No. 10-16645

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Appeal from the United States
District Court for the District of Arizona
No. CV 10-1413-PHX-SRB

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

STATE OF ARIZONA; AND JANICE K. BREWER, GOVERNOR OF THE STATE OF ARIZONA, IN HER OFFICIAL CAPACITY,
Defendants-Appellants.

BRIEF OF *AMICI CURIAE* THE COUNTY OF SANTA CLARA, CALIFORNIA; THE CITY OF BALTIMORE, MARYLAND; THE CITY OF BERKELEY, CALIFORNIA; THE CITY OF MINNEAPOLIS, MINNESOTA; THE COUNTY OF MONTEREY, CALIFORNIA; THE CITY OF NEW HAVEN, CONNECTICUT; THE COUNCIL OF THE CITY OF NEW YORK, NEW YORK; THE CITY OF PALO ALTO, CALIFORNIA; THE CITY OF PORTLAND, OREGON; THE CITY OF SAINT PAUL, MINNESOTA; SALT LAKE CITY, UTAH; THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA; THE CITY OF SAN JOSE, CALIFORNIA; THE COUNTY OF SAN MATEO, CALIFORNIA; THE CITY OF SEATTLE, WASHINGTON; AND THE UNITED STATES CONFERENCE OF MAYORS IN SUPPORT OF PLAINTIFF-APPELLEE

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CORPORATE DISCLOSURE STATEMENT

Amicus the United States Conference of Mayors ("the Conference") is a nonprofit organization incorporated in the State of Illinois. It has no parent corporation and there is no publicly held corporation that holds any of its stock. Except for the Conference, all *amici* listed herein are governmental entities.

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The County of Santa Clara, California; the City of Baltimore, Maryland; the City of Berkeley, California; the City of Minneapolis, Minnesota; the County of Monterey, California; the City of New Haven, Connecticut; the Council of the City of New York, New York; the City of Palo Alto, California; the City of Portland, Oregon; the City of Saint Paul, Minnesota; Salt Lake City, Utah; the City and County of San Francisco, California; the City of San Jose, California; the County of San Mateo, California; the City of Seattle, Washington; and the United States Conference of Mayors (hereinafter collectively referred to as "*amici*") respectfully submit this *amicus curiae* brief in support of Plaintiff-Appellee the United States of America (hereinafter the "federal government") pursuant to Rule 29 of the Federal Rules of Appellate Procedure. *Amici* urge this Court to affirm the district court's order granting in part the federal government's motion for a preliminary injunction.

I.

INTRODUCTION AND STATEMENT OF INTEREST[1]

Amici are cities and counties located across the United States and the nonpartisan organization that represents cities within the United States with populations over 30,000. Our local governments provide essential services to

[1] This brief was not authored in whole or in part by counsel for a party. No person or entity other than *amici curiae* or their counsel made a monetary contribution to the preparation or submission of this brief.

residents of our jurisdictions, including funding, operating, and overseeing local law enforcement agencies. The cities and counties represented by *amici* are home to some of the largest immigrant communities in the country, and our local law enforcement agencies provide and oversee law enforcement services within these communities.

Through Arizona Senate Bill 1070, as amended by Arizona House Bill 2162 (hereinafter referred to as "SB 1070"), the State of Arizona has created a comprehensive state immigration enforcement regime that threatens the ability of local law enforcement agencies to protect public safety. In granting in part the federal government's motion for a preliminary injunction, the district court enjoined the most problematic provisions of SB 1070 (sections 2(B), 3, and 6). These provisions instruct local law enforcement agencies to enforce Arizona's immigration scheme through means that are unconstitutional, vague, impractical, costly, and deeply damaging to the relationships of trust that local law enforcement agencies have built with immigrant communities and the public at large.

As the providers of local law enforcement services, *amici* can attest to the negative impact the enjoined provisions of SB 1070 would have on local law enforcement agencies' ability to carry out their core mission of ensuring public safety. The provisions of SB 1070 that were enjoined by the district court suggest, wrongly, that the enforcement of federal civil immigration law is the responsibility

of local government officials, and that basic constitutional principles do not apply when those officials are enforcing immigration law. If these provisions are allowed to go into effect, that message will reverberate not just in Arizona but in every state across the country, making immigrants—whether they are naturalized citizens, lawful permanent residents, visa holders, or undocumented individuals—deeply distrustful of local governments and law enforcement officials. Such distrust will have serious, long-term deleterious effects on the ability of local governments nationwide to protect the health and safety of all residents within their jurisdictions.

II.

