No. 11-182

In the Supreme Court of the United States

STATE OF ARIZONA, ET AL., PETITIONERS,

v.

UNITED STATES OF AMERICA, RESPONDENT.

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

BRIEF FOR THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, SOUTHERN POVERTY LAW CENTER, LEAGUE OF UNITED LATIN AMERICAN CITIZENS, NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION, NATIONAL CONGRESS OF AMERICAN INDIANS, LEGAL MOMENTUM, LAMBDA LEGAL DEFENSE AND EDUCATION FUND, AFRICAN AMERICAN MINISTERS IN ACTION, AMERICAN JEWISH COMMITTEE, LEADERSHIP CONFERENCE OF WOMEN RELIGIOUS, AND OTHER CIVIL RIGHTS, FAITH, AND COMMUNITY ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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STATEMENT OF INTEREST

The Leadership Conference on Civil and Human Rights is a diverse coalition of more than 200 national organizations charged with promoting and protecting the rights of all persons in the United States. *Amici curiae* are civil rights, faith, and community organizations whose constituents will suffer the harmful effects of S.B. 1070 and copycat legislation.

By pursuing "attrition through enforcement," states that enact these laws announce to immigrants and people of color that they are not welcome and will be subjected to constant scrutiny—as well as to the demeaning experience of criminal arrest and detention. These policies not only are unjust; they also create criminal consequences that inherently conflict with congressional policy.

For these reasons, *amici* urge affirmance of the injunction. A full list of *amici* are appended after the conclusion of this brief.[1]

[1] *Amici* state that no counsel for a party authored any part of this brief, and no person or entity other than *amici* and their counsel made a monetary contribution to the preparation or submission of this brief. Both Petitioners and Respondent have lodged letters of blanket consent to the filing of *amicus* briefs.

SUMMARY OF ARGUMENT

If the enjoined provisions of S.B. 1070 are allowed to go into effect, they will work harms on individuals who would not suffer such harms under the federal immigration scheme. Although purportedly targeting "unlawfully present" immigrants, S.B. 1070 will dramatically harm the lives of U.S. citizens, Lawful Permanent Residents ("LPRs"), and other individuals across a spectrum of immigration statuses—such as asylum seekers and victims of violent crimes—in ways that run counter to the federal immigration scheme.

S.B. 1070 endangers a broad swath of people in large part because it misapprehends federal immigration law. Underlying S.B. 1070 are two fallacies. The first is that each person fits into one of two categories—those who are "lawfully present" and those who are not. The second is that Arizona law enforcement officers can readily distinguish between these categories by simply reviewing a certain set of federally mandated documents, or by calling the federal government on the telephone.

In reality, even U.S. citizens often will not be readily identifiable; and where non-citizens are concerned, determining a person's immigration status requires a nuanced legal inquiry, which cannot be performed by police on the beat. Moreover, many non-citizens whom the federal government permits to be in this country will lack documentary proof of that permission.

On top of these erroneous premises, S.B. 1070 layers a system of criminal consequences that run roughshod over the critical distinctions between

criminal law and civil immigration law. For example, Section 3 will subject to arrest and prosecution many thousands of people who, under the federal scheme, are not criminally liable. And Section 6 superimposes Arizona officers' *state criminal* warrantless arrest authority onto *federal civil* immigration enforcement. Even federal officers are generally not authorized to make warrantless arrests.

S.B. 1070 has spawned a slew of copycat laws in other states seeking "attrition through enforcement."[2] The Court's decision in this case will thus shape the fates of people nationwide. In states such as Utah, Indiana, Georgia, Alabama, and South Carolina,[3] people of color will be subjected to constant scrutiny regarding their immigration status—and to the demeaning experience of criminal arrest and detention. S.B. 1070 and its copycats thus divide our nation between those regions where people of all ethnicities can freely travel, live, and work—and those where they cannot.

In the face of S.B. 1070's plain language, Petitioners ask the Court to identify some narrow reading of the statute, in the hope that the law might survive this facial challenge. The Court should not strain to identify such a legal fiction. The stated motives of its proponents, the stated understandings of its would-be enforcers, and real-world evidence all belie Petitioners' theoretical argument that S.B. 1070 can be implemented in a manner consistent with the Constitution.

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[2] 2010 Ariz. Legis. Serv. Ch. 113.

[3] Petition for Writ of Certiorari at 23.

ARGUMENT

I. THOUGH PURPORTEDLY TARGETED AT "UNLAWFUL PRESENCE," S.B. 1070 WILL HARM U.S. CITIZENS.

A crucial flaw of S.B. 1070 is the assumption that officers can determine "lawful presence" on the spot, simply by looking at a person's documents or by placing a phone call to the federal government. This "papers please" approach is one not generally pursued by federal agents, and is unworkable for the reasons discussed herein. Chief among them is the fact that U.S. citizens comprise the largest group of undocumented people in the United States. Many U.S. citizens do not carry—or even *own*—the sort of "papers" that the Arizona legislature expects them to possess at all times. These individuals will be at risk of frequent, drawn-out detention, and the demeaning experience of criminal arrest.

A. S.B. 1070 will require U.S. citizens to carry "papers" at all times—or run the risk of criminal detention.

S.B. 1070 and its copycats will have an unprecedented effect on the lives of U.S. citizens. Section 2(B), the "stop and verify" provision, requires Arizona police to determine the immigration status of any person they stop if "reasonable suspicion" exists to believe the person is "unlawfully present" in the United States.[4] Citizens will therefore have to carry

[4] Ariz. Rev. Stat. Ann. § 11-1051(B).

their "papers" at all times or face the risk of lengthy detention and false arrest.[5]

Never before have U.S. citizens been subjected to a general requirement that they carry proof of citizenship. Americans have rejected all legislative attempts to create a national identity card.[6] This reflects the long-standing, widely shared belief that having to prove one's citizenship over and over again would unduly impinge upon individual liberty.

U.S. citizens in Arizona have already begun to experience the ramifications of "papers please" policing. **Jim Shee**[7] is a seventy-one-year-old U.S. citizen of Spanish and Chinese ancestry. Despite having lived in Arizona his entire life, he is now being forced to suffer through the indignity of being repeatedly forced to prove his citizenship. On April 6, 2010, Mr. Shee was stopped for no apparent reason and questioned by a Phoenix police officer, who demanded to see his "papers." He was not given a citation. A similar sequence played out again in Yuma a mere ten days later.

Mr. Shee's experiences indicate the harm that the "stop and verify" provision will inflict on U.S. citizens. In Arizona, the Department of Public Safety makes well over 500,000 stops per year.[8] The vast

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[5] *See infra* Part I.B.

[6] G. DAVID GARSON, PUBLIC INFORMATION TECHNOLOGY AND E-GOVERNANCE: MANAGING THE VIRTUAL STATE 171-73 (2006).

[7] Declaration of Jim Shee, *Friendly House et al. v. Whiting*, No. CV-10-01061-PHX-JWS (D. Ariz. July 9, 2010).

