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14  
15 UNITED STATES DISTRICT COURT  
16 DISTRICT OF ARIZONA

17  
18 Friendly House, *et al.*,  
19 Plaintiffs,  
20  
21 v.  
22 Michael B. Whiting, *et al.*,  
23 Defendants.

CASE NO. CV-10-01061-MEA

**LODGED: Proposed Brief Of  
The United Mexican States As  
*Amicus Curiae* In Support Of  
Plaintiffs Attached**

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CASE NO. CV-10-01061-MEA

**BRIEF OF THE  
UNITED MEXICAN STATES  
AS *AMICUS CURIAE*  
IN SUPPORT OF PLAINTIFFS**

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1 **INTEREST OF THE *AMICUS CURIAE***

2 The United Mexican States (“Mexico”) respectfully submits this *amicus curiae*  
3 brief to express its grave concerns over Arizona Senate Bill 1070, 49th Leg., 2nd Reg.  
4 Sess., Ch. 113 (Az. 2010), as amended (“SB 1070”), and to underscore the importance of  
5 declaring SB 1070 unconstitutional in its entirety.

6 Mexico seeks to ensure that its bilateral diplomatic relations with the United States  
7 of America (“U.S.” or “United States”) are transparent, consistent and reliable, and not  
8 frustrated by individual U.S. states’ actions, in particular the Arizona Defendants herein.  
9 SB 1070 substantially impacts Mexico, its officials and citizens, by inappropriately  
10 burdening the uniform and predictable sovereign-to-sovereign relations, opening the door  
11 to divergent requirements among the different states, and with respect to the national  
12 government.

13  
14 Under Article 5(a) of the Vienna Convention on Consular Relations, to which both  
15 countries are signatories, Mexico has a right to protect the interests of its nationals within  
16 the limits of international law.<sup>2</sup> Mexico seeks to assure that its citizens, present in the  
17 United States, are accorded the human and civil rights granted under the U.S.  
18 Constitution; having therefore a substantial and compelling interest in protecting its  
19 citizens and ensuring that their ethnicity is not used as basis for state-sanctioned acts of  
20 discrimination, including the inequitable application of civil and criminal laws and state’s  
21 law enforcement powers. SB 1070 creates an imminent threat of state-sanctioned bias or  
22  
23  
24

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25 <sup>2</sup> Vienna Convention on Consular Relations art. 5, Apr. 24, 1963, 596 U.N.T.S. 261.

1 discrimination, resulting not only in individual injury, but also in broader social and  
2 economic harms to its citizens, undermining Mexico–U.S. relations.

3 The enactment of SB 1070 has been closely followed at the highest levels of the  
4 Mexican government and throughout Mexican society. The issues raised herein are of  
5 great importance to the people of Mexico, including the almost twenty million Mexican  
6 workers, tourists and students lawfully admitted to the United States throughout 2009,  
7 those already present or who will similarly be admitted to the U.S in the future, and the  
8 countless millions affected by international trade, immigration policies and drug violence.

9  
10 The government of Mexico respectfully submits that SB 1070 adversely impacts  
11 the bilateral relations between Mexico and the United States, as well as law abiding  
12 Mexican citizens and other people of Latin-American descent present in Arizona as  
13 argued by Plaintiffs.

#### 14 **SUMMARY OF ARGUMENT**

15 Through the enactment of SB 1070, Arizona has taken action that decisively  
16 departs from the collective immigration policy of the United States for the purpose of  
17 imposing Arizona’s own independent and conflicting set of requirements. Such action  
18 directly and indirectly interferes with the bilateral economic, immigration and security  
19 policies of Mexico and the U.S. federal government. Thus, SB 1070 raises substantial  
20 challenges to the bilateral diplomatic relations between Mexico and the U.S.

21  
22 In addition, Mexico is gravely concerned that SB 1070 will lead to disparate  
23 treatment among Mexican nationals in the U.S., as well as disparate treatment as  
24 compared to U.S. citizens. This disparate treatment will be in the form of racial profiling

1 and detentions of Mexican citizens without regard to whether they have taken any actions  
2 or exhibited any behavior indicating they are guilty of a crime or “unlawfully present” in  
3 the U.S.

