

No. 10-16645

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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UNITED STATES OF AMERICA,  
Plaintiff–Appellee,

v.

STATE OF ARIZONA; JANICE K. BREWER,  
Governor of the State of Arizona, in her official capacity,  
Defendants–Appellants.

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On Appeal from the United States District Court  
for the District of Arizona, Civil Action No. 2:10-cv-10-1413,  
The Honorable Susan R. Bolton, District Judge

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**MOTION FOR LEAVE TO FILE BRIEF OF  
THE UNITED MEXICAN STATES  
AS *AMICUS CURIAE*  
IN SUPPORT OF PLAINTIFF-APPELLEE**

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**MOTION OF *AMICUS CURIAE* FOR LEAVE TO FILE  
BRIEF IN SUPPORT OF PLAINTIFF – APPELLEE**

As *Amicus Curiae*, the United Mexican States (“Mexico”), respectfully moves for leave of Court to file the accompanying brief.<sup>1</sup> *Amicus Curiae* has two significant sovereign interests impinged by the Defendants’ actions.

Mexico has a substantial and compelling interest in ensuring that its bilateral diplomatic relations with the government of the United States of America (“U.S.”) be transparent, consistent and reliable, and not frustrated by the actions of individual U.S. states, herein Arizona and its government officials.

*Amicus Curiae*’s substantial and compelling interest also encompasses ensuring that its citizens are accorded human and civil rights when present in the United States in accordance with federal immigration law. In particular, Mexico has an interest in protecting its citizens and ensuring that their ethnicity is not used as basis for state-sanctioned acts of bias and discrimination. Therefore, *Amicus Curiae* respectfully requests that the Court grant leave to file this brief.

Respectfully submitted by *counsel for Amicus Curiae*,

HENRY L. SOLANO  
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CHRISTOPHER R. CLARK  
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<sup>1</sup> No person other than *Amicus Curiae* or its counsel authored this brief in whole or in part, or made a monetary contribution to its preparation or submission. Counsel for Plaintiff-Appellee has consented to the filing of this brief. Defendants-Appellants did not consent to the filing of this brief. See e-mail communication attached as Exhibit 1.

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## **INTEREST OF THE *AMICUS CURIAE***

On July 28, 2010, the District Court for the District of Arizona preliminarily enjoined sections 2(B), 3, 5(C), and 6 of Arizona Senate Bill 1070, 49th Leg., 2nd Reg. Sess., Ch. 113 (Az. 2010), as amended (“SB 1070”), finding that the United States of America (“U.S.”) was likely to prevail on the merits (the “Order”). The United Mexican States (“Mexico”) herein expresses its grave concerns over SB 1070, and underscores the importance of upholding the Order.

SB 1070 substantially burdens the consistent sovereign-to-sovereign relations between Mexico and United States of America (“U.S.”), interfering with the strategic diplomatic interests of the two countries and encouraging an imminent threat of state-sanctioned bias or discrimination. Under Article 5(a) of the Vienna Convention on Consular Relations, to which both countries are signatories, Mexico has a right to protect the interests of its nationals within the limits of international law.<sup>2</sup> Mexico seeks to ensure that its citizens present in the U.S. are accorded the human and civil rights granted under the U.S. Constitution.

The enactment of SB 1070 was closely followed at the highest levels of the Mexican government, throughout Mexican society, as well as by Mexicans and Americans in Arizona and the U.S. The issues raised herein are of great importance to the people of Mexico, including the almost twenty million Mexican workers,

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

tourists and students recently admitted to the U.S., those already present in the U.S., the countless millions whose daily lives and jobs depend on international trade, and those who may also be affected by immigration policies and drug violence. In addition, Mexico respectfully submits that SB 1070 adversely impacts U.S.–Mexico bilateral relations, Mexican citizens and other people of Latin-American descent present in Arizona.

## ARGUMENT

### **I. SB 1070’s Intrusion in International Affairs Impedes International Relations and Bilateral Cross-Border Collaboration**

In order to conduct effective diplomatic negotiations with the U.S., countries such as Mexico need and depend on consistent and reliable bilateral relations. *Amicus* cannot effectively collaborate with the U.S. to address inherently international and border-specific matters, such as immigration, trade and security, if U.S. political subdivisions establish their own requirements conflicting not only with each other, but also with the U.S. government’s efforts, priorities and commitments.