[8] UNIV. OF CINCINNATI POLICING INST., TRAFFIC STOP DATA ANALYSIS STUDY: YEAR 3 FINAL REPORT PREPARED FOR THE ARIZONA DEPARTMENT OF PUBLIC SAFETY 17 (2009) [hereinafter ARIZ. STOP DATA].

majority of stops are for minor traffic or equipment violations.[9] As in Mr. Shee's case, over ninety-eight percent do not result in arrest.[10] S.B. 1070 will transform these routine traffic stops into mini-trials where detained citizens bear the burden of proving their status.

Arizona attempts to downplay S.B. 1070's harm to U.S. citizens by promising that individuals stopped by police will be presumed lawfully present so long as they provide a "valid Arizona driver's license, tribal identification, or identification from any unit of government in the United States that requires proof of lawful presence."[11]

Although many adult Arizonans possess driver's licenses, a significant number of U.S. citizens will not have ready access to "proof of lawful presence." Less than half own passports,[12] and as many as seven percent (roughly thirteen million citizens) do not have ready access to naturalization papers or birth certificates.[13]

U.S. citizens from states that do not require proof of citizenship in order to obtain licenses will not

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[9] *Id.* at 30

[10] *Id.* at 49.

[11] Ariz. Rev. Stat. Ann. § 11-1051(B).

[12] *Passport Statistics*, U.S. DEP'T OF STATE, http://travel.state.gov/passport/ppi/stats/stats_890.html (last visited Mar. 26, 2012).

[13] BRENNAN CTR. FOR JUSTICE, CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION 2 (2006) (noting that citizens with comparatively low incomes are even less likely to possess documentary proof of citizenship).

qualify for Section 2(B)'s presumption.[14] As a consequence, Section 2(B) will infringe upon their freedom to travel through Arizona and states with S.B. 1070 copycats. **Jesus Cuauhtémoc Villa**[15] is a U.S. citizen who will not qualify for the presumption. Mr. Villa currently attends Arizona State University, but he is a resident of New Mexico, a state which does not require proof of U.S. citizenship to obtain a driver's license. Villa does not own a U.S. passport and therefore cannot drive in Arizona without risking arrest and detention due to his lack of proof of citizenship.

Even U.S. citizens who own documents proving citizenship often will not be able to produce them on the spot. This would have been true, for instance, if Mr. Shee had forgotten his driver's license at home. Car passengers, joggers, hikers, and bicyclists can also be stopped, and are not likely to have papers with them. People whose birth certificates constitute their only proof of citizenship logically store them away in safe, relatively inaccessible places. Out-of-state visitors and college students, for example, may own proof of citizenship, but will not be able to produce these documents.

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[14] *See* ARIZ. PEACE OFFICER STANDARDS & TRAINING BD., PRESUMPTIVE IDENTIFICATIONS (2010), *available at* http://agency.azpost.gov/supporting_docs/PresumptiveIdentifications.pdf.

[15] Complaint at 22, *Friendly House*, No. CV-10-01061-PHX-JWS (D. Ariz. May 17, 2010).

B. S.B 1070 will expose U.S. citizens to detention and the consequences of being erroneously labeled "unlawfully present."

Citizens stopped in Arizona without the requisite papers will risk being detained and falsely labeled "unlawfully present."[16] Petitioners assume Arizona officers can call the Law Enforcement Support Center ("LESC"), run by Immigration and Customs Enforcement ("ICE"), in order to verify immigration status.[17] This plan is neither as simple nor as effective as Petitioners would have it—especially where citizens are concerned.

Petitioners assert that "[r]equesting and receiving information from LESC is quick and can be done during an investigatory stop."[18] On average, however, it takes seventy minutes before someone at the LESC is even available to receive such a request, let alone begin to make the status determination.[19]

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[16] Petitioners cite *Muehler v. Mena*, 544 U.S. 93 (2005), for the proposition that local police may ask about immigration status. Pet. Br. at 22, 44. *Mena*, however, was not a preemption case, and held only that there was no Fourth Amendment violation because the questioning did not extend the time Mena was detained. 544 U.S. at 101. By contrast, Section 2(B) contemplates extending the time of detention by directing that the officer "shall have the person's immigration status determined before the person is released." Ariz. Rev. Stat. Ann. § 11-1051(B).

[17] Pet. Br. at 13.

[18] *Id.*

[19] *See* Declaration of David C. Palmatier, ¶ 8 ("Currently, the average query waits for approximately seventy minutes be-

After waiting the initial seventy minutes, it is unclear how Arizona officers—or for that matter, the LESC—will go about determining whether someone is a citizen. Unlike immigrants, who have registered with the federal government, U.S. citizens are not listed in a central database.[20] A "no match" response could mean either that a person such as Jim Shee is a citizen or that he entered the country without inspection.[21] Give these complications, status verification can take days to complete.[22] All the while, U.S. citizens will be treated as unwelcome in their own country.

The likelihood that Arizona police will mistake U.S. citizens for unauthorized immigrants is very real. In part, this is because Arizona purports to accomplish on-the-spot what federal authorities have trouble doing with the investment of greater time and resources. Since 2000, thousands of U.S. citizens have been mistaken for aliens and detained or deported.[23] In southern Arizona, between 2006 and

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fore a Law Enforcement Specialist is available to work on the request.").

[20] *Id.* at ¶ 19.

[21] *Id.* at ¶ 12.

[22] *See* S. POVERTY LAW CTR., ALABAMA'S SHAME: HB 56 AND THE WAR ON IMMIGRANTS 9-10 (2012) [hereinafter ALABAMA'S SHAME] (profiling Alabama mother wrongfully detained for three days by local authorities until ICE verified her status).

[23] Jacqueline Stevens, *U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens*, VA. J. SOC. POL'Y & L. 606, 608 (2011).

2008 slightly more than one percent of immigration detainees turned out to be U.S. citizens.[24]

Citizens who acquired or derived their citizenship are two examples of people who will be at special risk for being mistakenly labeled "unlawfully present." Acquired U.S. citizenship is conveyed to individuals born outside of the United States to U.S. citizen parents.[25] Because they are citizens at birth, these individuals will not appear in the LESC's database.[26] As a matter of law, minor LPRs derive U.S. citizenship when at least one of their parents naturalizes.[27] Derived citizens may apply for a Certificate of Citizenship—at a cost of $600—but they otherwise will not have documents proving their citizenship.[28] And since their citizenship is conveyed only as a matter of law, they will appear in the LESC database as LPRs.

Given these complications, even federal immigration authorities have mistaken derivative citizens

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[24] *Id.* at 622. In part to address this problem, last month ICE created a new position to address problems "related to ICE enforcement actions that affect U.S. citizens." *See* Andrew Lorenzen-Strait, *ICE Announces First-Ever Public Advocate*, Dep't of Homeland Security (Feb. 7, 2012, 8:58 AM), *http://blog.dhs.gov/2012/02/ice-announces-first-ever-public.html*.