## 4 ARGUMENT

### 5 **I. SB 1070 Impedes International Relations; There Needs to Be One Cohesive, 6 Consistent and Controlling United States Voice**

7 “The Federal Government, representing as it does the collective interests of the  
8 [fifty] states, is entrusted with full and exclusive responsibility for the conduct of affairs  
9 with foreign sovereignties.”<sup>3</sup> Through SB 1070, Arizona imposes its own independent  
10 and conflicting requirements. Arizona does this despite specific provisions of federal  
11 immigration law that permit Arizona to assist with the enforcement of immigration law  
12 after receiving federal approval and appropriate training to ensure constitutionality.<sup>4</sup>  
13 Arizona’s unilateral action burdens Mexico enormously by forcing its officials and  
14 citizens to respond to divergent requirements imposed by the different divisions of the  
15 U.S. government. In order to conduct effective diplomatic relations with the U.S.,  
16 countries such as Mexico need and depend on transparent, consistent and reliable  
17 bilateral negotiations. *Amicus* cannot effectively collaborate with the United States on a  
18 sovereign basis to address inherently international matters such as immigration, trade and  
19 security, if U.S. political subdivisions establish their own requirements that conflict not  
20 only with each other but also with the efforts, priorities and commitments of the U.S.  
21 federal government.  
22

23 <sup>3</sup> *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941); *see also* Meissner Decl. ¶¶ 13-14  
24 (asserting that States’ interventions frustrate the federal government’s ability to  
25 achieve its objectives).

<sup>4</sup> *See* 8 U.S.C. § 1357(g) (2006).

1 SB 1070 adversely impacts U.S. relations with foreign countries, directly  
2 interfering with the U.S. Department of State's ability to conduct foreign affairs and  
3 policy.<sup>5</sup> As conveyed by U.S. Secretary of State Hillary Clinton, although SB 1070 is not  
4 yet in effect, it is already straining U.S.–Mexico relations.<sup>6</sup> Mexico's ambassador to the  
5 U.S. Arturo Sarukhan explains that SB 1070 “threatens to poison the well from which our  
6 two nations have found and should continue to find inspiration for a joint future of  
7 prosperity, security, tolerance and justice.”<sup>7</sup>

8  
9 **A. SB 1070 Will Severely Hinder Trade and Tourism Between Mexico and Arizona**

10 One area of great concern to Mexico relates to the repercussions of SB 1070 on  
11 trade and commercial relations with the United States. Growth in U.S. trade with Latin  
12 America has historically outpaced that of all other regions.<sup>8</sup> Mexico is the third largest  
13 trading partner of the United States and the second purchaser of U.S. exports.<sup>9</sup> The  
14 interaction of labor markets, tourism, business travel, and student migration between the  
15

16  
17  
18 <sup>5</sup> Meissner Decl. ¶¶ 32–33.

19 <sup>6</sup> See *Meet the Press with Secretary Clinton* [Transcript] (May 2, 2010), available at  
<http://secretaryclinton.wordpress.com/2010/05/02/meet-the-press/>.

20 <sup>7</sup> Instituto Cultural Mexicano, *Entrega de los premios Ohtli*, at 3 (May 4, 2010),  
[www.ime.gob.mx/documentos/Entrega\\_Ohtlis.doc](http://www.ime.gob.mx/documentos/Entrega_Ohtlis.doc); CNN, *U.S., Mexican Presidents Say Key Issues Must be Tackled Together* (May 20, 2010),  
21 <http://www.cnn.com/2010/US/05/19/mexico.president.visit/index.html>. See also  
Lowenthal Decl. ¶ 10.

22 <sup>8</sup> J. F. Hornbeck, *U.S.-Latin America Trade: Recent Trends and Policy Issues*,  
Congressional Research Service, at 1 (Sept. 3, 2009), available at  
23 <http://www.fas.org/sgp/crs/row/98-840.pdf>.

24 <sup>9</sup> M. Angeles Villarreal, *U.S.-Mexico Economic Relations: Trends, Issues, and*  
*Implications*, Congressional Research Service, at 1 (Mar. 31, 2010), available at  
25 <http://www.fas.org/sgp/crs/row/RL32934.pdf>.