As conveyed by U.S. Secretary of State Hillary Clinton, even prior to going into effect, SB 1070 was already straining U.S.–Mexico relations.<sup>3</sup> Mexico’s ambassador to the U.S. Arturo Sarukhan explained that SB 1070 “threatens to

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<sup>3</sup> See *Meet the Press with Secretary Clinton* [Transcript], May 2, 2010, available at <http://secretaryclinton.wordpress.com/2010/05/02/meet-the-press/>.

poison the well from which our two nations have found and should continue to find inspiration for a joint future of prosperity, security, tolerance and justice.”<sup>4</sup> Thus and as demonstrated by recent studies from the Pew Research Center, the public perception of the U.S. in Mexico was significantly impacted after the passage of Arizona’s SB 1070.<sup>5</sup>

#### **A. SB 1070 Will Severely Hinder Mexico-Arizona Trade and Tourism**

Mexico is greatly concerned about the possible repercussions of SB 1070 on trade and commercial relations with the U.S. and Arizona. Growth in U.S.–Latin-American trade has historically outpaced all other regions.<sup>6</sup> Mexico is the third largest trading partner of the U.S., and the second purchaser of U.S. exports.<sup>7</sup> The interaction of labor markets, tourism, business travel and student migration is of

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<sup>4</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, <http://www.cnn.com/2010/US/05/19/mexico.president.visit/index.html>.

<sup>5</sup> Pew Global Attitudes Project, *Obama more popular abroad than at Home, Global Image of U.S. Continues to Benefit*, Pew Research Center (June 18, 2010), <http://pewglobal.org/2010/06/17/obama-more-popular-abroad-than-at-home/> (“[A] special follow-up poll found America’s favorable rating tumbling in Mexico in response to Arizona’s enactment of [SB 1070] . . . . Only 44% of Mexicans gave the U.S. a favorable rating following the signing of the Bill, compared with 62% who did so before the bill passed.”).

<sup>6</sup> J. F. Hornbeck, *U.S.-Latin America Trade: Recent Trends and Policy Issues*, Congressional Research Service, at 1 (Sept. 3, 2009), *available at* <http://www.fas.org/sgp/crs/row/98-840.pdf>.

<sup>7</sup> M. Angeles Villarreal, *U.S.-Mexico Economic Relations: Trends, Issues, and Implications*, Congressional Research Service, at 1 (Mar. 31, 2010), *available at* <http://www.fas.org/sgp/crs/row/RL32934.pdf>.

great importance to both economies.<sup>8</sup> A Federal Reserve Bank of San Francisco study estimates that immigration from 1990 to 2007 into the U.S. increased U.S. economic efficiency and productivity resulting in a 6.6% to 9.9% increase in real income per U.S. worker.<sup>9</sup>

The economic benefit of immigration for the border states is even greater. The gross domestic product (“GDP”) of the combined border states was over \$3.6 trillion and represents 24% of the aggregate GDP of the U.S. and Mexico.<sup>10</sup> In fact, “only the United States, Japan, China and Germany have a GDP larger than the border region.”<sup>11</sup>

Arizona is no exception. Each day approximately 65,000 Mexicans are admitted into Arizona, where they spend an average of \$7.35 million daily.<sup>12</sup> The positive

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<sup>8</sup> Press Release, The White House, *Remarks by President Obama and President Calderón of Mexico at Joint Press Availability*, May 19, 2010, available at <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).

<sup>9</sup> Giovanni Peri, *The Effect of Immigrants on U.S. Employment and Productivity*, Economic Letter, Federal Reserve Bank of San Francisco, at 10 (August 30, 2010), available at <http://www.frbsf.org/publications/economics/letter/2010/el2010-26.html>.

<sup>10</sup> Andrew Selee, Christopher Wilson, and Katie Putnam, *The United States and Mexico: More than Neighbors*, Woodrow Wilson Institute for Scholars, at 40-41 (May 2010), available at [http://wilsoncenter.org/topics/pubs/WWC\\_MI\\_More-Than-Neighbors-2010-update.pdf](http://wilsoncenter.org/topics/pubs/WWC_MI_More-Than-Neighbors-2010-update.pdf).