[25] *See* 8 U.S.C. § 1401(c)-(e).

[26] *See* Palmatier Decl. at ¶ 19.

[27] *See* 8 U.S.C. § 1431.

[28] *See* DEPT. OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGRATION SERVS. INSTRUCTIONS FOR FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP, *available at* http://www.uscis.gov/files/form/n-600instr.pdf.

for non-citizens. For example, **George Ibarra**[29] is a fourth-generation U.S. citizen with grand and great-grand parents born in Arizona and California. He was born in the border town of Nogales, Mexico, but has lived in Arizona since infancy. He derived citizenship through his U.S. citizen mother. A veteran wounded during the first Gulf War, today Mr. Ibarra suffers from PTSD. He has been mistaken for a non-citizen and erroneously deported on two separate occasions.[30]

Even with all of its resources, expertise, and access to data, federal authorities still err in determining—over the course of weeks and months—who is a citizen. Yet Arizona, without any of these advantages, purports to have its officers sort out this question on the spot during the course of "any lawful contact made by a law enforcement official."

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[29] *See* Jacqueline Stevens, *DHS Releases U.S. Citizen George Ibarra From Eloy Detention Center*, STATES WITHOUT NATIONS (MAY 4, 2011, 2:01 PM), http://stateswithoutnations.blogspot.com/ 2011/05/dhs-release-us-citizen-george-ibarra.html.

[30] Mr. Ibarra's story also points to the reality that citizens with mental disabilities are particularly vulnerable to such mistakes. *See Written Testimony of Kara Hartzler, Problems with ICE Interrogation, Detention, and Removal Procedures: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Security and Int'l Law of the H. Comm. on the Judiciary*, 110th Cong. 2 (2008) *available at* http://judiciary.house.gov/hearings/printers/110th/40742.pdf.

C. Citizens of color will disproportionately bear the burden of "papers please" policing.

Mr. Shee's story reflects the reality that citizens of certain ethnic and racial backgrounds have more frequent contact with law enforcement. Under S.B. 1070, these citizens will likely have to prove their status many times each year. This "aggregation of thousands upon thousands of petty indignities has a substantial impact on freedom"[31]—and undermines the status of all citizens of color who find themselves in Arizona.

People of color in Arizona are far more likely to be stopped by police than are their white counterparts. In Maricopa County—by far Arizona's largest—Latino drivers are over four times more likely to be stopped than similarly situated non-Latino drivers.[32] Minorities stopped in Arizona are also more likely than whites to be searched, and are detained for longer periods of time despite the fact that they are less likely to be found in possession of contra-

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[31] *Maryland v. Wilson*, 519 U.S. 408, 419 (1997) (Stevens, J., dissenting) (noting "potential daily burden on thousands of innocent citizens" resulting from police officers ordering passengers out of cars during routine traffic stops); *see also id.* at 423 (Kennedy, J., dissenting) (joining Justice Stevens' dissent and warning against "risk of arbitrary control by the police").

[32] *See* Letter from Thomas E. Perez, Ass. Att'y Gen., U.S. Dept. of Justice, Civil Rights Div., to Bill Montgomery, Att'y Maricopa Cnty. (Dec. 15, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf.

band.[33] Section 2(B) will exacerbate these patterns, subjecting citizens of color to yet greater scrutiny and detention.

Finally, in the vast run of cases, racial and ethnic perceptions will spawn the "reasonable suspicion" that Section 2(B) requires before an officer may further detain an individual while trying to ascertain that person's immigration status.[34] Perhaps in recognition of this inherent defect, Petitioners do not even attempt to articulate the content of Section 2(B)'s "reasonable suspicion" requirement.[35]

II. S.B. 1070 MISAPPREHENDS THE FEDERAL IMMIGRATION SCHEME, INSTITUTING STATE CRIMINAL CONSEQUENCES THAT CONTRAVENE CONGRESSIONAL POLICY.

Even if the citizenship/alienage issue described in Part I were readily resolvable, the question of whether a non-citizen is "lawfully present" is a nuanced legal inquiry, not an on-the-spot factual determination. This section describes non-citizens who will be harmed by the Arizona Legislature's fundamental misapprehension of the federal immigration scheme. These individuals will be exposed to state criminal consequences, in conflict with congressional policy.

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[33] *See* ARIZ. STOP DATA, *supra* note 9, at 5.

[34] *See, e.g.*, Declaration of George Gascon (Chief of Police, San Francisco), ¶¶ 18-20, and Declaration of Eduardo Gonzalez, ¶ 16 (Former Chief of Police, Tampa), *Friendly House*, No. CV-10-01061-PHX-JWS (D. Ariz. June 4, 2010).

[35] *See* Pet. Br. at 38-41 (discussing Section 2(B)).

A. Section 3 will criminalize failure to register by individuals with no way to register under the federal scheme.

Section 3 of S.B. 1070—which criminalizes failure to register for and carry registration documents[36]—epitomizes the Arizona Legislature's misapprehension of federal immigration law. Petitioners claim that this provision represents a "parallel" enforcement of federal registration requirements, "overlap[ping] precisely with federal direction in both its substantive elements and its penalty."[37] In reality, Section 3 departs dramatically from longstanding federal registration policy.

In stating that the "difference between Section 3 and the federal statutes is that Section 3 has no application at all to persons authorized to be in the United States,"[38] Petitioners reveal their crucial misunderstanding: Section 3 refers to a statute, the implementing regulations for which are almost entirely

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[36] Ariz. Rev. Stat. Ann. § 13-1509(A).

[37] Pet. Br. at 51. *See also* Brief of State Senator Russell Pearce as *Amicus* Curiae In Support Of Petitioners at 10 [hereinafter Pearce *Amicus* Brief] ("Section 3 simply codifies federal law."); Brief of Joseph M. Arpaio, Maricopa County Sheriff as *Amici Curiae* in Support of Petitioner at 4 [hereinafter Arpaio *Amicus* Brief] ("Section 3 essentially adopts federal law and provides for its enforcement under Arizona law."); Statement of Governor Jan Brewer on Signing S.B. 1070 (Apr. 23, 2010) ("[T]he new state misdemeanor crime of willful failure to complete or carry an alien registration document is adopted, verbatim, from the same offense found in [sic] federal statute."), *available at* http://www.p2012.org/issues/brewer042310sp.html.

[38] Pet. Br. at 17.

addressed to persons *authorized* to be in the United States.[39]

While the Alien Registration Act of 1940 states that "it shall be the duty of every alien . . . to apply for registration,"[40] for over fifty years the federal registration scheme has excluded entrants without inspection ("EWIs") from its ambit.[41] Even the post-9-11 "special registration" imposed by the Attorney General on particular groups[42] did not cover EWIs.[43]

Contrary to this longstanding federal interpretation, Arizona ignores federal regulations and reinterprets vestigial language in 8 U.S.C. § 1302(a) as requiring EWIs to register. This leads to the bizarre result of punishing "failure to register" by immi-

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[39] *See* 8 C.F.R. § 264.1(b) (listing forms of evidence of registration, none of which are available to immigrants who entered without inspection).

