B), regardless of whether there is any reason to believe that an arrestee is unlawfully present in the United States. As the City of Tucson averred in *Escobar v. City of Tucson*, a related case filed in 2010 in the Arizona District Court,

> Immigration and Customs Enforcement agents will not be able to respond with an immediate verification of the immigration status of every individual who receives a criminal misdemeanor citation within the City of Tucson and within the State of Arizona as required by A.R.S. § 11-1051(B). As a result Tucson will be required to incarcerate persons who would have been released at the time of citation pending federal verification of the person's immigration status. That verification will be particularly difficult for natural born citizens who do not have a passport or other record with federal immigration agencies. The federal verifications may take days or weeks. . . .

Escobar v. City of Tucson, No. CV 10-249-TUC-SRB (D. Ariz. Apr. 29, 2010), Answer and Cross-Claim at

¶¶ 40, 44-45. By requiring local governments to detain all arrestees pending verification of their immigration status, SB 1070 directs local governments to hold arrestees even when a prosecuting entity has decided not to pursue criminal charges for the conduct giving rise to the arrest or when a judge has ordered an individual released after an initial appearance in his or her criminal case. This requirement will expose local agencies to potential liability, as arrestees subject to these extended detentions may have cognizable Fourth Amendment or Fourteenth Amendment Due Process claims.[7] In light of the constitutional violations and potential liability for

[7] Federal courts have frequently held that when the original justification for a detention is no longer valid, continued detention of the individual is unconstitutional. While most courts have held that such "overdetentions" should be analyzed as a deprivation of liberty without due process in violation of the Fifth or Fourteenth Amendments, *see, e.g.*, *Cannon v. Macon County*, 1 F.3d 1558, 1562-63 (11th Cir. 1993); *Berry v. Baca*, 379 F.3d 764 (9th Cir. 2004); *Dodds v. Richardson*, 614 F.3d 1185, 1192-93 (10th Cir. 2010), a few recent decisions by federal district courts have found that an extended detention constitutes a "re-arrest" or a "re-seizure" under the Fourth Amendment, and have accordingly found Fourth Amendment violations when individuals remained in custody after they were entitled to be released. *See, e.g.*, *Barnes v. District of Columbia*, 242 F.R.D. 113, 118 (D.D.C. 2007); *Arline v. City of Jacksonville*, 359 F. Supp. 2d 1300, 1310 (M.D. Fla. 2005); *Jones v. Cochran*, No. 92-6913-CIV ZLOCH, 1994 U.S. Dist. LEXIS 20625, at *12-17 (S.D. Fla. Aug. 8, 1994). Regardless of whether lawsuits challenging the continued detention of arrestees pending verification of immigration status would be ultimately successful, local governments will expend significant time and resources defending such lawsuits.

local governments that would result from implementation of Section 2(B), *amici* urge this Court to uphold the court of appeals' decision.

III. IMPLEMENTATION OF THE ENJOINED PROVISIONS OF SB 1070 WILL IRREPARABLY DAMAGE TRUST BETWEEN IMMIGRANT COMMUNITIES AND LOCAL LAW ENFORCEMENT AGENCIES.

Amici submit that the public interest overwhelmingly favors affirming the court of appeals' decision in order to prevent irreparable damage to relationships between immigrant communities and local law enforcement agencies that are essential to the protection of public safety. Maintaining a clear separation between local government operations and federal civil immigration enforcement is critical to local governments' ability to serve community needs appropriately and to provide effective crime prevention and law enforcement services.