<sup>11</sup> *Id.*

<sup>12</sup> Vera Pavlakovich-Kochi and Alberta H. Charney, *Mexican Visitors to Arizona*, Economic and Business Research Center (Dec. 2008), available at [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).

economic impact of persons who settle in the state is even larger. A University of Arizona study concluded that the consumer spending power of immigrant-headed households in Arizona totaled \$10.5 billion in 2004, supporting approximately 66,500 full-time jobs, accounted for \$10.2 billion in state economic output, and generated approximately \$776 million in tax revenues.<sup>13</sup>

Almost 13 million people live in towns, counties and municipalities in the U.S.–Mexico border area,<sup>14</sup> including numerous families with members residing on both sides of the border. In 2009, 184,765,055 people crossed into the U.S. and 25,842,603 into Arizona through the U.S.–Mexico border.<sup>15</sup> This interaction constitutes a crucial factor for the strong U.S.–Mexico bilateral relations. The ties of the border residents run deep, making the bi-national area a single community.<sup>16</sup> But if SB 1070 takes effect, Mexican citizens will be afraid to visit Arizona for

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<sup>13</sup> Approximately \$6.1 billion from naturalized citizens and \$4.4 billion from non-citizens. Judith Gans, *Immigrants in Arizona: Fiscal and Economic Impacts*, Udall Center for Studies in Public Policy, the University of Arizona (June 2008), at 39-43, available at <http://udallcenter.arizona.edu/immigration/publications/impactofimmigrants08.pdf> (last year for which data is available).

<sup>14</sup> Selee, *supra* note 9, at 15.

<sup>15</sup> See Bureau of Transport Statistics, *Border Crossing Data* (June 1, 2010), <http://www.transtats.bts.gov/BorderCrossing.aspx>.

<sup>16</sup> Maria Markham and Nadia Diaz Funn, *Portfolio Reflection 2008*, at 4 (2009), available at <http://www.aecf.org/~media/Pubs/Topics/Special%20Interest%20Areas/SW%20border%20and%20American%20Indian%20Families/Strenghteni ngSWBorderNativeFamilies/FINALLearningAssessment10%2029%2009.pdf> (recognizing a “U.S.-Mexico common community, or “*Fronterizmo*”).

work or pleasure out of concern that they will be subject to unlawful police scrutiny and detention.

To enhance economic trade and collaboration, the U.S. and Mexico have pursued trade liberalization through collaborative multilateral, regional and bilateral negotiations, resulting in advantageous multi-faceted economic relationships.<sup>17</sup> Diplomacy is crucial to such efforts. SB 1070 impedes collaboration by pushing “nations that work together and trade” to “mutual recrimination, which has been so useless and damaging in previous times.”<sup>18</sup> Last year, Defendant-Appellant Janice K. Brewer recognized the importance of collaboration between the two countries, stating: “The U.S. and Mexico share the busiest international border in the world, and it is imperative that we foster and grow this bi-national partnership. The BGC [Border Governors Conference] provides this opportunity.”<sup>19</sup>

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<sup>17</sup> Hornbeck, *supra* note 5, at 5; Villarreal, *supra* note 6, at 16-18.

<sup>18</sup> Press Release, The White House, *Remarks by President Calderón of Mexico at Official Arrival Ceremony*, May 19, 2010, available at <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 6, at 20-24 (discussing Mexico-U.S. trade issues).

<sup>19</sup> Border Governors Conference News, *Border Governors Meet to Discuss Pressing Issues*, Sept. 4, 2009, available at [http://www.bordergovernors2010.org/2010\\_Governors\\_Conference/news.asp](http://www.bordergovernors2010.org/2010_Governors_Conference/news.asp). During this conference, Arizona led the way in the establishment of a program, intended to help border states meet infrastructure needs with the economic assistance of the federal governments.