ARGUMENT

SB 1070 represents a sweeping, unprecedented, and flatly unconstitutional attempt by the State of Arizona to regulate immigration, an arena in which the federal government has exclusive authority. *See DeCanas v. Baca*, 424 U.S. 351, 354 (1976). The district court preliminarily enjoined the provisions of SB 1070 that would intrude most significantly into the federal realm: Sections 2(B), 3, and 6. A.R.S. §§ 11-1051(B), 13-3883(A)(5), 13-1509(A). These provisions require local law enforcement officers to, *inter alia*, investigate individuals' immigration status, detain all arrestees until their immigration status is verified, and enforce state laws that require the carrying of alien registration documents. *Id.*

Congress has authorized local law enforcement agency participation in federal civil immigration law enforcement only under certain limited circumstances and in an extremely narrow manner.[2] The district court correctly recognized that the immigration enforcement scheme imposed by Sections 2(B), 3, and 6 impermissibly expands the role of state and local governments in enforcing federal civil immigration law, imposes unacceptable burdens on federal resources, and infringes on the rights of both citizens and lawfully-present immigrants. Indeed, neither the State of Arizona nor a local law enforcement agency has the authority to restructure federal immigration enforcement priorities in the manner prescribed by these provisions.

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

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

prosecute serious *criminal* activity. The preliminary injunction granted by the district court after careful consideration of the matter preserves the capacity of local law enforcement to protect public safety, ensures that local officials are not compelled to engage in unconstitutional conduct, and safeguards the relationships of trust with community members upon which local law enforcement officials rely to prevent, investigate, and prosecute crimes. In reviewing the district court's order granting the preliminary injunction, *amici* urge this Court to consider not only the bases relied upon by the district court in enjoining sections 2(B), 3, and 6, but also to consider the impact that implementing these provisions would have on the ability of local law enforcement agencies to ensure public safety.

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

The district court properly enjoined sections of SB 1070 that would unconstitutionally infringe upon the federal government's authority to regulate and police immigration. These same sections also impermissibly undermine local law enforcement agencies' ability to protect public safety. By requiring local law enforcement officers to devote significant time and resources to the enforcement of federal civil immigration law and newly-created state immigration crimes, the enjoined provisions of SB 1070, if allowed to take effect, would force localities to divert scarce resources from the most pressing threats to public safety occurring in

their jurisdictions.

Section 2(B)'s requirement that local law enforcement officers investigate individuals' immigration status is particularly troubling. This provision obligates local law enforcement officers to make a "reasonable attempt" to determine the immigration status of any person whom they have stopped, detained, or arrested if the officers have "reasonable suspicion . . . that the person is an alien and is unlawfully present in the United States," A.R.S. § 11-1051(B). If implemented, this provision would require officers to spend significant time and resources investigating the immigration status of persons with whom they come into contact. Although the statute purports to allow officers not to investigate immigration status when doing so would be impractical or would "hinder or obstruct an investigation," during the vast majority of detentions, officers would be required to make this inquiry in order to comply with the law.

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

[3] Under Section 2(B) of SB 1070, A.R.S. § 11-1051(B), a person is presumed not to be "unlawfully present" if he or she can provide a valid Arizona driver's license, a valid tribal enrollment card, or a valid government-issued ID card for which "proof of legal presence in the United States" is a prerequisite. Where such identification cannot be produced—e.g. when a pedestrian is stopped and is not

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

Section 2(B)'s requirement that local officials verify the immigration status

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carrying identification, or when a motorist from New Mexico (or any other state that does not require confirmation of lawful immigration status to obtain a driver's license) produces his or her state-issued driver's license—local law enforcement officers will have to contact federal authorities and wait for a response. Appellants argue that "it is not the case that Arizona's law enforcement *must* contact [federal officials] each time the officers inquire into a person's immigration status," because certain local law enforcement officers in Arizona have been granted access to certain of the federal government's immigration databases pursuant to 8 U.S.C. § 1357(g). Appellants' Brief at 38. Appellants' suggestion that these local officers can handle the volume of inquiries that SB 1070 will generate illustrates one of the many ways the law's implementation will usurp local law enforcement resources by diverting these officers from their primary responsibility of protecting public safety.

