

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 FORMER ARIZONA ATTORNEYS
GENERAL TERRY GODDARD AND
GRANT WOODS, AND OF FORTY-TWO OTHER
FORMER ATTORNEYS GENERAL, AS AMICI
CURIAE IN SUPPORT OF RESPONDENT**

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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES	iv
INTEREST OF AMICI CURIAE	1
PRELIMINARY STATEMENT AND SUMMARY OF ARGUMENT.....	6
POINT I.	
SB 1070 IMPERMISSIBLY INTER- FERES WITH LOCAL LAW ENFORCE- MENT BY DAMAGING POLICE AND PROSECUTORS' ABILITY TO EFFECTIVELY FIGHT CRIME	9
A. SB 1070 Interferes With The Ability Of Police To Enforce Criminal Laws And Deter Criminal Activity	10
1. The importance of community policing	10
2. SB 1070 will undermine the enforcement efforts of local law officials by turning them into untrustworthy immigration officers and promoting imper- missible racial-profiling.....	14
B. SB 1070 Will Erode Prosecutors' Ability To Secure Convictions Against Dangerous Criminals	20

	<i>Page</i>
POINT II.	
SB 1070 UNDERCUTS LOCAL POLICE AND PROSECUTORS' DISCRETION TO ESTABLISH LAW ENFORCEMENT POLICIES THAT BEST FIT THEIR PARTICULAR COMMUNITIES	23
A. SB 1070 Intrudes On The Ability Of Chiefs Of Local Law Enforcement Agencies To Set Their Own Criminal Enforcement Priorities	23
B. SB 1070 Reduces Law Enforcement Discretion By Holding Hostage The Already Cash-Strapped Budgets Of Local Agencies	26
POINT III.	
BY HAMPERING LOCAL LAW EN- FORCEMENT EFFORTS, SB 1070 FRUSTRATES CONGRESS'S NATIONAL IMMIGRATION POLICIES	31
A. Congress's Policy Of Leveraging Immigration Laws To Secure Con- victions Of Dangerous Criminals ...	31
B. Congress's Policy That Local Involvement In Immigration Enforcement Be Voluntary And In Cooperation With The Federal Government.....	34

	<i>Page</i>
C. Congress's Efforts To Establish Immigration Policies That Apply To All States Equally	35
CONCLUSION.....	40

TABLE OF AUTHORITIES

	<i>Page(s)</i>
Rules and Statutes	
8 U.S.C. § 1101(a)(15)(S)	32
8 U.S.C. § 1101(a)(15)(T)	32
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8 U.S.C. § 1306(a)	7
8 U.S.C. § 1357	34
8 U.S.C. § 1373	25
8 U.S.C. § 1373(c)	35
Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464	32-33
Department of Homeland Security Appropriations Act, 2010, Pub. L. No. 111-83, 123 Stat. 2142 (2009)	36
S.B. 1070, 2010 Ariz. Sess. Laws Ch. 113, <i>amended by</i> 2010 Ariz. Sess. Laws Ch. 211	<i>passim</i>
Cases	
<i>Christian Legal Society v. Martinez</i> , 130 S. Ct. 2971 (2010)	18-19

	<i>Page(s)</i>
<i>Graham v. Richardson</i> , 403 U.S. 365 (1971)	30
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<i>Printz v. United States</i> , 521 U.S. 898 (1997)	34
<i>State v. Jones</i> , 6 P.3d 323 (Ariz. Ct. App. 2000)	22
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<i>United States v. Brignoni-Ponce</i> , 422 U.S. 873 (1975)	17
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	<i>Page(s)</i>
Ernesto Londoño and Theresa Vargas, <i>Robbers Stalk Hispanic Immigrants, Seeing Ideal Prey</i> , Wash. Post, Oct. 26, 2007.....	10
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H.R. Rep. No. 106-939 (2000) (Conf. Rep.)	33
Hearing on H.R. 3808, the "Scott Gardner Act," Before the Subcomm. on Immig. Pol. And Enforcement of the H. Comm. On the Judiciary, 112th Cong. 4 (2012).....	15, 20

	<i>Page(s)</i>
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Jude Joff-Block, <i>Addressing Unlicensed Doctors & Illegal Medicine In Nevada</i> , Fronteras: The Changing America Desk, Mar. 13, 2012	11
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	<i>Page(s)</i>
M.C.C. Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies, Adopted by Major Cities Chiefs, June 2006	15
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Orde F. Kittrie, <i>Federalism, Deportation, and Crime Victims Afraid to Call the Police</i> , 91 Iowa L. Rev. 1449 (2006)	15
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INTEREST OF AMICI CURIAE¹

Amici are former state Attorneys General from all regions of the United States. As former chief law enforcers, amici are well acquainted with the obstacles faced by local police and prosecutors trying to make communities safer in an environment made increasingly complex by immigration-related issues. Amici include two former Attorneys General of Arizona who have particular experience with the issues at stake in this case. Amicus Terry Goddard has been a leader in combating border crimes, in particular by investigating and closing down complex smuggling conspiracies and employing groundbreaking techniques to identify and disrupt illegal wire transfers used to pay for human smuggling and trafficking. Amicus Grant Woods' experience investigating a high-profile immigration operation in Arizona provides him with unique insight into the deleterious effects that Arizona's law will have on the efforts of law enforcement throughout the United States.

Amici, many of whom also served as county, local, and federal prosecutors, have worked closely on criminal, public advocacy, and civil rights issues, over the course of several decades of collective experience, to ensure that all criminal laws are enforced and

¹ No counsel for a party authored this brief in whole or in part, and no person other than the amici curiae or its counsel made a monetary contribution to the preparation or submission of this brief. Letters from the parties consenting to the filing of this brief have been filed with the Clerk of the Court.

that all citizens are protected. Amici and the prosecutors they have collaborated with played a critical role in implementing a community-based model of policing that facilitated criminal law enforcement in their jurisdictions. Amici come to this Court to express their belief that the law at issue in this case will damage amici's work on these fronts, both in Arizona and beyond.

Amici Goddard and Woods, who served as Attorneys General of the State of Arizona from 2003 to 2011, and 1991 to 1999, respectively, were each selected by their peers as the nation's top attorney general in 2010 and 1995. They are joined on this brief by the following forty-two former Attorneys General of twenty-seven States and the District of Columbia:

Robert Abrams (New York Attorney General: 1979-1993)

Bruce Babbitt (Arizona Attorney General: 1975-1978; Arizona Governor: 1978-1987; U.S. Secretary of the Interior: 1993-2001)

William J. Baxley (Alabama Attorney General 1971-1979; Alabama Lieutenant Governor: 1983-1987)

Richard H. Bryan (Nevada Attorney General: 1979-1983; Nevada Governor 1983-1989; United States Senator: 1989-2001)

Robert A. Butterworth (Florida Attorney General: 1986-2002)