If Sections 2(B), 3, 5(C), and 6 of SB 1070 were to take effect, relationships between local law enforcement agencies and immigrant communities in Arizona and across the country would be severely damaged. By requiring local law enforcement to, *inter alia*, investigate immigration status, detain arrestees until their immigration status can be verified, and enforce state laws criminalizing the failure of immigrants to carry alien registration documents and apply for or perform work, the enjoined sections of SB

1070 would make many members of immigrant communities – including those who are lawfully present in the United States – justifiably afraid of interacting with local law enforcement officials. As local governments charged with protecting the public in diverse communities, *amici* can attest to the indispensable role that community relationships play in maintaining public safety. When local law enforcement officers are perceived as enforcers of civil immigration law, as they would be if the preliminary injunction were lifted, many individuals are reluctant to seek their help. Crimes go unreported, witnesses fear coming forward, victims lack protection, and communities become less safe.[8] The loss of trust

[8] *See Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws: Joint Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Sec., and Int'l Law and the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. 6 (2009) (Testimony of David A. Harris, Professor of Law, University of Pittsburgh) ("Involvement of state and local police in immigration enforcement . . . threatens to cut off the all-important avenues of communication and information that community policing uses to create public safety. Put simply, if state and local police become participants in immigration enforcement, people in immigrant communities will not trust them. Instead, they will begin to fear them, and to fear contact with them . . . The consequences of this are both obvious and disastrous. First, police will not have all of the information that they need to make the neighborhood safe, because some number of residents will not communicate with them out of fear. Second, and perhaps more appalling, immigrants victimized by predators – robbers, rapists, even potential

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resulting from implementing the enjoined provisions of SB 1070 would undermine local officials' ability to engage in effective crime prevention, detection, investigation, and prosecution, thereby decreasing the safety of all community members – non-citizens and citizens alike.

As former Flagstaff Chief of Police Brent Cooper explained, implementation of SB 1070 would "undermine the necessary trust between [his] department and community members whom we have a duty to protect and serve. It [would] deter immigrants . . . and other individuals, particularly those in the Latino community, from coming forward and interacting with police, because they will fear being questioned about their status and possibly arrested for violating one of Arizona's new state immigration crimes." Declaration of Cooper at ¶ 13. Former San Luis Chief of Police Rick Flores similarly noted that SB 1070 "will undoubtedly damage [his] department's ability to investigate and solve serious and violent crimes," and will place "officers . . . in the precarious position of deciding whether to treat [a] person as a crime victim/witness or as a possible immigration violator[.]" Declaration of Flores at ¶¶ 13; 15. As former Los Angeles Police Chief William Bratton explained, "when local police enforce immigration laws, it undermines their core public safety mission . . . and

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killers – will not report crimes against them. This leaves the predators free to victimize others.").

exacerbates fear in communities that are already distrustful of police. . . . Working with victims and witnesses of crimes closes cases faster and protects all of our families by getting criminals off the street." William Bratton, *Opinion: The LAPD Fights Crime, Not Illegal Immigration*, L.A. TIMES, Oct. 27, 2009.[9]

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[9] The views expressed by Chiefs Cooper, Flores, and Bratton are not unique; the widespread opposition to laws like SB 1070 by current and former law enforcement officials has been well documented. *See, e.g.*, Kevin Johnson, *Arizona immigration law creates rift*, USA TODAY, Apr. 26, 2010, *available at* http://www.usatoday.com/news/nation/2010-04-25-arizona-immigration_N.htm ("[Former] San Jose Police Chief Robert Davis, president of the Major Cities Chiefs Association, said the group stands by its 2006 policy that 'immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities.'"); Garin Groff, *Talking 1070 with Mesa police chief*, EAST VALLEY TRIBUNE, July 15, 2010, *available at* http://www.eastvalleytribune.com/local/article_1f0057e0-9069-11df-9af7-001cc4c002e0.html (quoting President of the Mesa, Arizona Fraternal Order of Police, Sergeant Bryan Soller: "[I]llegal immigrants could be hesitant to tell police they witnessed a crime or were a victim for fear of getting questioned about their status – and then deported . . . [I]f the illegal community does not contact us, it will take us a long time to know they're getting preyed on."); Thomasi McDonald, *Dolan bucks immigration checks*, NEWS & OBSERVER, Apr. 22, 2010, *available at* http://www.newsobserver.com/2010/04/22/448745/dolan-bucks-anti-immigration-bill.html#ixzz0mF8ZdzIl (quoting Raleigh, North Carolina Police Chief Harry Patrick Dolan's statement that "if the North Carolina legislature mandated [ ] a law [such as Arizona's SB 1070] that it would stretch already limited resources and distract police departments from their core mission: reducing and preventing crimes against people and property."); Alia Beard Rau and JJ Hensley, *Police Weighing Arizona's*