[40] Sec. 31(a), Ch. 439, 54 Stat. 670, 673-74 (1940) (codified at 8 U.S.C. § 1302(a)).

[41] *See, e.g.*, Alien Registration, 25 Fed. Reg. 7180 (July 29, 1960) (listing prescribed federal registration forms, none of which apply to EWIs).

[42] *See* 8 U.S.C. § 1303. The Attorney General exercised this power in a series of rules promulgated following the attacks of September 11, but none of the promulgated rules purported to apply to EWIs. *See, e.g.,* Registration of Certain Nonimmigrant Aliens from Designated Countries, 67 Fed. Reg. 67766 (Nov. 6, 2002) (notice) (subjecting aliens from Iran, Iraq, Libya, Sudan, and Syria to special registration).

[43] *See* IMMIGRATION AND NATURALIZATION SERVS., SPECIAL CALL-IN REGISTRATION PROCEDURES 4 (2002), *available at* http://www.deans.medsch.ucla.edu/visa/Official%20INS%20Special%20Registration%20Information%20Sheet.pdf (explaining that registration requirements "apply only to aliens who have been inspected by an Immigration officer").

grants who have no way to register under the federal scheme.

Since EWIs will have no way to comply with this phantom registration requirement, Section 3 will *de facto* criminalize their presence in this country. This is in direct conflict with Congress's decision not to criminalize mere presence. All legislative proposals to criminalize mere presence have failed. Indeed, Congress considered and rejected criminalizing "unlawful presence" a few short years before the Arizona Legislature moved to embrace it.[44]

Most EWIs, while potentially removable, are simply not subject to criminal penalties under the federal scheme. Although illegal entry is a misdemeanor punishable under 8 U.S.C. § 1325(a), it is governed by the federal five-year statute of limitations.[45] Over ninety percent of unauthorized immigrants entered before 2005 and are therefore not chargeable under this provision of the federal code.[46] In contrast, Section 3 will criminalize unlawful presence on an ongoing basis.[47]

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[44] *See* H.R. 4437, 105th Cong. § 203 (2005) (imposing misdemeanor-level penalties on any alien "present in the United States in violation of the immigration laws").

[45] 18 U.S.C. § 3282(a).

[46] MICHAEL HOEFER, NANCY RYTINA & BRYAN C. BAKER, DHS OFFICE OF IMMIGRATION STATISTICS, ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2010 3 (2011), *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2010.pdf.

[47] Were the federal government to bring charges against an EWI for failing to carry a registration document, the defendant would have an impossibility defense. *See United States v. Mendez-Lopez*, 528 F. Supp. 972, 973 (N.D. Okla. 1981) ("It is ap-

Section 3 criminalizes immigrants for failing to do the impossible. For "DREAMers" like **Erika Andiola** of Phoenix, Arizona, this will have particularly cruel consequences. Ms. Andiola was brought to the United States at the age of eleven. She excelled scholastically and enrolled at Arizona State University, where she became an honor student and graduated in 2009 with a B.A. in Psychology. She aspires to work as a school counselor.[48] Having been brought into the United States without inspection, Ms. Andiola has no way to register. Under Section 3, she will at once be subject to misdemeanor liability.[49] And unless she flees her home state, she will face felony liability for subsequent arrests.[50]

B. S.B. 1070 will criminalize the presence of immigrants who have the blessing of the federal government to be in the United States.

Arizona presumes the existence of registration documents that many "lawfully present" immigrants simply will not have—either because their cases are

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parent to the Court [that] 1304(e) is intended to apply only to aliens who have been registered and fingerprinted and who have thus been issued a certificate or receipt card.") (dismissing criminal complaint against EWI).

[48] Gregory Pratt, *Undocumented ASU Graduate Erika Andiola Receives Freedom From Fear Award for Confronting Russell Peace, Organizing for DREAM Act*, PHOENIX NEW TIMES (June 15, 2011, 12:47 PM), http://blogs.phoenixnewtimes.com/valleyfever/2011/06/undocumented_asu_graduate_erik.php.

[49] Ariz. Rev. Stat. Ann. § 13-1509(H).

[50] *Id.*

being processed by the federal government,[51] or because such documents do not exist in the federal scheme. As a result, S.B. 1070 will expose to wrongful arrest and criminal detention immigrants who are entitled to congressionally approved forms of relief. Those harmed will include individuals from nations experiencing crisis, victims of violent crime, asylum seekers, and relatives of U.S. citizens.

Congress passed the Nicaraguan Adjustment and Central American Relief Act ("NACARA") to provide immigration benefits to certain asylees from Nicaragua, Cuba, El Salvador, Guatemala, and the former Soviet bloc.[52] **John Doe #1**,[53] a resident of South Carolina, came to the United States in 1989 to escape a civil war in Guatemala. He obtained an Employment Authorization Document ("EAD") through NACARA. He must apply for renewal of his EAD on an annual basis, but due to administrative delay, often goes for weeks or months before he receives a current EAD. During these times, he lacks a registration document.

Congress created the U-Visa to give legal status to victims of certain crimes and to encourage

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[51] At any given moment, over a million immigrants occupy a sort of "twilight" status: They lack permanent status, but the federal government does not take action against them because they have pending applications for relief or Temporary Protected Status. *See* DAVID A. MARTIN, MIGRATION POL'Y INST., TWILIGHT STATUSES: A CLOSER EXAMINATION OF THE UNAUTHORIZED POPULATION 2 (2005) [hereinafter MARTIN TWILIGHT STATUSES], *available at* www.migrationpolicy.org/pubs/MPI_PB_6.05.pdf (compiling data as of 2005).

[52] *See* Pub. L. No. 105-100, 111 Stat. 2160 (1997).

[53] Declaration of John Doe #1, *Lowcountry Immigration Coalition v. Haley*, No. 2:11-CV-02779 (D.S.C. Oct. 21, 2011).

them to aid in the investigation and prosecution of crimes.[54] **Jane Doe #3**,[55] an immigrant from Mexico who now resides in Tucson, entered into a relationship with a man who became abusive. After he slashed her tires, destroyed her clothes, and defaced the walls of her apartment, Ms. Doe became afraid for her safety and that of her children. She immediately applied for U-status as a victim of violent crime, but it took fifteen months before she received a registration document.[56]

Asylum is a legal protection afforded to persons with a "well-founded fear of persecution" based on race, religion, nationality, sexuality, or other characteristics.[57] **Jane Doe #1**,[58] a thirty-five-year-old woman of South Asian descent, resides in Phoenix. Because she practices Catholicism, she was severely persecuted in her home country, which is Muslim. She was kidnapped and sexually assaulted, but authorities refused to investigate her attack. She and her family were forced to flee to the United

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[54] *See* Violence Against Women Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1464, 1533 (2000); *see also* 8 C.F.R. § 214.14(b)(1)-(3) (describing eligibility requirements for U-status).