- Bonnie Campbell (Iowa Attorney General: 1991-1994; Director of the U.S. Department of Justice's Violence Against Women Office: 1995-2001)
- Pamela Carter (Indiana Attorney General: 1993-1997)
- Steve Clark (Arkansas Attorney General: 1979-1990)
- J. Joseph Curran, Jr. (Maryland Attorney General: 1987-2007; Maryland Lieutenant Governor 1983-1987)
- Frankie Sue Del Papa (Nevada Attorney General: 1991-2003)
- Robert J. Del Tufo (New Jersey Attorney General: 1990-1993)
- James Doyle (Wisconsin Attorney General: 1991-2003; Wisconsin Governor: 2003-2011)
- W. A. Drew Edmondson (Oklahoma Attorney General: 1995-2011; District Attorney for Muskogee County, Oklahoma: 1983-1995)
- Lee Fisher (Ohio Attorney General: 1991-1995)
- David B. Frohnmayer (Oregon Attorney General: 1981-1991)
- Jan Graham (Utah Attorney General: 1993-2001)
- Jennifer Granholm (Michigan Attorney General: 1999-2003; Michigan Governor: 2003-2011)
- Scott Harshbarger (Massachusetts Attorney General: 1991-1999; District Attorney of Middlesex County, Massachusetts: 1983-1991)

- Peter Harvey (New Jersey Attorney General: 2003-2006; former Assistant U.S. Attorney)
- Andrew Ketterer (Maine Attorney General: 1995-2001)
- G. Oliver Koppell (New York Attorney General: January to December 1994)
- Peg Lautenschlager (Wisconsin Attorney General: 2003-2007; Winnebago County District Attorney: 1985-1988; United States Attorney Western District of Wisconsin: 1993-2001)
- Patrick C. Lynch (Rhode Island Attorney General: 2003-2011)
- J.D. MacFarlane (Colorado Attorney General: 1975-1983; Denver City and County Manager of Safety and Ex Officio Sheriff: 1985-1987)
- Patricia Madrid (New Mexico Attorney General: 1999-2007)
- Janet T. Mills (Maine Attorney General: 2009-2011)
- Jeffrey A. Modisett (Indiana Attorney General: 1996-2000; Marion County Prosecuting Attorney: 1991-1994)
- Mike Moore (Mississippi Attorney General: 1988-2004)
- Hardy Myers (Oregon Attorney General: 1997-2009)
- Edwin Pittman (Mississippi Attorney General: 1984-1988; Mississippi Supreme Court Chief Justice: 2001-2004)

- Dennis J. Roberts II (Rhode Island Attorney General: 1979-1985)
- Steve Rowe (Maine Attorney General: 2001-2009)
- Steve Six (Kansas Attorney General: 2008-2011)
- Gregory H. Smith (New Hampshire Attorney General: 1980-1984)
- Robert Spagnoletti (District of Columbia Attorney General: 2004-2006; District of Columbia Assistant U.S. Attorney: 1990-2003)
- Robert Stephan (Kansas Attorney General: 1979-1995)
- Mary Sue Terry (Virginia Attorney General: 1985-1993)
- Anthony F. Troy (Virginia Attorney General: 1977-1978)
- James Tierney (Maine Attorney General: 1980-1990; former Special Counsel to the Attorney General of Florida)
- R. Paul Van Dam (Utah Attorney General: 1989-1993; Salt Lake County District Attorney; 1975-1979)
- John Van de Kamp (California Attorney General: 1983-1991; U.S. Attorney, Central District of California: 1966-1967; former Los Angeles County District Attorney: 1975-1983)
- Mark White (Texas Attorney General: 1979-1983; Texas Governor: 1983-1987)

**PRELIMINARY STATEMENT AND
SUMMARY OF ARGUMENT**

Throughout the course of five days in July 1997, police officers of the City of Chandler, Arizona took it upon themselves to act as enforcers of federal immigration laws by engaging in sweeping raids of primarily Latino neighborhoods, apprehending hundreds of Latino individuals (many of them United States citizens or lawful residents) and creating distrust within the very communities they were entrusted to protect. During the subsequent three-month investigation into the operation, then-Arizona Attorney General Grant Woods, this Court's amicus, uncovered evidence of systematic and egregious unconstitutional behavior directed at Hispanic individuals. The damage that episodes like these inflict on local law enforcement's ability to prosecute criminals and make communities safer is unquantifiable and irreparable. It has motivated amici to raise their voice in support of Respondent in this case.

This case is before the Court on a motion by the United States for a preliminary injunction that turns on whether federal immigration laws preempt portions of Arizona's so-called "Support Our Law Enforcement and State Neighborhoods Act," S.B. 1070, 2010 Ariz. Sess. Laws Ch. 113, *amended by* 2010 Ariz. Sess. Laws Ch. 211 [hereinafter SB 1070]. Amici will not repeat the Ninth Circuit's well-reasoned opinion as to why the United States will likely prove on the merits that SB 1070 is preempted.

Instead, amici focus on the harm that SB 1070 sections 2(B), 3, & 6 cause to the public's interest. *See Winter v. Natural Res. Def. Council Inc.*, 555 U.S. 7, 20 (2008).² In particular, amici argue that SB 1070 harms the public interest, often irreparably by adversely affecting state and local law officials' efforts to fight crime, secure convictions, and make communities safer for all individuals.

First, SB 1070 erodes the trust that local law enforcement agencies have built with their communities by trying to turn local officials into federal immigration agents, and thus undermines these officials' ability to enforce our criminal laws. Compounding this problem, SB 1070 infects the relationship between police and their communities by inviting racial profiling. And the negative consequences of SB 1070 are felt not just by police officers, but also by prosecutors trying to keep criminals off the streets.

² Section 2(B) requires law enforcement officials to verify the immigration status of individuals in certain circumstances. Section 3 makes it a misdemeanor to violate the immigrant registration requirements of 8 U.S.C. §§ 1304(e) and 1306(a). Section 6 permits officers to arrest individuals without a warrant if the officer has probable cause to believe an individual has committed any deportable offense. Amici focus on the fourth prong of the preliminary injunction analysis, where the public interest lies. The public interest analysis was raised by the parties to the district court and the court of appeals. *See* Br. for Appellee at 60-65 *United States v. Arizona*, No. 10-16645 (9th Cir. Apr. 11, 2011); Appellants' Reply Br. at 26-29 *United States v. Arizona*, No. 10-16645 (9th Cir. Apr. 11, 2011).

Second, the public interest is harmed by SB 1070's unwelcome and unprecedented intrusion on police and prosecutorial discretion. SB 1070 directly attempts to micromanage local agencies' day-to-day operations through the threat of potentially crippling citizen suits against officials that do not focus sufficiently on immigration law enforcement. SB 1070 also harms discretion to the extent the costs imposed by the law further erode already scarce police and prosecutorial resources.

Finally, amici will link the problems SB 1070 causes for local law enforcement to the obstacles it creates for the implementation of national immigration policy as set forth by Congress. Importantly, Petitioners' repeated assertions to the contrary notwithstanding, the enforcement authorities claimed by Arizona in SB 1070 are well beyond what amici have traditionally understood to be the proper scope of their state prosecutorial powers vis-à-vis immigration. Whatever else may be within the proper purview of state officials with respect to enforcement of immigration laws, in amici's view, SB 1070 has clearly exceeded those boundaries. Moreover, SB 1070 subverts Congress's determination that our federal immigration system should be: (a) subordinated to the prosecution of certain categories of dangerous criminals; (b) permissive of voluntary cooperation, if any, from state and local law enforcement officials; and (c) available to the benefit of all States equally. Plainly, Arizona may not override clear Congressional intent through its own laws. SB 1070 seeks to do just that—by forcing

its own immigration priorities on local officials and through them on federal policing—it poses a significant obstacle to the “accomplishment and execution of the full purposes and objectives” of Congress’s immigration statutory schemes. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). SB 1070 is therefore preempted.