Strained diplomatic relations substantially impede the ability of the U.S. and Mexico to collaboratively develop, enhance and maintain commercial exchange critical to the border and, therefore, to both of their economies. Most notably, the strain on diplomatic ties directly affects bilateral border collaboration, as exemplified by the negative impact of the enactment of SB 1070 on the 2010 Border Governor Conference, causing significant strains within the U.S. and in the U.S.–Mexico relation.<sup>20</sup>

### **B. SB 1070 Derails Efforts Towards Comprehensive Immigration Reform and Collaborative Border Management**

With over 11 million nationals in the U.S., Mexico has a significant interest in U.S. comprehensive immigration reform. Similarly, the Obama Administration recognizes the need for collaboration with Mexico as one of its five guiding immigration principles.<sup>21</sup>

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<sup>20</sup> The conference was cancelled by Governor Brewer in response to the Mexican governors' decision not to attend, and then relocated to New Mexico by U.S. governors Richardson and Schwarzenegger, against the protests of governors Brewer and Perry. Janice K. Brewer, *Letter to the Honorable Governors of the States of Baja California, Chihuahua, Coahuila, Nuevo Leon, Sonora and Tamaulipas*, XXVIII Border Governors Conference (June 30, 2010), available at [http://www.bordergovernors2010.org/2010\\_Governors\\_Conference/Arizona\\_2010.asp](http://www.bordergovernors2010.org/2010_Governors_Conference/Arizona_2010.asp); Marc Lacey, *Border Governors Conference Under Way, Minus Most Governors*, New York Times (Sept. 20, 2010), available at <http://thecaucus.blogs.nytimes.com/2010/09/20/border-governors-conference-under-way-minus-most-u-s-governors/>.

<sup>21</sup> The White House, *Immigration* (last visited June 10, 2010), <http://www.whitehouse.gov/issues/immigration>.



Immigration was a principal discussion topic at the bilateral meeting of the U.S. and Mexican presidents on May 19, 2010. As President Obama acknowledged, both countries share the responsibility to address the issue, with Mexico's efforts to create jobs and the U.S.'s efforts to "fix our broken immigration system[.]"<sup>22</sup> Both presidents believe that SB 1070 is a "misdirected effort" to address immigration concerns, and that collaboration between the two countries is essential to ensure that immigration reform "does not have an adverse impact on the economies of [the border] regions."<sup>23</sup>

The effects of U.S.–Mexico migration to labor markets, tourism, business travel, and education is of great importance to both countries.<sup>24</sup> Mexican citizens comprised the highest percentage (12%) of the 163 million tourists, business travelers, specialty workers and students admitted into the U.S. in 2009.<sup>25</sup>

In particular, effective immigration policy is crucial to the communities on the U.S.–Mexico border. As noted by President Obama, "there are enormous flows of trade and tourists and people along the border region; the economies are

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<sup>22</sup> *Remarks by Presidents Obama and Calderón, supra* note 7.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*; *see also*, Jacoby, *supra* note 7, at 54-58 (noting that foreign labor has complemented, not competed with, the U.S. labor force).

<sup>25</sup> Randall Monger and MacReadie Barr, *Nonimmigrant Admissions to the United States: 2009*, Department of Homeland Security Office of Immigration Statistics (Apr. 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); *see also* *Remarks by Presidents Obama and Calderón, supra* note 7 (highlighting Calderón's U.S. education as an example of the benefits of intellectual exchange).

interdependent[.]”<sup>26</sup> In addition to immigration, consistent law enforcement policies are critical to border areas highly susceptible to drug-related violence.

Accordingly, on May 19, 2010,

[r]ecognizing the importance of securing and facilitating the lawful flow of goods, services, and people between their countries[,] [u]nderstanding that joint and collaborative administration of their common border is critical to transforming 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[.]”

*Amicus* and the U.S. entered into the Declaration by The Government Of The United States Of America and The Government Of The United Mexican States Concerning Twenty-First Century Border Management to strengthen collaboration regarding economic trade, tourism, and against criminal organizations.<sup>27</sup>

It is due to the social, economic, intellectual and security benefits of international collaboration, that the U.S. and Mexico recognize the importance of comprehensive immigration reform.<sup>28</sup> SB 1070 institutes an independent state immigration enforcement system that not only derails bilateral economic, social and security efforts, but imperils efforts at a comprehensive solution for

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<sup>26</sup> *Id.*

<sup>27</sup> Press Release, The White House, *Declaration by The Government Of The United States Of America and The Government Of The United Mexican States Concerning Twenty-First Century Border Management* (May 19, 2010), available at <http://www.whitehouse.gov/the-press-office/declaration-government-united-states-america-and-government-united-mexican-states-c>.