1 countries is widespread and of great importance to both economies.<sup>10</sup> A University of  
2 California study estimates that immigration into the United States over the 1990–2006  
3 period increased U.S. economic efficiency, resulting in a 2.86% real wage increase for  
4 the average U.S. worker.<sup>11</sup> In particular, each day approximately 65,000 Mexicans are  
5 admitted into Arizona; and each day they spend an average of \$7.35 million in its stores,  
6 restaurants, hotels and other businesses.<sup>12</sup>

7 SB 1070 poses a threat to this mutually beneficial trade between the two nations.  
8 As discussed in more detail in Section II, if SB 1070 takes effect, Mexican citizens will  
9 be afraid to visit Arizona for work or pleasure out of concern that they will be subject to  
10 unlawful police scrutiny and detention.

11  
12 To enhance the benefits of economic trade and collaboration, the United States  
13 and Mexico have pursued trade liberalization through collaborative multilateral, regional  
14 and bilateral negotiations, resulting in advantageous multi-faceted economic relationships  
15 (e.g. North American Free Trade Agreement).<sup>13</sup> Diplomacy is crucial to such  
16 negotiations. SB 1070 impedes collaboration by pushing “nations that work together and  
17 trade” to “mutual recrimination, which has been so useless and damaging in previous  
18

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19 <sup>10</sup> Press Release, The White House, *Remarks by President Obama and President*  
20 *Calderón of Mexico at Joint Press Availability* (May 19, 2010), available at  
21 <http://www.whitehouse.gov/the-press-office/remarks-president-obama-and-president-calder-n-mexico-joint-press-availability>. See also Tamar Jacoby,  
*Immigration Nation*, 85 *Foreign Affairs* 50, 54-58 (2006).

22 <sup>11</sup> Giovanni Peri, *The Impact of Immigrants in Recession and Economic Expansion*,  
University of California Davis, at 10 (June 2010), available at  
23 <http://www.migrationpolicy.org/pubs/Peri-June2010.pdf>.

24 <sup>12</sup> Vera Pavlakovich-Kochi and Alberta H. Charney, *Mexican Visitors to Arizona*,  
Economic and Business Research Center (Dec. 2008), available at  
25 [http://ebr.eller.arizona.edu/research/mexican\\_visitors\\_to\\_arizona\\_2007\\_08.pdf](http://ebr.eller.arizona.edu/research/mexican_visitors_to_arizona_2007_08.pdf).

<sup>13</sup> Hornbeck, *supra* note 8, at 5; Villarreal, *supra* note 9, at 16-18.

1 times.”<sup>14</sup> Strained diplomatic ties substantially impede the ability of the U.S. and Mexico  
2 to collaboratively develop, enhance and maintain commercial ties critical to their  
3 economies.

4 **B. SB 1070 Derails Efforts Towards Comprehensive Immigration Reform**

5 With over eleven million nationals in the U.S., Mexico has a significant interest in  
6 U.S. comprehensive immigration reform. The United States is equally interested in  
7 Mexico’s involvement. In fact, one of the five immigration principles of the Obama  
8 administration is to collaborate with Mexico.<sup>15</sup>

9 Immigration was a principal topic discussed by the presidents of Mexico and the  
10 U.S. in their May 19, 2010 meeting. As President Barack Obama acknowledged, both  
11 countries share a responsibility to address the issue. Among the responsibilities, he noted  
12 Mexico’s efforts to create jobs and the United States’ efforts to “fix our broken  
13 immigration system[.]”<sup>16</sup> Both presidents expressed their belief that SB 1070 is a  
14 “misdirected effort” to address immigration concerns, and that collaboration among the  
15 two federal governments is essential to ensure that immigration reform “does not have an  
16 adverse impact on the economies of [the border] regions.”<sup>17</sup>

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20 <sup>14</sup> Press Release, The White House, *Remarks by President Calderón of Mexico at*  
21 *Official Arrival Ceremony* (May 19, 2010), available at  
22 [http://www.whitehouse.gov/the-press-office/remarks-president-calder-n-mexico-](http://www.whitehouse.gov/the-press-office/remarks-president-calder-n-mexico-official-arrival-ceremony)  
[official-arrival-ceremony](http://www.whitehouse.gov/the-press-office/remarks-president-calder-n-mexico-official-arrival-ceremony). See also *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 770  
(2004) (removing blockade to cross-border trucking); and Villarreal, *supra* note 9, at  
20-24 (discussing Mexico-U.S. trade issues).

23 <sup>15</sup> The White House, *Immigration* (last visited June 10, 2010),  
<http://www.whitehouse.gov/issues/immigration>.