I. SB 1070 IMPERMISSIBLY INTERFERES WITH LOCAL LAW ENFORCEMENT BY DAMAGING POLICE AND PROSECUTORS’ ABILITY TO EFFECTIVELY FIGHT CRIME

Over the last several decades, law enforcement officials across the country have increasingly turned to participatory, community-focused policing models to find cost-effective and locally appropriate ways to fight crime in the increasingly diverse communities they serve. Such alternative law enforcement models focus specifically on building relationships of trust between officials and their communities. State and local law enforcement officials have devoted substantial time, energy, and resources to fostering these relationships. SB 1070, by turning local officers into immigration agents, and by increasing the likelihood of racial profiling against certain communities, will undermine the progress that these programs have painstakingly achieved. These problems will negatively impact all enforcers within the criminal justice system, from line officers to prosecutors, impeding their efforts to ensure public safety. In light of these

impacts, amici urge the Court to maintain the injunction against SB 1070 to protect the public's interest in effective criminal law enforcement.

**A. SB 1070 Interferes With The Ability
Of Police To Enforce Criminal Laws
And Deter Criminal Activity**

**1. The importance of community
policing**

Law enforcement in communities with any appreciable presence of immigrants must deal with two undisputed realities. The first is that immigrants, particularly undocumented immigrants, are favorite and easy targets of criminal activity.³ As a result of an unfortunate combination of factors, such as the inability to speak or understand English, the lack of documentation which would permit them to obtain bank accounts, and even the circumstances of their entrance into or presence in the United States, immigrants are especially vulnerable to crimes, including those that have garnered the attention of Attorneys General across the nation such as payday robberies and assaults,⁴ unlicensed

³ See generally International Association of Chiefs of Police, *Police Chiefs Guide to Immigration Issues* (June 2007), at 28 (noting immigrants “are extremely vulnerable to crime” and decrying the flourishing of “ethnic protection societies” run by criminals to act as substitutes for legitimate law enforcement).

⁴ See, e.g., Ernesto Londoño and Theresa Vargas, *Robbers Stalk Hispanic Immigrants, Seeing Ideal Prey*, Wash. Post, Oct. 26, 2007, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/25/AR2007>

providers of medical and legal services,⁵ and fraud.⁶ The vulnerability of immigrant women to human trafficking and domestic violence is particularly well-documented.⁷

102502740.html (describing ongoing robberies and assaults committed against Hispanics in Washington, D.C. whereby assailants “lurk . . . outside of cash-checking businesses on payday”).

⁵ See, e.g., Jude Joff-Block, *Addressing Unlicensed Doctors & Illegal Medicine In Nevada*, Fronteras: The Changing America Desk, Mar. 13, 2012, <http://www.fronterasdesk.org/news/2012/mar/13/addressing-unlicensed-doctors-illegal-medicine-nev/>; Jessica Weisberg and Bridget O’Shea, *Fake Lawyers and Notaries Prey on Immigrants*, N.Y. Times, Oct. 21, 2011, at A25B, available at <http://www.nytimes.com/2011/10/23/us/fake-lawyers-and-notaries-prey-on-immigrants.html>.

⁶ See, e.g., Press Release, Fed. Trade Comm’n, Telemarketer of “Credit Services” Agrees to Settle Federal and State Fraud Charges (June 19, 1998), available at <http://www.ftc.gov/opa/1998/06/ccs.shtm> (describing a case initiated by amicus Frankie Sue Del Papa against a company defrauding people who do not speak English well); Lornet Turnbull, *State Takes Aim At Those Preying On Immigrants*, Seattle Times, June 10, 2011, at B9, available at http://seattletimes.nwsource.com/html/localnews/2015279770_immigrants10m.html (discussing Washington Attorney General’s efforts to combat fraudulent providers of legal services); Vytautas Lekarauskas, *Immigration Fraud: State Says Con Man Preyed On Immigrants*, Huffington Post (Nov. 22, 2011), http://www.huffingtonpost.com/2011/09/22/vytautas-lekarauskas-sued_n_976261.html (detailing efforts of Illinois Attorney General against individual who defrauded immigrants by posing as government official).

⁷ See, e.g., Gene Voegtlin, Int’l Ass’n of Chiefs of Police, *Enforcing Immigration Law: The Role of State, Tribal and*

The second reality is that, for many of the same reasons listed above as well as for fear of deportation, immigrants—legal or undocumented—are often reluctant to report criminal activity or assist in the prosecution of perpetrators. Individuals are also reluctant to cooperate with police when they reasonably fear that a close relative may be subject to removal,⁸ a concern that affects many legal residents and United States citizens given that over 85% of undocumented individuals live in mixed-families wherein at least one individual is a lawful resident.⁹

It is against this backdrop that most police departments have turned to the “community policing” model of law enforcement. Community policing is a problem-solving initiative in which police build trusting partnerships with community members, who will then feel encouraged to cooperate with police in efforts to reduce crime.¹⁰ The purpose is to enhance police ability to obtain on-the-ground

Local Law Enforcement (2004) at 5, available at <http://www.theiacp.org/PublicationsGuides/ContentbyTopic/tabid/216/Default.aspx?id=553&v=1> [hereinafter IACP on Enforcement].

⁸ *Id.* (“Should local police begin enforcing immigration laws, more women and children struggling with domestic violence will avoid police intervention and help.”).

⁹ Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* 24 (2009), available at <http://www.policefoundation.org/strikinga-balance/strikingabalance.html>.

¹⁰ *Id.* at 24.

intelligence to apprehend wrongdoers.¹¹ Community-based policing has been cited as effective by officials involved in anti-terrorism efforts after 9/11.¹²

Amici's experience as chief law enforcement officers is that community policing is an increasingly effective tool to successfully enforce criminal laws. This experience is confirmed by the accounts of most commentators, including major police chiefs organizations and police departments in both Arizona and across the United States.¹³

¹¹ See Int'l Ass'n of Chiefs of Police, *Police Chiefs Guide to Immigration Issues* 21 (2007), available at <http://www.theiacp.org/PublicationsGuides/ContentbyTopic/tabid/216/Default.aspx?id=866&v=1> [hereinafter IACP Report] ("Working with [immigrant] communities is critical in preventing and investigating crimes. Communication has been identified as a major concern.").

¹² See David A. Harris, *The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America*, 38 Rutgers L. J. 1, 55-56 (2006) (describing FBI's efforts to enlist the help of Muslim and Arab communities to obtain intelligence in its fight against terrorism).

¹³ See, e.g., Decl. of Roberto Villaseñor, J.A. 60, ¶ 3 (explaining, on behalf of the Police Department in Tucson, that "it is absolutely essential to the success of our mission that we have the cooperation and support of all members of our community, whether they are here lawfully or not"); Harris, *supra* note 12, at 55-56 (noting that "local agencies have been working to change the negative image of police and build trust and confidence in immigrant neighborhoods" and that "research demonstrates that people who believe in officers' good motives are more likely to cooperate"); Hoffmaster, et al., *Police and Immigration: How Chiefs Are Leading Their Communities Through the Challenges* 27-36 (2010) [hereinafter Police Executive Research Forum] (describing how a measured immigration law enforcement approach by the Phoenix Police Department has fostered and maintained community members' trust and cooperation).