<sup>28</sup> *Remarks by Presidents Obama and Calderón*, *supra* note 7.

immigration policy and impedes crucial border management collaboration. Mexico cannot effectively cooperate with the U.S. when Arizona interferes with the sovereigns' efforts.

### **C. SB 1070 Obstructs International and Border Collaboration to Combat Drug Issues**

For over thirty years, the fight against drug-trafficking organizations has been a critical issue for the U.S. and Latin-American governments.<sup>29</sup> According to Guillermo Valdés Castellanos, director of the Mexican intelligence agency *Centro de Investigación y Seguridad Nacional* (CISEN), more than 28,000 people have died by organized-crime violence since 2006 (approximately 7,000 in 2009, with 31% in the border State of Chihuahua).<sup>30</sup> The involvement of the U.S. in this ongoing effort is particularly urgent because the drug trade and violence are driven

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<sup>29</sup> Clare Ribando Seelke, Liana Sun Wyler and June S. Beittel, *Latin America and 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, *The Merida Initiative for Mexico and Central America*, 5 *Loy. U. Chi. Int'l L. Rev.* 107, 108-09 (2007-2008).

<sup>30</sup> BBC News Latin America, *Q&A: Mexico's Drug-Related Violence*, Aug. 25, 2010, available at <http://www.bbc.co.uk/news/world-latin-america-10681249>; David A. Shirk, *Drug Violence in Mexico: Data and Analysis from 2001-2009*, Trans-Border Institute (Jan. 2010), at 1-2, 6-7, available at [http://www.justiceinmexico.org/resources/pdf/drug\\_violence.pdf](http://www.justiceinmexico.org/resources/pdf/drug_violence.pdf).

by the U.S. drug demand and the sales of weapons and drug-synthesizing chemicals by U.S. dealers to Mexican drug-trafficking organizations.<sup>31</sup>

The Obama and Bush Administrations along with numerous commentators recognize the shared responsibility for drug-related violence, stating “it is absolutely critical that the U.S. joins as a full partner in dealing with this issue.”<sup>32</sup>

To this end, following extensive bilateral negotiations, the Merida Initiative was announced in 2007. Its mission is to collaboratively strengthen the counter-narcotic efforts of both governments.<sup>33</sup> Such cooperation has made great strides, leading the U.S. and Mexico to successfully make over a thousand arrests, develop intelligence-sharing systems, strengthen the implementation of weapon-tracing and cash-seizure initiatives, and increase collaborative extraditions.<sup>34</sup>

As the U.S. and Mexico attempt to strengthen trust and collaboration among binational, federal, state and local law enforcement, SB 1070 threatens the bilateral

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<sup>31</sup> Selee, *supra* note 9, at 10 (noting the importance of U.S. demand for narcotics, that as much as 90% of all cocaine consumed in the U.S. is funneled through Mexico, and that many of the chemical inputs for methamphetamines are produced in or shipped through the U.S.).

<sup>32</sup> Shirk, *supra* note 29, at 12-13; Tom Baldwin, *Barack Obama Arrives in Mexico Amid Drugs Violence*, Times, Apr. 17, 2009, at 1-3, 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).

<sup>33</sup> Hendrix, *supra* note 28, at 109-10, 112; Clare Ribando Seelke, Mark P. Sullivan and June S. Beittel, *Mexico-U.S. Relations*, Congressional Research Service (Feb. 3, 2010), at 14, available at <http://www.hsdl.org/?view&doc=19141&coll=public>.

<sup>34</sup> Roberta S. Jacobson, *U.S.-Mexico Security Cooperation*, Statement Before the 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 32, at 1-6, 13-20; Selee, *supra* note 9, at 12.

efforts to attack drug-trafficking organizations and drug-related violence by straining and encumbering collaboration. States' interference with federal policies is of major concern in U.S. border states like Arizona, which play a significant operations role in the Merida Initiative's goal of controlling weapons traffic into Mexico and disrupting criminal organizations operating on both sides of the border.<sup>35</sup> Additionally, SB 1070 will obstruct international drug-related efforts by raising a very real risk of reducing crime-reporting in Arizona.<sup>36</sup> Mexico cannot collaborate with the U.S. without certainty that these bilateral efforts will not be obstructed by divergent states.