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Although the stated purpose of SB 1070 is "to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States," SB 1070 § 1, *amici* contend that natural born and naturalized U.S. citizens, lawful permanent residents, and other law-abiding individuals with authorization to reside in the U.S. will also justifiably fear being caught in the net of unworkable directives that local officials are expected to enforce under SB 1070. The possibility of being asked for papers and detained while immigration status is verified is enough to deter many crime victims, witnesses, and other community members from approaching the police, even if they have legal status. Furthermore, even lawful residents may not have documents that meet the standards set forth in SB 1070, and some will fear that the validity of their documents will be questioned or disregarded. Other lawful residents have family members who are

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immigration bill's impact, THE ARIZONA REPUBLIC, Apr. 22, 2010, *available at* http://www.azcentral.com/arizonarepublic/news/articles/2010/04/22/20100422arizona-immigration-bill-police-impact.html#ixzz1mfamA0CQ (quoting George Gascón, former Chief of Police for Mesa, Arizona and San Francisco, California: "[SB 1070] will further impact police departments already lacking the resources to do their basic job. . . . [P]eople will be more hesitant to report crimes, and that will create some very, very tough circumstances for local police in dealing with crime issues in areas heavily visited by people here from other countries." The article further notes that the Arizona Association of Chiefs of Police opposes SB 1070 because it will "hobble law enforcement's ability to 'fulfill their many responsibilities in a timely manner.' ").

undocumented or whose immigration status is not known; these individuals may not want to risk approaching local law enforcement officers if doing so might lead to investigations in their homes or neighborhoods, potentially endangering the people close to them. If the preliminary injunction is lifted, law enforcement officers throughout Arizona will be seen as enforcers of Arizona's new immigration scheme rather than solely as protectors of public safety. The resulting fear and loss of trust would be devastating to community relationships and therefore to local law enforcement agencies' ability to serve and protect the public.

Finally, the federal government has put in place various visa programs designed to assist local law enforcement agencies in obtaining the trust and cooperation of undocumented crime victims and witnesses. *See, e.g.*, 8 U.S.C. § 1101(a)(15)(T) (making "T" visas available to certain victims of human trafficking who assist law enforcement); *id.* § 1101(a)(15)(U) (making "U" visas available to certain victims of serious crimes, including domestic violence, who assist law enforcement). These provisions of federal law would be severely undermined if the enjoined provisions of SB 1070 were allowed to take effect. Local law enforcement and other officials have made significant progress in protecting public safety through use of these visa programs. By offering immigrant crime victims and witnesses a pathway to stable immigration status, these laws encourage undocumented immigrants to cooperate with local law enforcement,

to report crime, and to assist with prosecutions, so that all community members are better protected. Section 2(B)'s requirement that law enforcement officers instead attempt to determine the immigration status of individuals with whom they come into contact, and detain arrestees while verification of their status is pending, will deter immigrant victims and witnesses from cooperating in law enforcement investigations, even if they could ultimately be eligible for lawful status under the federal government's visa programs. By casting local law enforcement officers not as protectors of public safety but as enforcers of federal civil immigration law, the enjoined provisions of SB 1070 both conflict with and subvert the federal immigration visa programs on which our local governments rely to fight crime and safeguard our communities.

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CONCLUSION

For the reasons stated herein, *amici* urge the Court to affirm the judgment of the court of appeals.

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Respectfully submitted,

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