[55] Complaint at 24, *Friendly House*, No. CV-10-01061-PHX-JWS (D. Ariz. Oct. 31, 2010).

[56] *See* Letter from Nora Preciado, Esq., Nat'l Immigration Law Ctr., to Nancy Morawetz, Supervising Att'y, Washington Sq. Legal Servs. (Mar. 23, 2012) (on file with Washington Sq. Legal Servs.).

[57] Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980) (codified as amended in scattered sections of 8 U.S.C.).

[58] Declaration of Jane Doe #1, *Friendly House*, No. CV-10-01061-PHX-JWS (D. Ariz. June 14, 2010).

States. During the pendency of Ms. Doe's asylum application, she lacked a registration document.

Temporary Protected Status ("TPS") is a benefit granted to immigrants in the United States from countries with extraordinary conditions that prevent such individuals from safely returning.[59] TPS is not a path to permanent status, and recipients of this form of relief do not receive registration documents unless they apply for work authorization. Recipients of TPS who do not work—like children and the elderly—lack any registration documents. **C.M.**,[60] originally from Haiti, is a high school junior living in Gilbert, Arizona. Due to the devastating earthquake in Haiti, she was granted TPS. Although TPS is meant to provide safe haven to individuals like C.M., she now fears questioning because of her dark skin and is nervous to speak Creole in public.

Congress grants a path to permanent immigration status to family members of U.S. citizens and Lawful Permanent Residents (LPRs).[61] This reflects a core value of federal immigration law: family reunification. The federal government allows thousands of immigrants with familial ties to citizens and LPRs to

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[59] *See* 8 U.S.C. § 1254a(b) (stating criteria for designation of TPS).

[60] Declaration of C.M., *Friendly House*, No. CV-10-01061-PHX-JWS (D. Ariz. July 13, 2010).

[61] 8 U.S.C. § 1153(a) (detailing "[p]reference allocation for family-sponsored immigrants"). Between 2008 and 2010, 66.3% of new LPRs were granted status based on a familial relationship. RANDALL MONGER & JAMES YANKAY, DHS OFFICE OF IMMIGRATION STATISTICS, U.S. LEGAL PERMANENT RESIDENTS: 2010 (2011), *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2010.pdf.

wait in the United States while their cases are adjudicated.[62] For example, under Section 245(i) of the Legal Immigration Family Equity Act, some immigrants with immediately available family-based visas are allowed to adjust their status from within the United States—and thus avoid leaving their families to undergo consular processing abroad.[63] While their applications are being processed, many such immigrants will lack registration documents.[64]

Martha,[65] of central Alabama, is married to a U.S. citizen, with whom she has a U.S. citizen son. She is in the process of adjusting her status, in compliance with federal law. After Alabama's copycat law went into effect, she was stopped in a parking lot, allegedly for not having her lights on. When she failed to provide proof of citizenship to local police, Martha was arrested for violating the new law. She spent three days in criminal confinement until immigration officials arrived to verify her status.

The federal government has a longstanding policy of granting prosecutorial discretion to immi-

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[62] In 2010, over one million persons became LPRs, the majority of whom (fifty-four percent) already lived in the United States. *Id.*

[63] *See* 8 U.S.C. § 1255(i) (addressing "[a]djustment in status of certain aliens physically present in United States").

[64] Even after an alien's visa petition is approved (meaning the federal government recognizes his bona fide relationship to a citizen or LPR), he will not have a registration document unless he applies for work authorization, or until his visa "priority date" becomes current and the application for adjustment of status is processed. *See* 8 C.F.R. § 264.1(a)-(b); MARTIN, TWILIGHT STATUSES, *supra* note, at 2.

[65] *See* ALABAMA'S SHAME, *supra* note 17, at 11-12.

grants identified as low priority for removal.[66] This policy has been pursued by presidential administrations for decades, and has received bipartisan congressional backing.[67] Many recipients of prosecutorial discretion,[68] however, will have no way to obtain registration documents.[69] **Jane Doe #2**,[70] age twenty-

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[66] Shoba Sivaprasad Wadhia, *The Role of Prosecutorial Discretion in Immigration Law*, CONN. PUB. INT. L. J. 252 (2010).

[67] In 1999, U.S. Representative Lamar Smith and a bipartisan coalition of congressional members sent a letter to the Attorney General and the head of the I.N.S., arguing that "unfair" deportations had caused "unjustifiable hardship" for otherwise law-abiding immigrants and that "[t]rue hardship cases call for the exercise of discretion." Letter from Members of Congress to Att'y Gen. Reno and Comm'r Meissner (Nov. 4, 1999), *in* INTERPRETER RELEASES, 1730-32 (1999). Prompted by the letter, the I.N.S. issued a memorandum calling for the exercise of prosecutorial discretion, which has been reissued in similar form by every administration since. *See* Memorandum from Doris Meissner, INS Comm'r to INS Reg'l Dirs., et al. on Exercising Prosecutorial Discretion (Nov. 17, 2000) (on file with author); Memorandum from William Howard, ICE Principal Legal Advisor to the Office of the Principal Legal Advisor on Prosecutorial Discretion (Oct. 24, 2005) (on file with author).

[68] *See, e.g.*, Kirk Semple, *U.S. Drops Deportation Proceedings Against Immigrant in Same-Sex Marriage*, N.Y. TIMES, June 30, 2011, at A16 (describing cancellation of removal in case of Venezuelan man married to U.S. citizen).

[69] Beneficiaries of prosecutorial discretion do not automatically receive work authorization. *See* ICE, ENFORCEMENT & REMOVAL OPERATIONS, FREQUENTLY ASKED QUESTIONS ON THE ADMINISTRATION'S ANNOUNCEMENT REGARDING A NEW PROCESS TO FURTHER FOCUS IMMIGRATION ENFORCEMENT RESOURCES ON HIGH PRIORITY CASES (2011), *available at* http://www.ice.gov/doclib/about/offices/ero/pdf/immigration-enforcement-facts.pdf ("[R]equests [for EADs] will be . . . considered . . . on a case-by-case basis.").

four, has spent over half her life in Georgia, where she graduated from high school and college. In 2009, ICE placed her in removal proceedings, but granted her deferred action until May 2011. Although her deferred action has been extended until May 2012, she has no paperwork documenting the extension. She lacks any registration document.

C. Section 6 will expose Lawful Permanent Residents, and other authorized immigrants, to wrongful arrest and detention.

Section 6 of S.B. 1070 authorizes an Arizona officer, without a warrant, to "arrest a person if the officer has probable cause to believe . . . [t]he person to be arrested has committed any public offense that makes the person removable from the United States."[71] Arizona thus grants *local* officers substantially more power than Congress has given even *federal* immigration officers.[72] This will expose LPRs and other authorized immigrants with past convictions to wrongful arrest and criminal detention.