## **II. SB 1070 Poses a Risk of Harassment By Law Enforcement to Mexican Citizens**

Discriminatory legal enforcement has adverse legal, social, economic and political implications. Mexico has a legitimate interest in ensuring that its citizens

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<sup>35</sup> See e.g., Amanda Lee Meyers, *Officials: Phoenix Gun Dealer Sold to Mexican Drug Cartels*, Seattle Times, May 6, 2008, available at [http://seattletimes.nwsourc.com/html/nationworld/2004396644\\_apguntraffickingbust.html](http://seattletimes.nwsourc.com/html/nationworld/2004396644_apguntraffickingbust.html) (describing arrest of gun shop owner in Phoenix who knowingly sold firearms to Mexican drug-trafficking organizations).

<sup>36</sup> See Phillip Atiba Goff, Liana Maris Epstein, Chris Burbank, and Tracie L. Keese, *Deputizing Discrimination?*, The Consortium for Police Leadership in Equity, May 3, 2010 (on file with authors) (analyzing the chilling effects on crime reports of a Utah statute permitting state law enforcement to identify and detain 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).

are not deprived of international and constitutional protections or subjected to hostile attitudes or action by U.S. society.

While Latin American descent is not a proper factor for law enforcement, SB 1070 impliedly encourages the use of race, color, or national origin in implementing SB 1070's immigration provisions, to the extent permitted by the U.S. or Arizona Constitution.<sup>37</sup> This is confirmed by the public rhetoric of the Arizona governor and of other state officials. In discussing the criteria to be used as reasonable suspicion of a person's legal status in the U.S. under SB 1070, Arizona Governor Brewer focused on the physical appearance of "illegal immigrants," stating: "I do not know what an illegal immigrant looks like. I can tell you that there are people in Arizona that assume they know what an illegal immigrant looks like."<sup>38</sup> Giving state police the authority to simply create a description of "what an illegal immigrant looks like" will inevitably lead to the harassment of Mexicans legally present in the U.S. and appearance-based arrests, giving Mexico justified cause for concern.

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<sup>37</sup> Ariz. Rev. Stat. § 11-1051(B) (2010).

<sup>38</sup> CNN Wire Staff, *Arizona Governor Signs Immigration Bill*, CNN, Apr. 24, 2010, available at <http://www.cnn.com/2010/POLITICS/04/23/obama.immigration/index.html>.

In 2000, this Court held that the “use of race and ethnicity for such purposes [as a criterion in government decision-making] has been severely limited.”<sup>39</sup> It acknowledged that “[t]he Hispanic population of the nation and of the Southwest and Far West in particular, has grown enormously — at least five-fold in the four [border] states referred to in the Supreme Court’s decision [Arizona, California, New Mexico and Texas].”<sup>40</sup> This Court opined that even at border check stops,

at this point in our nation’s history, and given the continuing changes in our ethnic and racial composition, Hispanic appearance is, in general, of such little probative value that it may not be considered as a relevant factor where particularized or individualized suspicion is required . . . [to be used] in determining which particular individuals among the vast Hispanic populace should be stopped by law enforcement officials on the lookout for illegal aliens.<sup>41</sup>

In fact, recent preliminary demographic information establishes that minorities represent more than 50% of the population in Hawaii, New Mexico, California and Texas.<sup>42</sup> As of 2008, there were 11.4 million Mexican-born individuals in the U.S.

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<sup>39</sup> *United States v. Montero-Camargo*, 208 F.3d 1122, 1143 (citing *Adarand Constructors v. Peña*, 515 U.S. 200 (1995); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989)).

<sup>40</sup> *Montero-Camargo*, 208 F.3d at 1133-34 n.22. The court instructed that race “may be considered when the suspected perpetrator of a specific offense has been identified as having such an appearance.”

<sup>41</sup> *Id.* at 1134.

<sup>42</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/).