24 <sup>16</sup> *Remarks by Presidents Obama and Calderón*, *supra* note 10.

25 <sup>17</sup> *Id.*

1 The effects of U.S.–Mexico migration to labor markets, tourism, business travel,  
2 and education is of great importance to both the U.S. and Mexico.<sup>18</sup> Mexican citizens  
3 comprised the highest percentage (12%) of the 163 million non-immigrants legally  
4 admitted into the United States in 2009, including tourists, business travelers, specialty  
5 workers and students.<sup>19</sup> Furthermore, as noted by President Obama, the countries also  
6 profit from the intellectual exchange.<sup>20</sup>

7 Immigration policy is crucial to the communities of the 2000-mile U.S.–Mexico  
8 border. As noted by President Obama, “there are enormous flows of trade and tourists  
9 and people along the border region; the economies are interdependent[.]”<sup>21</sup> In addition to  
10 immigration, law enforcement policies are critical to border areas highly susceptible to  
11 drug-related violence. Accordingly,  
12

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

17 on May 19, 2010, *amicus* and the United States entered into the Declaration by The  
18 Government Of The United States Of America and The Government Of The United  
19 Mexican States Concerning Twenty-First Century Border Management to express their  
20

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21 <sup>18</sup> *Id.* See also, Jacoby, *supra* note 10, at 54-58 (noting that foreign labor has  
complemented, not competed with, the U.S. labor force).

22 <sup>19</sup> Randall Monger and MacReadie Barr, *Nonimmigrant Admissions to the United*  
23 *States: 2009*, Department of Homeland Security Office of Immigration Statistics  
(April 2010), available at [http://www.dhs.gov/xlibrary/assets/statistics/  
publications/ni\\_fr\\_2009.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ni_fr_2009.pdf).

24 <sup>20</sup> *Remarks by Presidents Obama and Calderón, supra* note 10 (highlighting  
Calderón’s U.S. education).

25 <sup>21</sup> *Id.*

1 commitment to strengthen collaboration to enhance economic exchange, lawful travel,  
2 and to dismantle criminal organizations.<sup>22</sup>

3 It is due to the social, economic, intellectual and security benefits of international  
4 collaboration, that the United States federal government and Mexico recognize the  
5 importance of comprehensive immigration reform.<sup>23</sup> Through SB 1070, Arizona  
6 impinges upon the US-Mexico bilateral agenda and obstructs the bi-national  
7 collaboration to tackle immigration and border problems, while preserving the benefits of  
8 economic and intellectual exchange. SB 1070 institutes an independent state system of  
9 immigration enforcement that not only derails bilateral economic, social and security  
10 efforts, but imperils the U.S. federal government's efforts at a comprehensive solution for  
11 immigration policy. Mexico cannot effectively cooperate or engage in meaningful  
12 bilateral relations with the U.S. when states are permitted to interfere with the sovereigns'  
13 bilateral efforts.  
14

15 **C. SB 1070 Obstructs International Collaboration to Combat Drug-**  
16 **Trafficking Organizations and Drug-Related Violence**

17 For over thirty years, the war against drug-trafficking organizations has been a  
18 critical issue for the U.S. and Latin American governments.<sup>24</sup> Recently, the fight against  
19

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20 <sup>22</sup> Press Release, The White House, *Declaration by The Government Of The United*  
21 *States Of America and The Government Of The United Mexican States Concerning*  
22 *Twenty-First Century Border Management* (May 19, 2010), available at  
[http://www.whitehouse.gov/the-press-office/declaration-government-united-states-](http://www.whitehouse.gov/the-press-office/declaration-government-united-states-america-and-government-united-mexican-states-c)  
[america-and-government-united-mexican-states-c.](http://www.whitehouse.gov/the-press-office/declaration-government-united-states-america-and-government-united-mexican-states-c)

23 <sup>23</sup> *Remarks by Presidents Obama and Calderón, supra* note 10.