Arizona assumes that removability based on past convictions is a simple determination that police can make on the spot. In reality, this is a legal de-

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[70] Complaint at 36-37, *Georgia Latino Alliance for Human Rights v. Deal*, 793 F. Supp. 2d 1317 (N.D. Ga. 2011) (No. 1:11–CV–1804–TWT).

[71] Ariz. Rev. Stat. Ann. § 13-3883.

[72] 8 U.S.C. § 1357(a)(4) (authorizing federal officers to make warrantless arrests only "if there is likelihood of the person escaping before a warrant can be obtained"); 8 C.F.R. § 287.5 (same).

termination that requires knowledge of a suspect's immigration status, current case law, and the nature of the past convictions. For this reason, the federal scheme contemplates careful deliberation by expert officials prior to the issuance of a "Notice to Appear" before an immigration judge.[73] And, to prevent error, the federal scheme prohibits federal officers from making warrantless arrests unless the suspect presents a flight risk.[74]

Local police are bound to make repeated mistakes given their lack of immigration law expertise, and the inherent impossibility of making these determinations on the spot. As a result, LPRs and other lawfully present immigrants with criminal records will live in constant fear of arrest by Arizona police—even if their crimes do not subject them to immigration consequences.[75]

Petitions argued below that Section 6 should be construed "so as to require officers to confirm with federal authorities that an alien has committed a

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[73] *See* Memorandum from John P. Torres, Acting Dir. ICE, Office of Detention and Removal to ICE Field Officers on the Detention and Deportation Officer's Field Manual § 11.3 (Mar. 27, 2006), *available at* http://www.legalactioncenter.org/sites/default/files/docs/lac/ICE-DetentionDeportation-OfficerFieldManual.pdf.

[74] *See* 8 U.S.C. § 1357(a)(4); 8 C.F.R. § 287.5.

[75] Russell Pearce, the self-described "author of, and driving force behind" S.B. 1070, claims that Section 6's warrantless arrest authority applies only where a suspect has "willfully failed or refused to depart after having been ordered to be removed by a federal immigration judge." Pearce *Amicus* Brief, *supra* note 38, at 1, 13. The statute's language does not admit of this narrow interpretation and the Court should not credit Mr. Pearce's *post facto* attempt to rewrite S.B. 1070.

public offense that makes the alien removable before making a warrantless arrest."[76] Even if the provision were so interpreted, it would still expand the power of state authorities to make immigration arrests far beyond the scope sanctioned by Congress. Whereas 8 U.S.C. § 1252c authorizes state and local law enforcement officials to arrest certain "alien[s] . . . previously . . . convicted of a *felony*,"[77] Section 6 allows for arrests where the individual has committed "*any public offense* that makes the person removable."[78]

III. REAL-WORLD EVIDENCE BELIES PETITIONERS' THEORETICAL ARGUMENT THAT S.B. 1070 CAN BE IMPLEMENTED IN A MANNER CONSISTENT WITH THE CONSTITUTION.

Petitioners and their *amici* invite the Court to identify some narrow reading of S.B. 1070 in the hope that the enactment might survive this facial challenge. The Court should not strain to identify such a legal fiction. The plain language of the statute, the stated understandings of its would-be enforcers, and the real-world experience of people of color in Arizona and the other copycat states all serve to refute Petitioners' claim that S.B. 1070 can be implemented in a manner consistent with the Constitution.[79]

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[76] Appellants' Opening Brief at 54, *United States v. Ariz.*, 641 F.3d 339 (9th Cir. 2011) (No. 10-16645).

[77] *See* 8 U.S.C. § 1252c(a)(2) (emphasis added).

[78] Ariz. Rev. Stat. Ann. § 13-3883 (emphasis added).

[79] While 8 U.S.C. § 1357(g)(10)(B) allows the Attorney General, in the absence of formal agreements, to involve interested

A. Arizona's track record lays bare the hollowness of Petitioners' contention that S.B. 1070 can be carried out in a constitutional manner.

Arizona's failure to safeguard civil rights and its unwillingness to respect federal control over immigration enforcement both militate toward upholding the injunction. Maricopa County, home to over half of Arizona's residents,[80] joined the 287(g) program in 2007.[81] The program allows certain state and local law enforcement officers to be trained by ICE to perform immigration enforcement activities pursuant to a formal contract with the federal government that requires, *inter alia*, that they function under the control and supervision of federal authorities.[82] In 2009 and again last year, the federal government was forced to drastically curtail Maricopa County's 287(g) authorization.[83] According to the DOJ, the

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states in cooperative immigration-related efforts, Petitioners read this provision as an invitation for states to invent immigration enforcement schemes that are independent of the federal scheme. Pet. Br. at 32. Petitioner's interpretation of that provision reads out the "co-" in the word "cooperate." This unilateral approach to cooperation is at odds with the federal scheme.

[80] Arpaio *Amicus* Brief, *supra* note 38, at 2.

[81] *See* Memorandum of Agreement Between ICE and Maricopa County, Feb. 24, 2007, *available at* http://www.aclu.org/files/pdfs/immigrants/maricopa_moa_20070207.pdf.

[82] 8 U.S.C. § 1357(g)(1)-(9).

[83] Ray Stern, *Feds Pull 287(g) Authority From Maricopa County Jails Because of Civil Rights Violations*, PHOENIX NEW TIMES (Dec. 15 2011, 1:00 PM),

Maricopa County Sheriff's Office ("MCSO") systematically engaged in "racial profiling of Latinos" through unlawful stops, arrests, and detentions.[84]

This officially sanctioned racial profiling has resulted in rampant harassment of U.S. citizens and LPRs. **Julio Cesar Mora**,[85] born in Avondale, Arizona, is a U.S. citizen of Mexican ancestry. On February 11, 2009, Mr. Mora and his then sixty-six-year-old father (an LPR who had lived in the United States for thirty years) were on their way to work. Just yards from their destination, they were surrounded by two MCSO vehicles, and ordered out of their pick-up truck. They were frisked, handcuffed, and eventually taken to Mr. Mora's workplace—the site of an MCSO immigration raid. Along with over 100 others, they were corralled by masked officers carrying semi-automatic rifles. Mr. Mora is still astounded by the treatment he received. As he explains, "[m]aybe it was because of the Campesina radio station sticker on our bumper or . . . because my

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http://blogs.phoenixnewtimes.com/valleyfever/ 2011/12/ feds_pull_287g_authority_from.php.

[84] *See* Letter from Thomas E. Perez, Ass. Att'y Gen., U.S. Dept. of Justice, Civil Rights Div., to Bill Montgomery, Att'y Maricopa Cnty. (Dec. 15, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/mcso_findletter_ 12-15-11.pdf.