of "[a]ny person who is arrested . . . before the person is released" is equally burdensome. A.R.S. § 11-1051(B). This provision mandates that local governments verify the immigration status of *all* arrestees—even where there is no reason to suspect that an arrestee is undocumented. It further requires that arrestees be detained until their civil immigration status is verified, even if this would prolong their detention well beyond the point at which they would otherwise have been released.[4] These extended detentions raise serious constitutional concerns as set forth in Section II.B(3) below. They would also result in the expenditure of significant local resources, occupying officers' time and tying up space in jails and other holding facilities. Indeed, many of the persons detained pursuant to this provision would be minor offenders who otherwise would be cited and immediately released. As the district court noted in its order issuing the preliminary injunction, the City of Tucson alone arrested and immediately released 36,821 people in fiscal year 2009. Local law enforcement agencies simply cannot perform the civil immigration-related investigations required by SB 1070 without

[4] Appellants argue that although this portion of Section 2(B) requires local officials to determine the immigration status of "[a]ny person who is arrested," it "should be read . . . to require that officers determine the immigration status of an arrestee *only* where reasonable suspicion exists that the person is unlawfully present in the United States." Appellants' Brief at 39. This unsupported reading was properly rejected by the district court. Furthermore, even if this Court were to read this section of the law as Appellants suggest, the district court's decision to enjoin it was nonetheless proper, as prolonged post-arrest detentions supported by reasonable suspicion of unlawful presence are nonetheless unconstitutional and unduly burdensome on local law enforcement agencies.

significantly reducing the time and resources allocated to the essential task of maintaining safe communities.

In sum, the district court's preliminary injunction barring Section 2(B) of SB 1070 from taking effect ensures that law enforcement agencies in Arizona will not be forced to prioritize the enforcement of federal civil immigration law over the protection of public safety.

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

If allowed to take effect, Section 2(B) threatens to expose Arizona localities and officials to substantial potential liability because the law (1) provides no effective mechanism for local officials to determine whether they have reasonable suspicion that an individual is "an alien and unlawfully present" in the United States, and (2) requires local officials to detain individuals in violation of the Constitution. Although the district court did not address these and other constitutional problems that would arise if Section 2(B) were implemented, *amici* urge this Court to consider these and other problems that would result if the preliminary injunction were lifted.

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

Section 2(B) compels local officers to attempt to determine the immigration

status of any individual who is stopped, arrested, or detained "where reasonable suspicion exists that the person is an alien and is unlawfully present" in the United States. A.R.S. § 11-1051(B). Yet it fails to provide any guidance concerning factors upon which an officer may rely to establish reasonable suspicion. By failing to provide this guidance, the Arizona Legislature appears to have left determinations regarding what creates reasonable suspicion to local law enforcement officials. Local law enforcement officials have expertise in identifying facts that suggest an individual is engaged in criminal conduct; they have no expertise in identifying facts that might support reasonable suspicion that an individual is unlawfully present in the United States in violation of federal civil immigration law.

Local law enforcement officers are trained to determine whether an individual has engaged in criminal activity based on facts the officers can readily observe or obtain, such as witnessing the commission of a crime, analyzing forensic evidence from a crime scene, or evaluating informant or witness testimony. The question of whether a person is "unlawfully present" in the United States, by contrast, can be answered only by applying a complex scheme of federal statutory and regulatory law to an individual's unique circumstances (e.g., the person's place of birth, the date and method of entry into the country, conduct while residing in the U.S., any prior adjudications of immigration status by a

federal agency or court, etc.). Local officials do not have the expertise or training necessary to interpret this complex statutory and regulatory scheme, nor do they have the ability during a stop, arrest, or detention to identify critical facts that would permit them to distinguish between individuals with lawful status and those whom they might reasonably suspect are "unlawfully present."

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

Amici do not believe that the provisions of SB 1070 that require an officer to assess whether a person is unlawfully present in the United States can be enforced in a constitutional manner. There simply is no sound way for local law enforcement officers to tell by simple observation whether someone has lawful immigration status. Accordingly, if Section 2(B) of SB 1070 is allowed to take effect, factors such as race, ethnicity, level of English proficiency, or national origin are likely to form the basis for such determinations, in violation of the Constitution.[5] Although SB 1070 purportedly limits the extent to which an officer