2. SB 1070 will undermine the enforcement efforts of local law officials by turning them into untrustworthy immigration officers and promoting impermissible racial-profiling

The destruction of trust-based relationships. Given that most modern police efforts are based on this idea of trust, it should be readily apparent that SB 1070 will hamper police officers' progress by undoing the essential relationships between law enforcement and their local communities.

SB 1070 requires Arizona officers to determine alienage during most encounters with individuals, permits warrantless arrests of individuals police believe have committed a deportable offense, and creates state crimes based on an individual's immigration status. In other words, SB 1070 turns police officers into federal immigration agents, forcing them to prioritize enforcement of immigration laws over any trust-building efforts. This in turn pushes immigrant communities to prioritize protecting individuals at risk of deportation, at the expense of the interests of law enforcement. To the extent that immigrants (documented or undocumented) perceive officials as enforcers of immigration laws, fear of deportation, whether for themselves or a family member, will logically discourage them from coming forward to report crimes or assist with investigations. Real life experiences time and again repeatedly demonstrate that distrust of police officers that are perceived as immi-

gration officials will increase.¹⁴ The Major Cities Chiefs of Police (covering New York, Los Angeles, Detroit, Seattle, Tucson, Miami, and El Paso),¹⁵ the Chief of Police of Salt Lake City,¹⁶ and many others, including amicus Woods,¹⁷ have memorialized their experiences with this phenomenon.¹⁸

¹⁴ See, e.g., Proposed Decl. of George Gascón, *Friendly House, et al. v. Whiting*, No. 10-cv-01061 (D. Ariz. filed June 14, 2010) ¶¶ 9-12 (former Chief of the Mesa and San Francisco Police Departments and current San Francisco District Attorney, describing how SB 1070 alienates immigrant communities from police, which leads to decreases in crime reporting and public safety); Orde F. Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 Iowa L. Rev. 1449, 1480-81 (2006) (noting that several empirical studies have found a causal link between the threat of deportation and reduced crime reporting by immigrants).

¹⁵ See M.C.C. Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies, Adopted by Major Cities Chiefs, June 2006, at 6, *available at* http://www.houstontx.gov/police/pdfs/mcc_position.pdf [hereinafter MCC Recommendations].

¹⁶ Hearing on H.R. 3808, the “Scott Gardner Act,” Before the Subcomm. on Immig. Pol. And Enforcement of the H. Comm. On the Judiciary, 112th Cong. 4 (2012) [hereinafter Burbank Testimony] (testimony of Christopher Burbank, Chief of Salt Lake City Police Department).

¹⁷ See Office of the Attorney General Grant Woods, Results of the Chandler Survey 32 (1997) [hereinafter Chandler Survey].

¹⁸ See, e.g., IACP on Enforcement, *supra* note 7, at 5. (“Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families.”); Gail Pendleton, *Local Police Enforcement of Immigration Laws and*

In the context of enforcement of domestic abuse laws, for example, as succinctly explained in a report by the International Association of Chiefs of Police, the barrier between victims and law enforcement:

“is heightened when the victim is an immigrant and rightly or wrongly perceives her tormentor to wield the power to control her ability to stay in the country. . . . Should local police begin enforcing immigration laws, more women and children struggling with domestic violence will avoid police intervention and help.”¹⁹

It is hardly surprising then, that local policing of immigration was described by members of the Consortium for Police Leadership in Equity as “A Job We Do Not Want.”²⁰

The specter of racial profiling. SB 1070 also harms law enforcement efforts in a more subtle but even more egregious manner. Because SB 1070 will lead to racial profiling, it will deepen the divide between law enforcement and local communities,

its Effects on Victims of Domestic Violence, ABA Commission on Domestic Violence 4, <http://www.mcadsv.org/webinars/IR-2007-April/VI/BI%20Law%20Enforcement%20CJS.pdf> (recommending that police and prosecutors refrain from inquiring into a victim’s immigration status to encourage reporting and secure convictions of domestic violence).

¹⁹ IACP on Enforcement, *supra* note 7, at 5.

²⁰ Chris Burbank, Phillip Atiba Goff, and Traci L. Keese, *Policing Immigration. A Job We Do Not Want*, Huffington Post (June 7, 2010), http://www.huffingtonpost.com/chief-chris-burbank/policing-immigration-a-job_602439.html.

devastating police efforts. Despite the statements of Petitioners' amici to the contrary, amici are confident that application of the law requires racial profiling.

Although SB 1070 prohibits utilizing race as the only factor in determining whether an officer has reasonable suspicion of undocumented status, the prohibition is limited by the statement that race may be considered "to the extent permitted by the United States or Arizona Constitution." SB 1070 § 2(B). As the Court is well aware, *United States v. Brignoni-Ponce* can be read to permit officers to consider race as one of many permissible factors, at least in certain limited contexts. *See* 422 U.S. 873, 882-87 (1975). Thus, by its very terms, SB 1070 invites officers to consider race.²¹

SB 1070's use of race, however, goes further. The text of the law contains no guidance as to what

²¹ One of Petitioners' amicus attempts to liken SB 1070's use of the clause "except as to the extent permitted by the United States . . . Constitution," to the use of a similar phrase in the Department of Justice's guidelines on the use of race and ethnicity. *See* Br. of Amicus Curiae Freedom Watch in Support of Pet'rs at 12-15. This argument is disingenuous because it ignores that the Department of Justice's directive is limited by its own terms to situations in which trained, federal law enforcement officials are investigating national security threats, responding to catastrophic events, or dealing with threats to the integrity of our national borders, and then *only if* the official has reason to suspect that a person of a particular ethnicity is relevant to the investigation. *See* U.S. Dep't of Justice, *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies* (June 2003) at 9-10, *available at* http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf.

other factors Arizona police can use to make the reasonable suspicion determination, and neither Petitioners nor their amici have proffered any guidance. *Cf. United States v. Sokolow*, 490 U.S. 1, 7 (1989) (citing *Illinois v. Gates*, 462 U.S. 213, 232 (1983)) (Reasonable suspicion “is not ‘readily, or even usefully, reduced to a neat set of legal rules.’”). The only direction that amici have been able to ascertain comes from Arizona guidelines, issued in the wake of SB 1070, which list several factors that are purportedly relevant to the reasonable suspicion analysis.²² But while some of the factors listed in these guidelines may be of marginal relevance in the context of stops near Arizona’s border with Mexico (e.g., an “overcrowded vehicle”), most of the factors are not particularly probative of alienage (e.g., “preparation for flight,” “providing inconsistent information,” “traveling in tandem”), or are meaningless when applied outside the border context (e.g., a vehicle that “rides heavily”). When these unhelpful factors are eliminated, all that is logically left are “dress” and “significant difficulty communicating in English” as probative factors of unauthorized presence. These characteristics are impermissible proxies for race that overtly request that law enforcement engage in racial profiling, and the Court should recognize them as such. *Cf. Christian Legal Society v. Martinez*, 130

²² See SB 1070 Public Information Center, *Implementation of the 2010 Arizona Immigration Laws Statutory Provisions for Peace Officers Arizona POST 3-4* (June 2010), available at http://agency.azpost.gov/supporting_docs/ArizonaImmigrationStatutesOutline.pdf.