24 <sup>24</sup> Clare Ribando Seelke, Liana Sun Wyler and June S. Beittel, *Latin America and*  
25 *the Caribbean: Illicit Drug Trafficking and U.S. Counterdrug Programs*,  
Congressional Research Service (Feb. 3, 2010), available at  
[http://assets.opencrs.com/rpts/R41215\\_20100430.pdf](http://assets.opencrs.com/rpts/R41215_20100430.pdf); see also Steven E. Hendrix,

1 Mexican drug-trafficking organizations has taken the spotlight. Approximately seven  
2 thousand people were killed by drug-related violence in Mexico in the past year;<sup>25</sup> 31%  
3 took place in the border State of Chihuahua.<sup>26</sup> The current and previous U.S.  
4 administrations have recognized the shared responsibility for drug-related violence, and  
5 determined that “it is absolutely critical that the United States joins as a full partner in  
6 dealing with this issue.”<sup>27</sup> As numerous scholars highlight, “without changes in U.S. drug  
7 policy, efforts to combat DTOs [drug-trafficking organizations] or to address Mexico’s  
8 own growing domestic demand for drugs will be futile.”<sup>28</sup>

9  
10 To this end, following extensive negotiations between the U.S. and Mexico, the  
11 Merida Initiative was announced on October 22, 2007. This initiative is a training and  
12 equipment bilateral cooperation package intended to collaboratively strengthen the  
13 counter-narcotic efforts of both governments.<sup>29</sup> In connection with the Merida Initiative,  
14 former U.S. President George W. Bush stated: “The United States is committed to this  
15 joint strategy to deal with a joint problem. I would not be committed to dealing with this  
16 if I wasn’t convinced that President Felipe Calderón had the will and the desire to protect  
17

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18 *The Merida Initiative for Mexico and Central America*, 5 Loy. U. Chi. Int’l L. Rev  
19 107, 108-09 (2007-2008).

20 <sup>25</sup> David A. Shirk, *Drug Violence in Mexico: Data and Analysis from 2001-2009*,  
21 Trans-Border Institute, at 1 (Jan. 2010), available at  
[http://www.justiceinmexico.org/resources/pdf/drug\\_violence.pdf](http://www.justiceinmexico.org/resources/pdf/drug_violence.pdf).

22 <sup>26</sup> *Id.* at 2, 6-7.

23 <sup>27</sup> *Id.* at 13; Tom Baldwin, *Barack Obama Arrives in Mexico Amid Drugs Violence*,  
24 Times, at 1-3 (Apr. 17, 2009), available at [http://www.timesonline.co.uk/tol/news/world/us\\_and\\_americas/article6108394.ece](http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6108394.ece).

25 <sup>28</sup> Shirk, *supra* note 25, at 12.

<sup>29</sup> Hendrix, *supra* note 24, at 109-10, 112; Clare Ribando Seelke, Mark P. Sullivan  
and June S. Beittel, *Mexico-U.S. Relations*, Congressional Research Service, at 14  
(Feb. 3, 2010), available at <http://www.hsdl.org/?view&doc=19141&coll=public>.

1 his people from narco-traffickers.”<sup>30</sup> Cooperation under the Merida Initiative has made  
2 great strides, leading the United States and Mexico to successfully make over a thousand  
3 arrests, including top-members of multiple drug-trafficking organizations, as well as to  
4 intelligence-sharing, and strengthening the implementation of weapon tracing and cash  
5 seizure initiatives.<sup>31</sup>

6 As the U.S. and Mexico attempt to strengthen trust and collaboration among bi-  
7 national federal, state and local law enforcement to attack drug-trafficking organizations  
8 and drug-related violence, SB 1070 threatens the U.S.–Mexico efforts by straining and  
9 encumbering bilateral collaboration. Moreover, SB 1070 will further obstruct  
10 international goals to control drug-related violence by raising a very real risk of reducing  
11 crime-reporting in Arizona, including by Mexican nationals,<sup>32</sup> thereby impeding law  
12 enforcement’s efforts to continue making arrests and seizures on both sides of the border.  
13 Former U.S. President Bush’s opinion – regarding the U.S.’s inability to unilaterally  
14 commit to a project – is a sentiment shared on both sides of the border. Mexico equally  
15 cannot in good faith negotiate and collaborate with the United States without certainty  
16

17  
18 <sup>30</sup> *Id.* at 113.

19 <sup>31</sup> Roberta S. Jacobson, *U.S.-Mexico Security Cooperation*, Statement Before the  
20 U.S. House of Representatives Committee on Foreign Affairs (May 27, 2010),  
*available at* <http://www.state.gov/p/wha/rls/rm/2010/142297.htm>; Seelke, *Mexico-*  
*U.S. Relations*, *supra* note 29, at 1-6, 13-20.