[5] *See, e.g.*, *Whren v. United States*, 517 U.S. 806, 813 (1996) (The "Constitution prohibits selective enforcement of [] law[s] based on considerations such as race."); *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975) (an individual's "Mexican appearance" is not a sufficient basis, by itself, to provide reasonable suspicion for a stop or brief questioning); *United States v. Manzo-Jurado*, 457 F.3d 928, 937 (9th Cir. 2006) ("[A]n individual's inability to understand English" does not give rise to reasonable suspicion that an individual is in the country illegally.); *Chavez v. Illinois State Police*, 251 F.3d 612, 635 (7th Cir. 2001) ("[U]tiliz[ing] impermissible racial classifications in determining whom

may rely upon race, color, or national origin to support reasonable suspicion that a person is "unlawfully present," as a practical matter, this section of the law would not prevent reliance on these factors. Unless local agencies adopt the impossibly burdensome approach of contacting federal authorities to determine the immigration status of *every* person stopped, arrested, or detained, each such encounter would require an officer (a) to engage in potentially unconstitutional conduct by relying upon observable factors such as race, ethnicity, or level of English proficiency, or (b) to ignore SB 1070's requirement that immigration status be verified during these encounters. Thus, if Section 2(B) were allowed to take effect, local officials would be put in the untenable position of either acting in an unconstitutional manner or violating state law.

3. Implementation of Section 2(B)'s Requirement That Arrestees' Immigration Status Must Be Determined Prior to Release Would Result in Unconstitutional Detentions.

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

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to stop, detain, and search . . . would amount to a violation of the Equal Protection Clause of the Fourteenth Amendment.").

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

Escobar, et al. v. City of Tucson, et al., No. CV 10-249-TUC-SRB (D. Ariz. Apr. 29, 2010), Answer and Cross-Claim at ¶¶ 40, 44-45. By requiring local governments to detain arrestees pending verification of their immigration status, SB 1070 directs local governments to hold arrestees in violation of their rights under the Fourth Amendment, thereby exposing localities to potential liability. In light of the constitutional violations and potential liability for local governments that would result from implementation of Section 2(B), *amici* urge this Court to affirm the district court's issuance of the preliminary injunction.

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

Amici submit that the public interest overwhelmingly favors affirming the preliminary injunction to prevent irreparable damage to relationships between immigrant communities and local law enforcement agencies that are essential to the protection of public safety. Maintaining a clear separation between local

government operations and federal immigration enforcement is critical to enable local governments to serve community needs appropriately, and to provide effective crime prevention and law enforcement. As former Los Angeles Police Chief William Bratton explained, "when local police enforce immigration laws, it undermines their core public safety mission, diverts scarce resources, increases their exposure to potential liability and litigation, and exacerbates fear in communities that are already distrustful of police. . . . Working with victims and witnesses of crimes closes cases faster and protects all of our families by getting criminals off the street." William Bratton, *Opinion: The LAPD Fights Crime, Not Illegal Immigration*, L.A. Times, Oct. 27, 2009.

If Sections 2(B), 3, and 6 of SB 1070 were to take effect, relationships between local law enforcement agencies and immigrant communities in Arizona and across the country would be severely damaged. By requiring local law enforcement to, *inter alia*, investigate immigration status, detain arrestees until their immigration status can be verified, and enforce state laws regarding the carrying of alien registration documents, the enjoined sections of SB 1070 are sure to make many members of immigrant communities—including those who are lawfully present in the United States—justifiably afraid of interacting with local law enforcement officials. As local governments charged with protecting public safety in diverse communities, *amici* can attest to the indispensable role that

community relationships play in maintaining public safety. When local law enforcement officers are perceived as enforcers of immigration law, as they would be if the preliminary injunction were lifted, many individuals are reluctant to seek their help. Crimes go unreported, witnesses are afraid to come forward, victims go without protection, and communities become less safe. The loss of trust resulting from implementation of the enjoined provisions would seriously undermine local officials' ability to engage in effective crime detection, investigation, prosecution, and prevention, thereby undermining the safety of all community members—citizens and non-citizens alike.

Appellants argue that SB 1070 "does not, on its face, target lawfully-present aliens—it is aimed at identifying *illegal* aliens." Appellants' Brief at 25. But natural born and naturalized U.S. citizens, lawful permanent residents, and other law-abiding individuals with authorization to reside in the country will justifiably fear being caught in the net of unworkable standards that local officials are expected to follow if the enjoined provisions of SB 1070 are allowed to take effect. The possibility of being asked for papers and detained while immigration status is verified is enough to deter many crime victims, witnesses, and other community members from approaching the police, even if they have legal status. Furthermore, even lawful residents may not have documents that meet the standards set forth in SB 1070, and some will fear that the validity of their documents will be questioned

or disregarded. Other lawful residents have family members who are undocumented or whose immigration status is not known; these individuals may not want to risk approaching local law enforcement officers if doing so might lead to investigation in their homes or neighborhoods and endanger the people close to them. If the preliminary injunction is lifted, law enforcement officers throughout Arizona will be seen as enforcers of Arizona's new statewide immigration scheme rather than as protectors of public safety. The resulting fear and loss of trust would be so devastating to community relationships that Arizona agencies may never recover their ability to serve and protect the public adequately.