S. Ct. 2971, 2990 (2010) (the Court will look past the pretext that a policy is aimed at punishing acts, not sexual orientation, when the targeted acts are proxies for sexual orientation).

Again, the collective experiences of amici and other law enforcement agencies bear out that racial profiling will occur when local officials act as immigration agents. The Court need look no further than Arizona's own experience with immigration enforcement by its police for illustrative examples. Amicus Grant Woods conducted a detailed examination of local law officials' behavior while assisting federal agents during an immigration raid in the City of Chandler, Arizona in 1997. Throughout a three-month survey focused on the impact of the raids on legal immigrants and United States citizens, General Woods uncovered unsettling accounts of rampant racial profiling, use of racial slurs, and outright discrimination, including "[n]umerous American citizens and legal residents [being] stopped . . . for no other apparent reason than their skin color or Mexican appearance."²³ Similarly, the Arizona Sheriff who has devoted the most efforts to immigration enforcement has been denounced for his methods of "profil[ing] people with brown skin and . . . ignor[ing] the civil rights we should all be enjoying,"²⁴ and has been found by the Department

²³ See Chandler Survey, *supra* note 17, at 31.

²⁴ Police Executive Research Forum, *supra* note 13, at 30.

of Justice to be “stopping Latinos on the basis of their appearance.”²⁵

Amici strongly believe that, as the Department of Justice has aptly put it, racial profiling leads to a “wall of distrust” between law enforcement and the communities they are tasked to serve.²⁶ This contravenes law enforcers’ duty to “provide for public well-being and security while safeguarding the civil rights of all persons, equally without bias.”²⁷

B. SB 1070 Will Erode Prosecutors’ Ability To Secure Convictions Against Dangerous Criminals

To the extent SB 1070 hinders police officers’ efforts to investigate crimes, it will also prevent prosecutors from convicting criminals and making communities safer.

Once more, amici’s experience demonstrates that this will be the case. Witnesses have been, and will

²⁵ Letter from U.S. Department of Justice, Civil Rights Division to Bill Montgomery, County Attorney, Maricopa County (Dec. 15, 2011) at 3, 6, *available at* http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf [hereinafter DOJ Letter].

²⁶ *Id.* at 2 n.2.

²⁷ Burbank Testimony, *supra* note 16, at 2. Further, SB 1070 will lead to improper utilization of race even outside the context of immigration laws, because it is unrealistic to expect officers conducting investigations to consider race in determining reasonable suspicion under SB 1070 § 2(B), while not doing so with respect to any other criminal activity they may be investigating at that time.

continue to be, afraid to give statements to prosecutors or to attend criminal trials or sentencing for fear that in doing so they will be turned over to immigration authorities. In an illustrative case, Louisiana prosecutors sought material witness warrants to detain six undocumented immigrants believed to be witnesses to a brutal murder. The individuals were detained without a lawyer or a status hearing for eight months.²⁸ Such episodes cause immigrants to avoid cooperating with prosecutors at all costs. The domestic abuse and sexual and human trafficking contexts are other particularly serious areas of criminal law in which prosecutions have been and will be severely hampered when law enforcement officials are perceived as immigration agents.²⁹

²⁸ Violeta R. Chapin, *Silencio! Undocumented Immigrant Witnesses and the Right to Silence*, 17 Mich. J. Race & L. 119, 125-26 (2011). Chapin argues that “unauthorized immigrants can no longer be expected to participate in local prosecutions . . . [because] the costs are simply too high: detention in a local jail for months at a time . . . solely because they had the misfortune to witness a crime.” *Id.* at 136.

²⁹ See Jennifer M. Chacon, *Tensions and Trade-Offs: Protecting Trafficking Victims In the Era of Immigration Enforcement*, 158 U. Pa. L. Rev 1609, 1612 (2010) (stating that unauthorized immigrants are reluctant to report crimes and assist prosecutors due to perceived legal ramifications of doing so, which helps sexual traffickers assert control over their victims); Ajmel Quereshi, *287(g) and Women: The Family Values of Local Enforcement of Federal Immigration Law*, 25 Wis. J.L. Gender & Soc’y 261, 282-96 (2010) (noting that female victims of domestic violence are deterred from cooperating with law enforcement given state immigration enforcement programs) (both cited in Chapin, *supra* note 28, at 5 n.23).

The problem of recalcitrant witnesses will be acutely felt by prosecutors in Arizona (and perhaps other states that may adopt SB 1070-like statutes), where state laws require evidence beyond the statements of the defendant to secure a criminal conviction. *See State v. Jones*, 6 P.3d 323, 328 (Ariz. Ct. App. 2000).³⁰ If witnesses become more reluctant to cooperate, prosecutors will have an especially difficult time in securing convictions for criminal offenses where there are generally few witnesses or the victims are themselves the only (recalcitrant) witnesses, such as domestic abuse, commercial fraud, and trafficking.³¹

³⁰ Most of amici's states follow Arizona in applying the *corpus delicti* rule to criminal cases. *See* David A. Moran, *In Defense of the Corpus Delicti Rule*, 64 Ohio St. L.J. 817, 834-35 n.106 (2003) (listing thirty nine states that applied the rule for at least some criminal statutes as of 2003).

³¹ Ironically, the misdemeanors of SB 1070 will be similarly difficult for prosecutors to prove, given the need to establish alienage through evidence other than the defendants' statements. Prosecutors will thus need to consistently resort to federal immigration intelligence to secure convictions. *See* Mem. of Mayor Jim Lane to Maricopa County Attorney's Office (July 1, 2010) at 4, *available at* <http://www.scottsdaleaz.gov/Asset35425.aspx>; Ingrid V. Eagly, *Local Immigration Prosecution: A Study of Arizona Before SB 1070*, 58 UCLA L. Rev. 1749, 1785-86 (2011) (explaining complexity of obtaining convictions of alienage-dependent offenses in Arizona given the evidentiary requirement discussed above).

II. SB 1070 UNDERCUTS LOCAL POLICE AND PROSECUTORS' DISCRETION TO ESTABLISH LAW ENFORCEMENT POLICIES THAT BEST FIT THEIR PARTICULAR COMMUNITIES

In addition to obstructing police and prosecutorial efforts, SB 1070 tries to micromanage the day-to-day operations of police departments and officers on the street, and redirects and exhausts already-limited law enforcement resources through its use of punitive citizen civil lawsuits. The statute will thus further wreak havoc on state and local law enforcement's ability to disrupt criminal activity, and will further erode discretion to establish priorities local agencies believe best address the individualized needs of the communities they serve.

A. SB 1070 Intrudes On The Ability Of Chiefs Of Local Law Enforcement Agencies To Set Their Own Criminal Enforcement Priorities

SB 1070 contains a draconian, unprecedented provision, before now unknown to amici, permitting citizen suits against law enforcement agencies that establish a "practice or procedure" of not enforcing federal immigration laws to their "full extent." SB 1070 § 2(G). This punitive provision is a "unique and truly novel sanction . . . against local governments if they take steps to direct local resources away from federal immigration enforcement."³²

³² Rick Su, Commentary, *The Overlooked Significance of Arizona's New Immigration Law*, 108 Mich. L. Rev. First Impressions 76, 77 (2010).