[85] *See Testimony of Julio Cesar Mora, Pub. Safety & Civil Rights Implications of State and Local Enforcement of Immigration Laws: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Security and Int'l Law and the Subcomm. on the Const., Civil Rights, & Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. 11 (2009), *available at* http://judiciary.house.gov/hearings/printers/111th/111-19_ 48439.pdf.

dad was wearing his Mexican tejana [hat] and they thought we were illegal. But they never bothered to ask us."

MCSO has brazenly undermined federal control over immigration enforcement. Asked why his office refused to cooperate with an investigation of the county's "discriminatory practices," Sheriff Joseph Arpaio explained: "Do you think I'm going to report to the federal government? I don't report to them."[86] Yet Mr. Arpaio submits an *amicus* brief in this case claiming he is ready to cooperate with federal immigration enforcement.[87]

Federal control of the 287(g) program allowed DOJ to "pull the plug" on MCSO in light of its egregious misconduct. Lifting the injunction not only would restore MCSO's power; it also would severely limit the federal government's future ability to supervise MCSO's immigration enforcement activities. Worse still, Arizona would be given license to run a rival immigration regime that departs dramatically from federal design.

B. Laws like S.B. 1070 embolden individuals to commit private acts of racial discrimination.

Laws like S.B. 1070 signal to members of the public that some of their neighbors, customers, and employees are henceforth "illegal." Following the ex-

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[86] *Immigration, Outsourced*, N.Y. TIMES, Apr. 9, 2008, at A24.

[87] Arpaio *Amicus* Brief at 14 ("The Court should assume that Arizona law enforcement officials will comply with federal law in executing Section 2(B).").

ample of their state governments, private actors have begun treating people with brown skin or accents as second-class citizens. In Alabama, for example, H.B. 56 has emboldened acts of blatant racism toward anyone perceived as foreign. The view from the ground is frightening.

Carmen Gonzalez[88] is a U.S. citizen and the mother of two U.S. citizen children. Born in Texas, she has lived in Foley, Alabama for most of her life. In December of 2011, she was greeted by a piece of paper on the floor of her vehicle that read: "Go Back to Mexico." When her son asked if his family was going to Mexico, Ms. Gonzalez was forced to explain, "You're allowed to be here . . . You're supposed to be here."

N.L.,[89] originally from Mexico, resides in Shelby, Alabama, with her husband and two U.S. citizen daughters. On a recent afternoon at a lunch buffet, her deaf seven-year-old daughter crossed in front of a white man whom she did not hear coming, causing him to bobble his plate. Furious, the man intentionally poured barbecue sauce on top of the young girl. He yelled anti-immigrant epithets at her while she struggled to her feet. Hurt and feeling helpless to confront the man, the family quickly cleared the table, paid, and left the restaurant.

W.H.,[90] originally from Mexico, resides in Birmingham, Alabama. In October, after protecting

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[88] *See* ALABAMA'S SHAME, *supra* note 17, at 7.

[89] *See* Letter from Tom Fritzsche, Esq. & Samuel Brooke, Esq., S. Poverty Law Ctr., to Nancy Morawetz, Supervising Att'y, Washington Sq. Legal Servs. (Mar. 23, 2012) (on file with Washington Sq. Legal Servs.).

[90] *Id.*

his wife and three-year-old U.S. citizen son from an attack by a neighbor's pitbull, he asked the neighbor to be more careful with the dog. The neighbor responded by hurling racial insults at him and threatening to "have him deported" if he made a fuss about the dog.

Hortensia[91] of Decatur, Alabama performed three days of landscaping work around the home of her employer. When she went to collect her pay, she was met with the barrel of a gun, and told she "couldn't do anything" because she did not have "papers."

As these stories illustrate, the particulars of S.B. 1070 and its copycats are lost on many laypersons. They simply view these state immigration laws as giving them license to treat people with brown skin or accents as second-class citizens.

C. Laws like S.B. 1070 divide our nation into regions where people of color can freely live and travel—and regions where they cannot.

The backdrop for the passage of S.B. 1070 is the reality of shifting demographics in Arizona and the nation as whole. The United States has rapidly become a diverse nation, welcoming people of all rac-

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[91] *See* ALABAMA'S SHAME, *supra* note 17, at 13-14.

Hortensia's story illustrates one reason why Congress rejected the criminalization of work performed by unauthorized immigrants: protection of a "fair day's pay for a fair day's work." *See, e.g.*, President Franklin Delano Roosevelt, *Public Papers*, VI (May 24, 1937). Cognizant of this congressional objective, the lower courts were correct to enjoin Section 5(C).

es and countries of origin. Racial and ethnic minorities accounted for 91.7% of the nation's growth during the 2000-2010 decade. The growth rates of the Latino population have been 43%, 53% and 58%, for the past three decades, respectively. As of 2010, there were 50.5 million Latino residents of the United States—16.3% of the total population. This includes 4.6 million Latinos born in Puerto Rico, who are U.S. citizens by birth.[92] Nationwide, 74% of all Latinos are U.S. citizens by birth or naturalization.[93] Of the 31,674,000 residents of Mexican ancestry in the United States, 20.3 million (64.1%) are citizens born in this country and 2.6 million (8.2%) are naturalized citizens.[94] Meanwhile, only one-third of Latinos between the ages of sixteen and twenty-five were born abroad.[95]

Arizona exemplifies these trends. More than one in four Arizonans is Latino. For youths between the ages sixteen and twenty-five, the figure is over one in three.[96] As of 2009, close to 1.3 million Latinos

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[92] MARK HUGO LOPEZ & GABRIEL VELASCO, PEW HISPANIC CTR., A DEMOGRAPHIC PORTRAIT OF PUERTO RICANS 1 (2011), *available at* http://www.pewhispanic.org/files/2011/06/143.pdf.

[93] Daniel Dockterman, *Country of Origin Profiles*, PEW HISPANIC CTR. (May 26, 2011), http://www.pewhispanic.org/2011/05/26/country-of-origin-profiles (last visited Mar. 26, 2012).

[94] *Id.*

[95] *Latino Youths Optimistic But Beset by Problems*, PEW HISPANIC CTR. (Dec. 11, 2009), http://www.pewhispanic.org/2009/12/11/latino-youths-optimistic-but-beset-by-problems (last visited Mar. 26, 2012).

[96] *Id.*

lived in the Phoenix Metropolitan Area alone;[97] over two-thirds of them were born here as U.S. citizens.[98]

S.B. 1070 and its copycats subject new Americans—and all people of color—to constant scrutiny about their immigration status. Many immigrants and people of color have packed up and left their home states. In Arizona, both legally present and undocumented, have begun leaving the state in droves.[99] In Alabama, the exodus of Latinos began just hours after H.B. 56 passed, with frightened families leaving behind fully furnished mobile homes in order to take refuge in other states.[100]

Meanwhile, immigrants and other people of color who remain in states like Arizona and Alabama have been deterred from seeking basic public services. Following the passage of Alabama's law, hundreds of fearful parents pulled their children out of public schools.[101] The Alabama Department of Public Health is concerned that H.B. 56 is keeping people from seeking medical care, thereby increasing the

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[97] *Latinos by Geography*, PEW HISPANIC CTR. (Mar. 16, 2012), http://www.pewhispanic.org/2012/03/16/latinos-by-geography (last visited Mar. 26, 2012).