21 <sup>32</sup> See Phillip Atiba Goff, Liana Maris Epstein, Chris Burbank, and Tracie L.  
22 Keese, *Deputizing Discrimination?*, The Consortium for Police Leadership in  
23 Equity (May 3, 2010) (on file with authors) (analyzing the chilling effects on crime  
24 reports of a Utah statute permitting state law enforcement to identify and detain  
25 individuals whose immigration status may be in question); *see also* Chris Burbank,  
Phillip Atiba Goff, and Tracie L. Keese, *Policing Immigration: A Job We Do Not*  
*Want*, HUFFINGTON POST (June 7, 2010), *available at*  
[http://www.huffingtonpost.com/chief-chris-burbank/policing-immigration-a-jo\\_b\\_602439.html](http://www.huffingtonpost.com/chief-chris-burbank/policing-immigration-a-jo_b_602439.html).

1 that the bilateral efforts will not be obstructed by divergent political subdivisions, like  
2 Arizona. This interference with federal policies is of particular concern in U.S. border  
3 states including Arizona, which play a significant operations role regarding the Merida  
4 Initiative's goal of controlling weapons traffic into Mexico.<sup>33</sup>

5        "[T]he interest of the cities, counties and states, no less than the interests of the  
6 people of the whole nation, imperatively requires that federal power in the field affecting  
7 foreign relations be left entirely free from local interference."<sup>34</sup> For this reason, James  
8 Madison expressed: "If we are to be one nation in any respect, it clearly ought to be in  
9 respect to other nations."<sup>35</sup> As a foreign nation, Mexico has a compelling interest in  
10 maintaining its bilateral relations based on respect for the constitutional law of the United  
11 States, and in the invalidation of SB 1070.

## 13 **II. Mexico Has a Legitimate Interest Protecting Its Citizens' Rights Under the U.S. 14 Constitution**

15        The Mexican government respectfully submits that history demonstrates the state  
16 sanctioned actions, like SB 1070, violate the basic tenets of the U.S. Constitution that  
17 guaranteeing freedom, liberty and equal protection of the law. Sovereign actions by the  
18 United States against minority populations at perceived times of threat have proven  
19 unwarranted. For example, the actions taken toward African-Americans during and prior

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20 <sup>33</sup> See e.g., Amanda Lee Meyers, *Officials: Phoenix Gun Dealer Sold to Mexican  
21 Drug Cartels*, Seattle Times (May 6, 2008), available at [http://seattletimes.  
22 nwsourc.com/html/nationworld/2004396644\\_apguntraffickingbust.html](http://seattletimes.nwsourc.com/html/nationworld/2004396644_apguntraffickingbust.html) (describing  
23 arrest of gun shop owner in Phoenix who knowingly sold firearms to Mexican drug-  
24 trafficking organizations).

25 <sup>34</sup> *Hines v. Davidowitz*, 312 U.S. at 63.

<sup>35</sup> The Federalist No. 42 (James Madison) (concerning regulation of intercourse with  
foreign nations); see also The Federalist No. 4 (John Jay) (concerning dangers from  
foreign force and influence).

1 to the Civil Rights movement underscore the potential harm and lasting negative effects  
2 of SB 1070.

3 Discriminatory and biased legal enforcement have adverse legal, social, economic  
4 and political implications, and underline Mexico's legitimate interest in assuring that its  
5 citizens are not deprived of protection under the U.S. Constitution and not subjected to  
6 hostile attitudes or action by U.S. society. As of 2008, there were 11.4 million Mexican-  
7 born individuals living in the United States, 5.4% of them live in Arizona.<sup>36</sup> Moreover,  
8 the Ninth Circuit acknowledged in 2000 that "[t]he Hispanic population of the nation and  
9 of the Southwest and Far West in particular, has grown enormously — at least five-fold  
10 in the four [border] states referred to in the Supreme Court's decision [Arizona,  
11 California, New Mexico and Texas]."<sup>37</sup> In fact, recent preliminary demographic  
12 information establishes that minorities represent more than fifty percent of the population  
13 in Hawaii, New Mexico, California and Texas, making use of race and ethnicity as a law  
14 enforcement factor inappropriate.<sup>38</sup>

16 Alongside these demographic changes, the 9<sup>th</sup> Circuit also noted that there have  
17 been "significant changes in the law restricting the use of race as a criterion in  
18 government decision-making," with the court concluding that the "use of race and  
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21 <sup>36</sup> Aaron Terrazas & Jeanne Batalova, Migration Policy Institute, *Frequently Requested Statistics on Immigrants and Immigration in the United States* (2009), <http://www.migrationinformation.org/feature/display.cfm?ID=747#3b>.