In determining whether to uphold the District Court's preliminary injunction, *amici* urge this Court to look beyond Arizona to consider effects that full implementation of SB 1070 would have nationwide. Implementation of the enjoined provisions would send a message to immigrant communities across the country that local law enforcement agencies are in the business of enforcing civil immigration law. As local governments in various regions throughout the country, we see our communities change and develop as people move in and out of our geographic borders. Many of our community members migrate from, travel to, or have family members in Arizona. Implementation of SB 1070 would instill fear and mistrust in local governments among Arizona's residents and visitors, creating a ripple effect throughout the country and the communities we serve. Accordingly,

the preliminary injunction is necessary to maintain the trust built between local governments and immigrant communities in jurisdictions nationwide.

D. THE ENJOINED PROVISIONS OF SB 1070 SUBVERT FEDERAL IMMIGRATION POLICIES DESIGNED TO ENHANCE PUBLIC SAFETY.

In contrast to the State of Arizona's disregard for the relationship between local law enforcement and immigrant communities, the federal government has put in place various programs designed to assist local law enforcement agencies in obtaining the trust and cooperation of undocumented crime victims and witnesses. *See, e.g.*, 8 U.S.C. § 1101(a)(15)(T) (making "T" visas available to certain victims of human trafficking who assist law enforcement); *id.* § 1101(a)(15)(U) (making "U" visas available to certain victims of serious crimes, including domestic violence, who assist law enforcement). These provisions of federal law would be severely undermined if the enjoined provisions of SB 1070 are allowed to take effect. *Amici* can attest that local law enforcement and other officials have made significant progress in protecting public safety by using these visa programs. By offering immigrant crime victims and witnesses a pathway to stable immigration status, these laws encourage immigrants to cooperate with local law enforcement, to report crime, and to assist with prosecutions. Section 2(B)'s requirement that law enforcement officers instead interrogate individuals about their immigration status and detain arrestees while verification of their status is pending will deter

immigrant victims and witnesses from cooperating in law enforcement actions, even if they could ultimately be eligible for lawful status under Congress's visa programs. By casting local law enforcement officers not as agents of public safety but as enforcers of federal civil immigration law, the enjoined provisions of SB 1070 both conflict with and subvert the federal immigration programs that our local governments use to advance public safety.

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III.

CONCLUSION

The district court's order granting in part the federal government's motion for a preliminary injunction should be upheld both on the bases set forth in the district court's order, and for the reasons set forth above. *Amici* urge this Court to prevent irreparable harm to public safety by upholding the district court's preliminary injunction.

Dated: September 30, 2010

Respectfully submitted,

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STATEMENT OF RELATED CASES

Attorneys for the County of Santa Clara, California, on behalf of counsel for all *amici*, are not aware of any related cases pending in this Court, as defined in Ninth Circuit Rule 28-2.6.

Dated: September 30, 2010

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(c) and Ninth Circuit Rule 32-1, the attached *amici curiae* brief is proportionately spaced, has a typeface of 14 points or more, and contains approximately 4,342 words.

Dated: September 30, 2010

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CERTIFICATE OF SERVICE BY MAIL

UNITED STATES OF AMERICA, v. STATE OF ARIZONA; AND JANICE K. BREWER, GOVERNOR OF THE STATE OF ARIZONA, IN HER OFFICIAL CAPACITY

Case No. 10-16645

I hereby certify that I electronically filed the foregoing

BRIEF OF *AMICI CURIAE* THE COUNTY OF SANTA CLARA, CALIFORNIA; THE CITY OF BALTIMORE, MARYLAND; THE CITY OF BERKELEY, CALIFORNIA; THE CITY OF MINNEAPOLIS, MINNESOTA; THE COUNTY OF MONTEREY, CALIFORNIA; THE CITY OF NEW HAVEN, CONNECTICUT; THE COUNCIL OF THE CITY OF NEW YORK, NEW YORK; THE CITY OF PALO ALTO, CALIFORNIA; THE CITY OF PORTLAND, OREGON; THE CITY OF SAINT PAUL, MINNESOTA; SALT LAKE CITY, UTAH; THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA; THE CITY OF SAN JOSE, CALIFORNIA; THE COUNTY OF SAN MATEO, CALIFORNIA; THE CITY OF SEATTLE, WASHINGTON; AND THE UNITED STATES CONFERENCE OF MAYORS IN SUPPORT OF PLAINTIFF-APPELLEE

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.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/S/ .
Alexandra K. Weight