(5.4% in Arizona),<sup>43</sup> making use of ethnicity as a law-enforcement factor inappropriate.

SB 1070 encourages an unacceptable risk of unfair and disproportionate targeting of Latinos, which in immigration enforcement a federal judge found indistinguishable from “the former practice of Southern peace officers who randomly stopped black pedestrians to inquire, ‘Hey, boy, what are you doin’ in this neighborhood?’”<sup>44</sup> SB 1070 promotes negative stereotypes-and encourages private persons to target Mexicans, as seen when armed Arizona ranchers used unjustified force to arrest Hispanics crossing their land.<sup>45</sup> Alternatively, SB 1070 will prevent Mexican citizens, afraid of harassment, from traveling into Arizona.<sup>46</sup>

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<sup>43</sup> Aaron Terrazas & Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Policy Institute (2009), <http://www.migrationinformation.org/feature/display.cfm?ID=747#3b>.

<sup>44</sup> *United States v. Zapata-Ibarra*, 223 F.3d 281, 285 (5th Cir. 2000) (Wiener, J., dissenting). See Joan W. Howarth, *Representing Black Male Innocence*, 1 J. Gender, Race & Just. 97, 106 (1997) (“The stereotype that all Latino’s are ‘foreigners’ of suspicious immigration status ...” is similar to “the deeply imbedded idea [reinforced by the criminal justice system] ... that Black male means criminal.”).

<sup>45</sup> See Smita P. Nordwall & Elliot Blair Smith, *Mexico Threatens to Sue Arizona Ranchers*, USA Today, May 3, 2000, at 19A; see also e.g., Kevin R. Johnson, *How Did You Get to be Mexican? A White/Brown Man’s Search for Identity* (1999), at 46 (regarding the public outcry and distrust of law enforcement caused by the mistaken shooting deaths of two black men, Amadou Diallo and Sean Bell, and the brutal torture of Abner Louima by New York City law enforcement’s use of racial profiling).

<sup>46</sup> See Jessica Hopper, *Immigrants Prepare for Enforcement of Arizona Law*, ABC News, July 27, 2010, available at <http://abcnews.go.com/WN/arizona-immigration-law-takes-effect-thursday-immigrants-flee/story?id=11263752>.



### III. SB 1070 Dangerously Leads to a Patchwork of Laws that Impede Effective and Consistent Diplomatic Relations

SB 1070 has spurred an avalanche of “copycat” legislation, leading to a dangerous patchwork of inconsistent immigration laws. Already, in as many as 29 U.S. states at least one representative has or intends to introduce a copycat bill.<sup>47</sup> In fact, there has already been an attempt to introduce bills in 10 states.<sup>48</sup> But while these laws are all considered anti-immigration laws, their provisions differ in a significant manner.<sup>49</sup> As a result, such legislative agendas could create a mix of

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<sup>47</sup> Legislators have indicated their intent to introduce Arizona-style legislation in Ala., Ark., Colo., Del., Fla., Ga., Idaho, Ind., Kan., Md., Mass., Mich., Minn., Miss., Mo., Neb., Nev., N.C., Ohio, Okla., Or., Pa., R.I., S.C., S.D., Tenn., Tex., Utah, and Va. Seth Freed Wessler, *Mapping the Spread of SB 1070*, ColorLines, July 1, 2010, available at [http://colorlines.com/archives/2010/06/mapping\\_the\\_nationwide\\_spread\\_of\\_arizonas\\_sb\\_1070.html](http://colorlines.com/archives/2010/06/mapping_the_nationwide_spread_of_arizonas_sb_1070.html); *State and Local Elected Leaders for Immigration Reform*, Reform Immigration for America (last visited Sept. 21, 2010), available at [http://act.reformimmigrationforamerica.org/cms/sign/elected\\_officials/](http://act.reformimmigrationforamerica.org/cms/sign/elected_officials/); *Anti-Immigrant Proposals Continue to Fail in Wake of Arizona’s Law*, Progressive States Network (last visited Sept. 21, 2010), available at <http://www.progressivestates.org/node/25348>; Lee Fang, *Prison Industry Funnels Donations To State Lawmakers Introducing SB1070-Like Bills Around The Country*, Think Progress, Sept. 16, 2010, available at <http://thinkprogress.org/2010/09/16/sb1070-prison-lobby/>.