22 <sup>37</sup> *United States v. Montero-Camargo*, 208 F.3d 1122, 1133 (9<sup>th</sup> Cir. 2000). The court pointed out that race "may be considered when the suspected perpetrator of a  
23 specific offense has been identified as having such an appearance." *Id.* at 1134 n.22.

24 <sup>38</sup> Hope Yen, *Minority Population Growing, Census Says*, Associated Press (June 11, 2010), available at [http://www.boston.com/news/nation/washington/articles/2010/06/11/minority\\_population\\_growing\\_census\\_says/](http://www.boston.com/news/nation/washington/articles/2010/06/11/minority_population_growing_census_says/).

1 ethnicity for such purposes has been severely limited.”<sup>39</sup> The Court further opined that  
2 even at border check stops, “at this point in our nation’s history, and given the continuing  
3 changes in our ethnic and racial composition, Hispanic appearance is, in general, of such  
4 little probative value that it may not be considered as a relevant factor where particularize  
5 or individualized suspicion is required...[to be used] in determining which particular  
6 individuals among the vast Hispanic populace should be stopped by law enforcement  
7 officials on the lookout for illegal aliens.<sup>40</sup> Given the public rhetoric by the Arizona  
8 Governor and other state officials, together with the implied reference in A.R.S. Sec. 11-  
9 1051(B), sending an impermissible impression of U.S. and Arizona Constitutional  
10 support for using race and ethnicity pursuant to SB 1070, Mexico is rightfully concerned  
11 for the civil rights of its citizens in Arizona. Until *Montero-Camargo*, as late as 2000,  
12 U.S. Border Patrol agents impermissibly used Hispanic appearance as a singularly  
13 sufficient basis to stop Hispanics for immigration purposes.

15 **A. SB 1070’s Results in Racial Profiling Reminiscent of African-American**  
16 **Discrimination**

17 SB 1070 gives local officers *carte blanche* authority to stereotype and to rely on  
18 the popular perception that appearances of “foreign-ness” are justifiable means for  
19 disparate treatment. These “[n]egative stereotypes are further promulgated because  
20 profiling prompts more investigations, which will inevitably result in more arrests and  
21 convictions of members of the targeted group.”<sup>41</sup> Commentators note that immigration

22 \_\_\_\_\_  
23 <sup>39</sup> *Montero-Camargo*, 208 F.3d at 1143 (citing *Adarand Constructors v. Peña*, 515  
U.S. 200 (1995); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989)).

24 <sup>40</sup> *Id.* at 1134.

25 <sup>41</sup> See John Dwight Ingram, *Racial and Ethnic Profiling*, 29 T. Marshall L. Rev 55,  
76 (2003).

1 enforcement, especially in the Southwest, regularly imposes indignities on U.S. citizens  
2 and lawful immigrants of Mexican ancestry not also imposed on the white, non-Hispanic  
3 population.<sup>42</sup>

4 Mexico is justifiably concerned that stereotypes and bias will be used by law  
5 enforcement as state sanctioned. When Arizona Governor Jan Brewer was asked what  
6 criteria will be used as reasonable suspicion of a person's legal status in the U.S., she  
7 focused on the physical appearance of "illegal immigrants," stating:

8 I do not know what an illegal immigrant looks like. I can tell you that there are  
9 people in Arizona that assume they know what an illegal immigrant looks like. I  
10 don't know if they know that for a fact or not, but I know that if AZPosts [Arizona  
11 Peace Officers] gets themselves together, works on this law, puts down the  
description that the law will be enforced civilly, fairly and without discriminatory  
points to it.<sup>43</sup>

12 Giving state police the authority to simply create a description of what an illegal  
13 immigrant looks like is plainly racial profiling, which is why Mexico is concerned.<sup>44</sup> This  
14 inevitably will lead to casting an overbroad net in the pursuit of "illegal immigrants,"  
15 with individuals being stopped based on appearance.