Effectively, SB 1070 permits an individual to sue, for example, the Pima County Attorney's Office, for prioritizing convictions of serious crimes such as human trafficking or domestic abuse, if the increased enforcement of those laws comes at the expense of enforcement of federal immigration laws. Thus, Arizona police departments have lost a great deal of control over their law enforcement priorities: they would be foolish to prioritize the investigation of any criminal activity, no matter how violent or destructive to the community, over the misdemeanors created by SB 1070. Only neglecting the investigation of immigration infractions carries the risk of civil liability while neglecting the investigation of, for example, sexual assaults does not.³³

It should also be clear that SB 1070's micromanagement of law enforcement trickles down to each police officer on the street. By removing a police department's ability to set enforcement priorities that make sense for the locality in which the department is located, SB 1070 effectively reduces police chiefs' control over their own employees as well. Stated differently, a police officer in Arizona may decide to only investigate immigration violations and not any violent criminal offenses. The officer now knows that he cannot be reprimanded or terminated for doing so—any police department

³³ Cf. DOJ Letter, *supra* note 25, at 16 & nn.9-10 (detailing allegations that Maricopa County Sheriff's Office has neglected investigation of sexual assault cases due to its increased focus on immigration offenses).

which would try to take such action against him could face civil liability.³⁴

To be sure, some localities may choose to devote some of their resources to cooperating with the federal government's immigration enforcement efforts, for example through the 287(g) program.³⁵ Amici trust, however, that local police and prosecutors will work together (and jointly with federal immigration officials) to establish policies that make sense for their communities. It is the legislator-imposed priorities that amici oppose.³⁶

Certain provisions of SB 1070 themselves demonstrate why and how legislative control over the day-to-day operations of police officers is harm-

³⁴ Su, *supra* note 32, at 78 (explaining how SB 1070 permits officers to “go rogue’ in the eyes of his department”).

³⁵ See *Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, ICE, <http://www.ice.gov/news/library/factsheets/287g.htm> (last visited Mar. 26, 2012) (listing state and local entities that have entered into so-called 287(g) agreements with Immigrations and Customs Enforcement to enable such entities to enforce immigration laws under the supervision of the U.S. Attorney General).

³⁶ Some of Petitioners’ amici try to obscure the true intent of SB 1070 by characterizing the statute as simply giving police “additional powers” to enforce immigration laws. See, e.g., Br. of Sheriff Dever in Supp. of Pet’rs at 2-3. This interpretation of SB 1070 cannot be correct because state law enforcement officials are already empowered to inquire into the immigration status of individuals under many circumstances similar to those set forth in SB 1070, as established by *Muehler v. Mena*, 544 U.S. 93, 100-01 (2005), and are already able to communicate with federal law enforcement officials under federal law, see 8 U.S.C. § 1373. See also Resp’t Br. at 47.

ful. As previously noted, SB 1070 does not provide clear guidance as to how a police officer is supposed to follow the law's mandate to prioritize immigration law enforcement. Further, SB 1070 sets up an unworkable mechanism where police officers are permitted, and arguably required, to consider race in determining reasonable suspicion of undocumented status, but are not permitted to consider race in determining that any other offense has been committed. *See, e.g., United States v. Armstrong*, 517 U.S. 456, 464 (1996). In other words, SB 1070 expects police officers to artificially compartmentalize their thinking while conducting traffic stops, routine inquiries, or complex criminal investigations. SB 1070 thus intrudes not only into every sheriff's and county prosecutor's office, but it also attempts to tell even every line officer how to think.

B. SB 1070 Reduces Law Enforcement Discretion By Holding Hostage The Already Cash-Strapped Budgets Of Local Agencies

SB 1070 further constrains the day-to-day operations of local law enforcement in another significant way: by reducing and misdirecting already limited police and prosecutorial resources from protecting communities to enforcing and defending against the multitude of problems caused by SB 1070's hijacking of law enforcement's discretion.³⁷

³⁷ The reality of shrinking law enforcement budgets is no secret, particularly given the current focus of many legislatures

For one, Section 2(G) will require that local law enforcement expend scarce resources to defend against potential citizen lawsuits, thus increasing pressure on tight local budgets. *See supra* Part II(A).

Second, the civil rights lawsuits that will result from local law enforcement's foray into the area of immigration law will add, and have added, to this problem. The City of Chandler, Arizona experienced this first hand when it paid \$400,000 to settle civil rights claims arising out of the immigration raids conducted in 1997.³⁸ That is, of course, but one example of litigation costs faced by local agencies turned into immigration offices.³⁹

across the country on decreasing their states' budget deficits. *See* IACP Report, *supra* note 11, at 23 (discussing significant federal funding cuts for law enforcement since 2002). Arizona officials in particular have been affected by significant budget cuts since 2008. *See* Mary Jo Pitzl, *Arizona Budget Slashing Reshapes State*, *Ariz. Repub.*, Oct. 2, 2011, at B1, available at <http://www.azcentral.com/arizonarepublic/local/articles/2011/10/02/20111002arizona-budget-strategy-slashing.html> (Arizona has cut a total of \$8 billion from state budgets since 2008).

³⁸ *See* Chandler Survey, *supra* note 17, at 32.

³⁹ *See, e.g.*, Sam Dolnick, *Danbury Settles in Day Laborers' Suit*, *N.Y. Times*, Mar. 9, 2011, at A28, available at <http://www.nytimes.com/2011/03/10/nyregion/10danbury.html> (Connecticut city pays \$400,000 to settle federal lawsuit alleging racial profiling); IACP on Enforcement, *supra* note 7, at 4 (noting that the police department of the city of Katy, Texas, faced numerous civil law suits after it became involved in immigration enforcement).

Third, given the complexity of federal immigration laws that local officials are now compelled to enforce, police departments and prosecutors' offices will have to devote thousands of hours to new training programs. The amount of resources that will be devoted to transforming state law enforcement into "state-mandated DHS enforcers," *United States v. Arizona*, 641 F.3d 339, 351-52 (9th Cir. 2011), is best illuminated by the many difficulties that state peace officers will face in enforcing SB 1070. For instance, Section 2(B)'s requirement that officers ascertain whether a person is "lawfully present" in the United States cannot be completed by simply observing an individual's behavior. It instead turns on a multitude of factors such as an individual's place and circumstances of birth, his or her time of presence in the United States, and the history of the individual's prior entries into the United States if any. Even if all these facts are somehow established, the officer must interpret them against the backdrop of "one of the most complicated bodies of law in the United States."⁴⁰ In addition, individuals who are lawfully present in the United States (such as those whose asylum

⁴⁰ Harris, *supra* note 12, at 36 (discussing the myriad of problems presented by requiring that local police enforce federal immigration law). Although Section 2(B) creates a presumption of lawful presence if the individual provides, inter alia, a government-issued identification if the issuing entity "requires proof of legal presence . . . before issuance," SB 1070 § 2(B)(4), this will not help police officers unless they learn which forms of identification, of the many issued by different states and municipalities, require proof of legal presence before being issued.