<sup>48</sup> Ark., Colo., Kan., Md., Mass., Mich., Minn., Miss., Mo., Neb., Nev., N.C., Ohio, Okla., Or., Pa., and R.I. already introduced SB 1070-like legislation. See Wessler, *supra* note 47; Reform Immigration for America, *supra* note 47; Progressive States Network, *supra* note 47; and Fang, *supra* note 47.

<sup>49</sup> See e.g., H.R. 1367, 60th Leg., 2nd Sess. (Idaho 2010)(making undocumented immigrants unable to qualify for resident student status); H.R. 2449, 95th Leg., 2nd Sess. (Mo. 2010)(making it a felony for undocumented immigrants to transport themselves); and H.R. 2751, 52nd Leg., 2nd Sess. (Okla. 2010)(enacted) (requiring unlawfully present immigrants to submit to DNA testing for law enforcement identification purposes once arrested).

disparate laws across the U.S., which would create an environment of uncertainty and would make it nearly impossible for Mexican nationals to understand their rights and obligations in each U.S. state. This result would significantly affect the ability of the federal governments of both nations to address issues of international importance.

Mexico has a legitimate interest in supporting U.S. efforts to prevent its states from affecting bilateral relations. The executive and legislative branches of the two countries, almost every federal agency, and dozens of states and local governments collaborate directly with their counterparts across the border.<sup>50</sup> Because the bilateral cooperation is extensive, it is essential, for U.S.–Mexico bilateral relations, that each sovereign is able to approach discussions with a consistent front.

“[T]he interest of the cities, counties and states, no less than the interests of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference.”<sup>51</sup> SB 1070 poses an imminent threat to U.S.–Mexico bilateral relations. *Amicus* has a

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<sup>50</sup> Selee, *supra* note 9, at 13-14.

<sup>51</sup> *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941); *see also* The Federalist No. 42 (James Madison)(concerning regulation of intercourse with foreign nations)(“If we are to be one nation in any respect, it clearly ought to be in respect to other nations.”); The Federalist No. 4 (John Jay)(concerning dangers from foreign force and influence).

compelling interest in consistent relations among sovereigns, and in the Court upholding the Order preliminarily enjoining SB 1070 sections 2(B), 3, 5(C), and 6.

### **CONCLUSION**

For the foregoing reasons, *Amicus Curiae* respectfully requests that this Court affirm the Order. Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH  
FEDERAL RULE OF APPELLATE PROCEDURE 32(a)  
AND CIRCUIT RULE 32-1**

Pursuant to FRAP Rule 32(a)(7)(C) and Ninth Circuit Rule 32-1, I certify that the attached *Amicus Curiae* brief is complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6). This brief was prepared in Times New Roman 14-point font and contains 4,772 words, excluding the parts of the Brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

/s/ Carla Gorniak  
Carla Gorniak

## **CERTIFICATE OF SERVICE**

I certify that I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate CM/ECF system on September 30, 2010. Participants in this case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Carla Gorniak  
Carla Gorniak

## EXHIBIT 1

### Gorniak, Carla

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**From:** Gorniak, Carla  
**Sent:** Thursday, September 23, 2010 1:44 PM  
**To:** 'jbouma@swlaw.com'; 'bhenry@swlaw.com'; 'jgadams@swlaw.com'; 'jkanefield@az.gov'  
**Cc:** Solano, Henry L.; Clark, Christopher R. (Associate); Gorniak, Carla  
**Subject:** Request for Consent to File Amicus Curiae Brief on Behalf of the United Mexican States  
**Importance:** High

Messrs. Bouma, Henry, Adams, and Kanefield,

Pursuant to FRAP 29(a), we hereby request your consent to our filing of an *amicus curiae* brief on behalf of the United Mexican States in support of Plaintiff-Appellee in *United States of America v. State of Arizona*, No. 10-16645 (2010).

In addition, on behalf of several unrepresented Latin-American countries, we hereby request your consent to their intent to join such *amicus curiae* brief of the United Mexican States.

Please contact us if you have any questions.

Best regards,

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