[98] *Id.*

[99] Alan Gomez, *Hispanics Flee Arizona Ahead of Immigration Law*, USA TODAY, June, 9, 2010, at A1.

[100] *See* Campbell Roberson, *After Ruling, Hispanics Flee an Alabama Town*, N.Y. Times, Oct. 3, 2011 at A1.

[101] In Montgomery County, more than 200 Latino students were absent the morning after learning that the law would go into effect. *See* Jay Reeves, *Hispanic Students Vanish From Alabama Schools*, ASSOCIATED PRESS, Sept. 30, 2011, *available at* http://www.msnbc.msn.com/id/44734906/ns/us_news-life/t/hispanic-students-vanish-alabama-schools/ #.T3ABYmEged8.

risk of illnesses across the state.[102] Immigrants of faith have also been forced into the shadows. Latinos have grown reluctant to attend Spanish-language worship or access services such as English classes. In this climate, congregations and ministries have been forced to shut down.[103]

The marginalization of people of color comes as no surprise to the drafters of S.B. 1070 and its copycats. State-level "attrition through enforcement" laws are designed to divide our nation between those regions where people of all ethnicities can freely travel, live and work—and those where they cannot.

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[102] *See* Jay Reeves, *Alabama Immigration Law Sparking Public Health Worries*, ASSOCIATED PRESS, Oct. 28, 2011, *available at* http://www.msnbc.msn.com/id/45081790/ns/health/t/ala-immigration-lawsparking-public-health-worries. This is particularly problematic for sufferers of HIV/AIDS, who will be deterred from accessing testing and lifesaving medical treatment.

[103] This problem is compounded by the transportation problems presented by Alabama's "harboring and transport" provision. *See* Beason-Hammon Alabama Taxpayer and Citizen Protection Act, 2011 Alabama Laws Act 2011-535 (H.B. 56), § 13(a)(1) (codified at Ala. Code § 31-13-13(a)(1)) ("It shall be unlawful for a person to . . . . [c]onceal, harbor, or shield or attempt to conceal, harbor, or shield or conspire to conceal, harbor, or shield an alien from detection in any place in this state . . . ."). Although S.B. 1070 shares this feature, *see* Ariz. Rev. Stat. Ann. § 13-2929(A)(2)-(3), it is not before the Court.

CONCLUSION

For these reasons, the decision of the Court of Appeals should be affirmed.

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Respectfully submitted,

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APPENDIX: LIST OF *AMICI CURIAE*

Organizations Challenging S.B. 1070 Copycat Laws

Alabama Appleseed Center for Law & Justice
Coalition of Utah Progressives
Georgia Latino Alliance for Human Rights
Hispanic Interest Coalition of Alabama
Lowcountry Immigration Coalition (South Carolina)
South Carolina Appleseed Legal Justice Center
Utah Coalition of La Raza

Local, National, and International Organizations

The Leadership Conference on Civil and Human Rights
9to5, National Association of Working Women
Adorers of the Blood of Christ, U.S. Region
Adrian Dominican Sisters
African American Ministers In Action
Alliance for a Just Society
American GI Forum
American Jewish Committee
Asian & Pacific Islander American Health Forum
Asian American Institute
Asian Law Caucus, member of the Asian American Center for Advancing Justice
Asian Pacific American Labor Alliance, AFL-CIO

Bickel & Brewer Latino Institute for Human Rights

Center for Community Change

Center for Gender & Refugee Studies

Centro Civico Mexicano

Church World Service

Coalition for Humane Immigrant Rights of Los Angeles

Congregation of Sisters of St. Agnes

Congregation of St. Joseph

Congregation of the Sisters of Charity of Saint Vincent de Paul of New York

Convent of the Sisters of Saint Joseph of Chestnut Hill, Philadelphia

Daughters of Charity of St. Vincent de Paul, Province of St. Louise

Daughters of Charity of St. Vincent de Paul, Province of the West

Dēmos

Dominican Sisters of Peace

Dominican Sisters of St. Catherine de Ricci

Dominican Sisters, Grand Rapids, MI

Equal Justice Society

Esperanza

Fair Immigration Reform Movement

Farmworker Justice

Franciscan Action Network

Grey Nuns of the Sacred Heart

Hebrew Immigrant Aid Society

Holy Cross Ministries

Immigration Equality

Jewish Labor Committee

Lambda Legal Defense and Education Fund

Leadership Conference of Women Religious

Leadership Conference of Women Religious

League of United Latin American Citizens

League of Women Voters of Utah

Legal Momentum

Lutheran Immigration & Refugee Service

Main Street Alliance

Make the Road New York

Muslim Public Affairs Council

National Advocacy Center of the Sisters of the Good Shepherd

National Asian Pacific American Bar Association

National Association of Colored Women's Clubs

National Association of Human Rights Workers

National Coalition for Asian Pacific American Community Development

National Congress of American Indians

National Council of Jewish Women

National Employment Law Project

National Fair Housing Alliance

National Immigration Project of the National Lawyers Guild

National Korean American Service & Education Consortium

National Latina Institute for Reproductive Health

National Latino Evangelical Coalition

National Organization for Women Foundation

National Tongan-American Society

NETWORK A Catholic Social Justice Lobby

New York Immigration Coalition

OCA

Pineros y Campesinos Unidos del Noroeste

Public Advocates

Refugee & Immigration Ministries, Disciples Home Missions, Christian Church (Disciples of Christ)

Religious Sisters of Charity

Rights Working Group

School Sisters of Notre Dame, Central Pacific Province

Sikh American Legal Defense and Education Fund

Sinsinawa Dominican Sisters

Sisters of Charity of Cincinnati

Sisters of Charity of Leavenworth

Sisters of Charity of Nazareth

Sisters of Charity of Our Lady of Mercy

Sisters of Charity of Saint Elizabeth

Sisters of Charity of Seton Hill, Greensburg, PA

Sisters of Charity of the Blessed Virgin Mary

Sisters of Mercy of the Americas

Sisters of Notre Dame de Namur, USA

Sisters of St. Francis of Dubuque, Iowa

Sisters of St. Francis of Penance and Charity

Sisters of St. Joseph of Rochester, NY

Sisters of St. Joseph of Springfield, MA

Sisters of the Divine Compassion

Sisters of the Holy Cross

Sojourners

Somos America
South Asian Americans Leading Together
Southeast Asia Resource Action Center
Southern Center for Human Rights
Southern Poverty Law Center
Southwest Conference of the United Church of Christ
The Conference of Major Superiors of Men
United Church of Christ, Justice and Witness Ministries