applications are pending or who have been granted cancellation of removal by an immigration judge) may lack sufficient documentation to establish their legal immigration status. Thus, police officers unable to ascertain legal presence through regular documentation will be forced to resort to federal immigration authorities to determine the legality of an individual's status. Similarly, because Section 6 permits officers to conduct warrantless arrests of individuals who have committed a "removable" offense, the statute requires that officers be trained on the complex rules that determine what is a removable offense, lest officers engage in systematic unconstitutional warrantless arrests. All of these tasks, which have traditionally "fallen [on] special units of federal law enforcement created, trained, equipped, and deployed" for immigration enforcement, will require a further curtailment of local enforcement discretion to the extent that tight budgets will have to be diverted to immigration training.⁴¹

It is no accident, of course, that local agencies will see their resources curtailed in this way. Amici's understanding, as the former chief law enforcers of their respective states, is that, whatever else is covered within the proper scope of their involvement with immigration enforcement, state enforcement of civil immigration violations is plainly beyond the traditional ambit of their authority. That states do not provide advanced

⁴¹ Harris, *supra* note 12, at 36.

training to their officials on complex immigration matters is simply a reflection of that understanding. Petitioners' repeated claim that state law officials have "inherent authority" to do that which SB 1070 commands them to do is contradicted both by this reality and by amici's experience with and their understanding of the law.

Finally, to the extent that criminal investigations and prosecutions become more difficult for the reasons stated herein, the resulting rise in crime will lead to increased demands on police and prosecutors' budgets efforts.⁴²

To further compound these injurious effects, SB 1070 will export many of the costs related to immigration law enforcement to the law departments of other states. Such is the express purpose of the law. *See* S.B. 1070 § 1 ("[T]he intent of this act is to make attrition through enforcement the public policy of . . . Arizona" and to "deter the presence of aliens . . . unlawfully present in the United States").⁴³ It is undisputed that states that have

⁴² *See, e.g.*, Spencer S. Hsu, *U.S. Police Chiefs Say Arizona Immigration Law Will Increase Crime*, Wash. Post, May 27, 2010, at A03, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/26/AR2010052601200.html> (citing Los Angeles Police Chief's statement that SB 1070 "is not a law that increases public safety" but is one that "makes it much harder for us to do our jobs").

⁴³ The goal of SB 1070 could not constitutionally be to force immigrants to leave the United States. "The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government." *See Graham v. Richardson*, 403 U.S. 365, 379 (1971).

enacted immigration measures that are considered tough on immigrants have seen their immigrant populations move to other states.⁴⁴ Amici, as former Attorneys General of states other than Arizona, are thus increasingly concerned that people who flee Arizona and settle in amici's states will come with an understandable fear of law enforcement officials. In this way, Arizona's draconian law undermines community policing efforts in amici's other states as well.

III. BY HAMPERING LOCAL LAW ENFORCEMENT EFFORTS, SB 1070 FRUSTRATES CONGRESS'S NATIONAL IMMIGRATION POLICIES

Amici posit that the serious concerns outlined in Parts I and II herein are sufficient reasons to enjoin the application of SB 1070 as harmful to the public interest, pending a full adjudication on the merits of this litigation. Amici further argue that the effects of SB 1070 on local law enforcement directly frustrate several Congressional immigration-related policies and priorities.

A. Congress's Policy Of Leveraging Immigration Laws To Secure Convictions Of Dangerous Criminals

In sharp contrast to SB 1070, which reflects Arizona's view that enforcement of immigration laws

⁴⁴ See, e.g., Emily Bazar, *Illegal Immigrants Moving Out*, USA Today, Sept. 27, 2007, at A3, available at http://www.usatoday.com/news/nation/2007-09-26-moving_N.htm.

should be the highest priority of law enforcement, *see* SB 1070 § 1, Congress has made clear that investigation and prosecution of certain categories of crime (including domestic violence, human trafficking, and terrorism) take precedence over alien removals.

Several provisions of the immigration laws reflect Congress's intent to incentivize cooperation with law enforcement by individuals who may otherwise be afraid to do so because of their immigration statuses. Specifically, Congress has established visa programs for the benefit of individuals who cooperate in the investigation and successful prosecution of terrorists, domestic abusers, and human traffickers. *See* 8 U.S.C. § 1101(a)(15)(S) (providing "S" visas to certain crime informants and close family members); *id.* § 1101(a)(15)(U) (providing "U" visas to certain crime victims and close family members); *id.* § 1101(a)(15)(T) (providing "T" visas to certain trafficking victims and close family members). Congress's intent in establishing these programs, which is paramount, *Wyeth v. Levine*, 555 U.S. 555, 564-67 (2009), is easily ascertained by the statutory text and legislative history of the acts, which indicate that the law was designed "to remove barriers to criminal prosecutions of persons who commit acts of battery or extreme cruelty against immigrant women and children" and "to offer protection against domestic violence occurring in family and intimate relationships." Battered

Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1502, 114 Stat. 1464, 1518.⁴⁵

SB 1070 directly interferes with the functioning of these federal programs. By creating new immigration crimes under state law and channeling them into the state's criminal justice system and away from the federal immigration and criminal systems, SB 1070 attempts to supplant the federal government's prosecutorial discretion with the state's own interests, clearly frustrating Congress's priorities in enacting the visa programs. Petitioners' argument that SB 1070 promotes a "system of cooperative federalism," Pet'rs' Br. at 51, thus ignores the ways in which SB 1070 interferes with Congressional policy and is unavailing. *See also* Resp't Br. at 21.

⁴⁵ *See also* H.R. Rep. No. 106-939, at 112 (2000) (Conf. Rep.) ("[P]roviding battered immigrant women and children . . . with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors . . ."); Battered Immigrant Women Protection Act of 2000, Pub. L. No. 106-386, § 1502, 114 Stat. 1464, 1518 ("The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes . . ."); Dina Francesca Haynes, *Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers*, 26 Hum. Rts. Q. 221, 233 & n.50 (2004) (explaining similar purposes of the Trafficking Victims Protection Act of 2000).

B. Congress's Policy That Local Involvement In Immigration Enforcement Be Voluntary And In Cooperation With The Federal Government

Congress has also established various voluntary mechanisms through which state and local law enforcement agencies may seek to cooperate with federal officials in their enforcement of immigration laws. The linchpin of those programs, however, is that they are voluntary and that, if the states and local agencies choose to participate, they do so under the supervision of the federal government. Indeed, Congress has created a path for state and local governments to assist federal officials in immigration enforcement, to the extent and in the context that makes sense for each agency. *See, e.g.*, 8 U.S.C. § 1357. SB 1070's commandeering of local agencies constitutes a mandatory, not a voluntary, transformation of all law enforcement agents in Arizona into immigration agents. SB 1070 thus dismantles the voluntary provision of the Immigration and Nationality Act and disables the incentive-based mechanisms established therein, effectively overriding the operation of federal immigration laws in Arizona. SB 1070 is a purposeful obstacle to the carrying out of clear Congressional immigration enforcement policy, and is therefore preempted by such policy.⁴⁶