16 This unfair and disproportionate targeting of Hispanics and Latin-Americans in  
17 immigration enforcement is similar to that witnessed by young African-American males  
18 in criminal law enforcement. One federal judge has analogized the dangers of racial  
19 profiling in immigration (border patrol enforcement) to the experience of *driving while*  
20 *black*: "How is this practice distinguishable from the former practice of Southern peace  
21

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22 <sup>42</sup> *Id.*

23 <sup>43</sup> CNN Wire Staff, *Arizona Governor Signs Immigration Bill*, CNN, Apr. 24,  
24 2010, available at [http://www.cnn.com/2010/POLITICS/04/23/  
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25 <sup>44</sup> See *Montero-Camargo*, 208 F.3d 1122.

1 officers who randomly stopped black pedestrians to inquire, ‘Hey, boy, what are you  
2 doin’ in this neighborhood?’<sup>45</sup>

3 **B. SB 1070’s Harmful Effects Lead to Dangerous Harms Spanning From**  
4 **Physical Violence to Promotion of Negative, Ill-Conceived Stereotypes**

5 Finally, Mexico, as a sovereign, needs to protect its people. SB 1070 endangers  
6 this goal. First, as demonstrated by New York City’s experience in the mistaken shooting  
7 deaths of two black men, Amadou Diallo and Sean Bell, and the brutal torture of a third  
8 black man, Abner Louima, one small mishap of racial profiling by law enforcement can  
9 lead to public outcry and distrust of law enforcement by local communities.<sup>46</sup>

10 Additionally, racial profiling by law enforcement may encourage private organizations or  
11 citizens to target Mexican citizens, as seen when armed ranchers in Douglas, Arizona  
12 used unjustified force to arrest Hispanic persons crossing their land.<sup>47</sup>

13 Second, SB 1070 promotes negative, ill-conceived stereotypes about “Mexican  
14 appearance.” The statute gives untrained local officials the authority to determine who  
15 fits “Mexican appearance” and who does not. By sanctioning pre-textual detainment and  
16 questioning of Hispanics or Latin Americans perceived to be “illegal aliens”, the bill  
17 creates a social and political hotbed for further acts of discrimination or rights abrogation,  
18

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19 <sup>45</sup> *United States v. Zapata-Ibarra*, 223 F.3d 281, 285 (5th Cir. 2000) (Wiener, J.,  
20 dissenting). See Joan W. Howarth, *Representing Black Male Innocence*, 1 J. Gender,  
21 Race & Just. 97, 106 (1997). “The stereotype that all Latino’s are ‘foreigners’ of  
22 suspicious immigration status influences immigration law.” Similarly, “the deeply  
23 imbedded idea of a frightening Black man has some influence on every person in  
24 America, including every person in the criminal justice system. Each stage of [the  
25 American] criminal justice process reflects and reinforces the ‘knowledge’ that Black  
male means criminal.”

<sup>46</sup> See Kevin R. Johnson, *How Did You Get to be Mexican? A White/Brown Man’s  
Search for Identity* 46 (1999).

<sup>47</sup> See Smita P. Nordwall & Elliot Blair Smith, *Mexico Threatens to Sue Arizona  
Ranchers*, USA Today, May 3, 2000 at 19A.

1 perpetuating the cycle of exclusion.<sup>48</sup> For example, “[m]ost [persons of Mexican  
2 ancestry] are of dark complexion with black hair . . . [b]ut many are blond, blue-eyed and  
3 ‘white’, while others have red hair and hazel eyes.”<sup>49</sup> Furthermore, when aligned with  
4 other drastic measures, such as the recently enacted bill intended to ban the multicultural  
5 studies program in the Tucson Unified School District, it becomes unavoidable to see that  
6 Arizona’s legislative efforts constitute a discriminatory policy. SB 1070’s discriminatory  
7 objective runs against the fundamental rights of people living in the United States.  
8

### 9 CONCLUSION

10 For the foregoing reasons, *amicus curiae* respectfully requests that this Court  
11 declare SB 1070 unconstitutional in its entirety.

12 Respectfully submitted,

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23 <sup>48</sup> Eli J. Kay-Oliphant, Comment, *Considering Race in American Immigration*  
24 *Jurisprudence*, 54 Emory L.J. 681, 708 (2005).

25 <sup>49</sup> See Julian Samora & Patricia Vandel Simon, *A History of the Mexican-American*  
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