⁴⁶ It is further arguable that SB 1070, to the extent it obligates local police officers to become federal law enforcement agents, violates the anti-commandeering principle set forth in *Printz v. United States*, 521 U.S. 898, 916-18 (1997). *See generally* Gabriel J. Chin, et al., *A Legal Labyrinth: Issues Raised by*

C. Congress's Efforts To Establish Immigration Policies That Apply To All States Equally

The structure of federal immigration laws also reflects Congressional intent to establish a comprehensive scheme of enforcement that applies to all states equally. Congress allocates a certain level of funding available for federal immigration officials to respond to certain inquiries by local law enforcement without differentiating amongst communities or regions, and makes such responses mandatory. *See* 8 U.S.C. § 1373(c). As Immigration and Customs Enforcement officials have noted, they are constrained by such monies in the drawing up of immigration enforcement priorities.⁴⁷

Arizona Senate Bill 1070, 25 Geo. Immigr. L.J. 47, 80 n.149 (2010) (arguing that SB 1070 violates the principle set forth in *Printz* because “state executive officials cannot be conscripted to enforce federal law.”). Amici posit that the question of preemption, which effectively turns on the Court’s statutory construction of SB 1070 and the various federal immigration provisions cited here and elsewhere, is an easier question of constitutional law than this potentially far-reaching constitutional question.

⁴⁷ The claim by Petitioners and several of their amici, that the Executive Branch cannot preempt a state law by “refusing” to enforce immigration laws, and that Congress has failed to enact comprehensive immigration reform, is also unavailing. *See e.g.*, Pet’rs’ Br. at 14, 18; Br. of Amicus Curiae Freedom Watch in Support of Pet’rs at 6 (faulting Congress for failure to enact immigration reform); Br. of Amici Curiae Minuteman Civil Defense Corps et al. in Support of Pet’rs at 3. This argument ignores that Congress has directed the Executive Branch to set priorities for immigration enforcement, both through the enactment of the federal immigration laws giving discretion to the

SB 1070 subverts that system of equal application to all states by claiming for Arizona a portion of federal law enforcement resources larger than that which Congress has deemed appropriate to allocate to it. Given that federal officials are required by law to respond to immigration-related inquiries by state officials, and that Arizona agents are essentially obligated by SB 1070 to submit many more inquiries on complex immigration questions, it is clear that Arizona's mandatory enforce-

Executive and through the annual budgetary allocation of resources to enforce those laws. *See, e.g.*, Department of Homeland Security Appropriations Act, 2010, Pub. L. No. 111-83, Title II, 123 Stat. 2142, 2149 (2009) (directing Secretary of Homeland Security to “prioritize the identification and removal of aliens convicted of a crime by the severity of that crime”); *see also* Haynes, *supra* note 45, at 233 n.50 (explaining that Congress directed the U.S. Department of State to implement Congress’s priorities with respect to human trafficking issues). Moreover, Petitioners’ attempt to contextualize the enactment of SB 1070 against the federal government’s purported failure to enforce immigration laws backfires. This argument, which is in essence that Petitioners are taking immigration matters into their own hands because of the federal government’s purported failure to do so, negates the inference that Petitioners invite the Court to draw throughout their brief—that SB 1070 is nothing more than an effort by a State to increase cooperation with federal officials. That SB 1070 reflects Petitioners’ attempt to take matters into their own hands in fact supports the contrary inference—that SB 1070 is an effort to express to the federal government Arizona’s contempt with what Arizona views as the federal government’s failure. Petitioners’ disagreement with Congressional immigration priorities and with the Executive’s enforcement thereof, and Petitioners’ attempt to alter these priorities through legislation, both lead to the conclusion that SB 1070 is preempted. *See also* Resp’t Br. at 4 & n.4.

ment scheme will claim a disproportionate share of finite federal resources. Arizona officers arrest over 300,000 individuals a year,⁴⁸ which amounts to over 800 daily inquiries to federal agents, without even taking into account inquiries that may result from thousands of routine traffic stops by Arizona officers during which they are obligated by SB 1070 to submit a federal inquiry.⁴⁹ Verifying the immigration statuses of over 300,000 people with the federal government would “inevitably” place an enormous strain on the Law Enforcement Support

⁴⁸ Robert C. Halliday, Ariz. Dep’t of Pub. Safety, *Crime in Arizona Report* 63 (2010).

⁴⁹ The parties disagree as to whether SB 1070 requires police to ascertain immigration status as part of all arrests, or only during arrests in which the officer has reasonable suspicion that the individual is undocumented. *See, e.g.*, Pet’rs’ Br. at 39-41. The force of amici’s argument is unchanged regardless of which reading of the law is correct. Amici Goddard and Woods can attest that, in their experience, Arizona officers conduct several hundred thousand routine stops every year and believe that a large number of such encounters will result in police officers in Arizona attempting to ascertain an individual’s immigration status. Moreover, amici note their concern that, if Respondent’s reading of SB 1070 is correct, residents from some of amici’s states will, if arrested in Arizona, be subjected to prolonged detention while their immigration status is verified, because the driver’s licenses of some of amici’s states do not meet the identification requirements of SB 1070, because of SB 1070’s failure to provide for release on bail for those being held on a misdemeanor charge, and because of the extended wait time for federal officials to ascertain an individual’s immigration status. *See infra* at 38-39. In fact, federal immigration databases do not contain information on a large number of U.S. citizens. *See* Decl. of David C. Palmatier, J.A. 94-95, ¶ 12 [hereinafter Palmatier Decl.].

Center (“LESC”), the immigration enforcement facility operated by the U.S. Immigrations and Customs Enforcement.⁵⁰ According to Mr. Palmatier, the Unit Chief for LESC, the current average LESC query wait exceeds eighty minutes, and in 2009, LESC processed a little more than one million queries, 80,000 of which originated in Arizona.⁵¹ Since SB 1070 will require that federal officers assist Arizona prosecutors in establishing the elements of alienage-based offenses, *see supra* note 31, the bill “necessarily diverts [federal] attention away from high-priority targets, such as aliens with criminal records or those implicated in terrorism.”⁵²

Not only will SB 1070 require an approximate 20% increase in such queries by because of an additional 200,000 inquiries from Arizona, but it will also logically increase the number of U.S. citizens and lawful permanent residents queried, “reducing [LESC’s] ability to provide timely responses to law enforcement on serious criminal aliens.” Palmatier Decl., *supra* note 49, ¶ 15. These effects combined mean that, in addition to burdening LESC and thereby frustrating Congress’s priorities, SB 1070 will also

⁵⁰ See Palmatier Decl., *supra* note 49, ¶ 15.

⁵¹ *Id.*

⁵² Eagly, *supra* note 31, at 1787 (citing U.S. Gov’t Accountability Office, GAO-10-919T, *available at* <http://www.gao.gov/new.items/d10919t.pdf>). *See supra* note 47 (Congress’s immigration law enforcement priorities are directed to criminal aliens as reflected in the Department of Homeland Security Appropriations Act, 2010); Resp’t Br. at 21.

result in longer wait times for other states seeking to ascertain the immigration statuses of individuals within their borders, further undermining Congress's goal of establishing systems that are available to all states on a nominally equal basis.

CONCLUSION

For the foregoing reasons, amici respectfully request that the judgment of the Court of Appeals be affirmed.

Respectfully submitted,

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