

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF ARIZONA, et al.,

Defendants.

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PUBLIC RECORDS  
Released pursuant to  
A.R.S. 39-121, Et. Seq.  
To:

**DRAFT DECLARATION OF ARIZONA CHIEF JACK HARRIS**

1. I have been employed with the Phoenix Police Department for 38 years and the Chief for nearly six years. The operations budget for the department is over 500 million dollars each year.

2. As the Chief, I am responsible for protecting and ensuring the public safety of all people living and traveling in my jurisdiction, regardless of their immigration status. Currently, the City of Phoenix is the 6<sup>th</sup> largest City in the United States and the largest City in the State of Arizona located on the US-Mexican border. Phoenix has a population of 1.6 million people and covers 510 square miles. It is estimated that nearly 500,000 immigrants live in the state of Arizona and nearly 150,000 to 250,000 live in Phoenix alone. The surrounding valley population is close to three million people.

3. As the Chief, I am responsible for establishing policies, procedures, and priorities for the department and my officers. My department has 3,640 sworn positions and approximately 1100 civilian support staff. At any given moment I may have 300 officers answering calls for service on the street. Phoenix alone dispatches 670,000 calls for service annually. With that said, we are presently holding over 400 vacant sworn positions. Ninety-five percent of our operating budget is for personnel. That figure is higher than normal due to the large number of vacant positions.

Officers engage in a broad range of law enforcement activities and actions, including but not limited to investigation and solving serious and violent crimes, responding to domestic violence calls, taking and responding to complaints from

the public to include civil disputes, and working with the community to encourage reporting of crime.

Deterring, investigation and solving serious and violent crimes are the department's top priorities, and it would be impossible for us to do our job without the collaboration and support of community members, including those who may be in the country unlawfully.

Myself as well as law enforcement leaders across the country are very concerned about the effect the new law will have on our community policing efforts. Victims and witnesses will be afraid to call police for fear deportation. A woman who is unlawfully present and a victim of domestic violence may very well suffer injury rather than take a chance on deportation. We recently had witnesses physically detain a child molester until officers arrived to assist. The witnesses were undocumented members of our community. Had this new law been in effect, the witnesses may have been reluctant to take action and call the police.

Another concern is that this law does nothing to support law enforcement in efforts to combat crimes associated with criminal immigration that we hear about so often in the media. In fact, it forces resources away from criminal investigations, including criminal investigations involving Federal criminal immigration violations, and instead, forces officers to divert attention to unlawfully present workers who are not committing any other violations of the law.

In particular, this law focuses on civil immigration laws rather than criminal immigration violations, kidnappings, human smuggling, extortions, and drop houses where people are holding others for ransom. Not only does Arizona already have State statutes for these types of crimes, but the Phoenix Police Department's Home Invasion Kidnapping Enforcement Squad (H.I.K.E) was designed exclusively for the purpose of investigating, enforcing and supporting patrol with these types of crimes relating to immigration. In Phoenix, we experience 350 kidnapping crimes per year. Many of the victims are unlawfully present and tortured while family members are told by telephone to bring money to the suspects. They currently call police and we have saved many victims from further torture and even murder because the family called police. That my change dramatically if the family loses confidence in the police. My department currently works closely with agents from ICE for enforcement of human smuggling and other related crimes. However, with this new law, instead of focusing on these crimes, we will be forced to focus on persons who overstayed their working VISA, student VISA, or those unlawfully present and working and not committing criminal offenses, and detaining people who may be citizens.

On many occasions, HIKE investigators, and other investigative bureaus rely heavily on information received from victims and witnesses who are unlawfully present but otherwise compliant with the laws of this State. In fact, the Drug Enforcement Bureau consisting of undercover narcotics and conspiracy

detectives receive invaluable information from persons who may be unlawfully present but provide a wealth of information concerning major players in the drug trade. It takes cooperation and collaboration from all persons living in Arizona and elsewhere to defeat large drug operations. Most are very large and complicated investigations involving drug trafficking.

Many unlawfully present aliens have developed a strong trust with law enforcement and provide information freely without the fear of deportation for civil and administrative violations of immigration law.

Within the many Precincts that divide our city into grids, each has a Neighborhood Enforcement Team composed of officers who specifically work very closely with community members and the public to solve crimes in the neighborhoods. These officers are familiar with the criminal activity in the respective precinct and are phenomenal at developing a rapport with people in these diverse communities to gather information on suspects involved in crimes. It is imperative to these investigations that relationships and information continue to freely flow with those who are unlawfully present. Cooperation with those who are not only unlawfully present and a victim/witness of a crime, but those suspects who would not otherwise have been caught had it not been for the information received that lead us to the ultimate goal; to solve violent crimes, combat the drug activity, and protect the safety of all persons in our community.

4. Arizona's SB 1070, which was signed by the Governor on April 23, 2010, and becomes effective July 29, 2010, mandates that when an officer makes a traffic stop, contacts a person for a city ordinance violation, or stops a person under an investigative "terry" detention (reasonable suspicion to believe the person is, was or is about to be involved in a crime), and during one of these stops, subsequently develops "reasonable suspicion" (articulable facts to believe the person is an unlawfully present alien) the officer **MUST** make a "reasonable attempt" to contact ICE to verify the persons immigration status. The articulable facts for reasonable suspicion that a person is unlawfully present are found in case law.

Some of these factors which may be considered include but are not limited to the following; lack of identification if required to carry, limited ability to speak English, demeanor such as unexplained nervousness coupled with other factors, location where unlawfully present aliens are known to congregate looking for work, officers prior information about the person, amongst other unlawfully present persons, foreign vehicle registration, flight from an officer, foreign identification, hiding inside a vehicle, unable to provide a place of residence, inconsistent information, or admitting to be an unlawful alien. It is usually the totality of all the facts and circumstances that the officer can articulate and not exclusively this list. One factor alone likely will not establish reasonable suspicion.

Exceptions to making a "reasonable attempt" to contact ICE include the presumptive identifications minus any other facts, if it is practicable to contact ICE, and lastly, if contacting ICE does not hinder an investigation. Outlying small towns and other areas not within the metropolitan area of Phoenix will find it difficult if not impossible to access an ICE office or contact personnel from ICE.

In contrast to the above analysis, anyone who is arrested cannot be released unless the person's immigration status is verified with the Federal government. Reasonable suspicion is not a part of this analysis. There are no exceptions for arrest situations regardless of whether the officer has reasonable suspicion to believe a person is an unlawful alien. This applies to any and all persons who are arrested. In other words, a person cannot be cited in lieu of a detention (criminal citation with a court date) unless the immigration status of the person can be determined. There are no exceptions to this mandate. Thus, those who present identification and would normally be cited for criminal speed, will now be booked into jail and cannot be released with a criminal citation until the verification of the person's immigration status is verified. This includes juveniles. Unfortunately, this will be extremely expensive and affects everyone, including U.S. citizens, and lawful and unlawful aliens alike.

Another issue is that the only way to verify a person's immigration status is through the Federal government. In order for an actual verification to occur, the person must have all ten fingers printed and sent through the federal computer system in order to actually verify a person's immigration status. This process alone will take numerous officers off the street at some point during the ten hour shift. Officers may choose to book the person into jail, rather than wait for hours until an ICE officer answers the phone and can assist with the verification if it is at all possible without fingerprinting. Person's committing offenses that would normally receive a criminal citation so that the officer is able to go back into service quickly, may be forced to waste time contacting ICE or booking a person into jail.

Under these circumstances, this immigration law will impact the operations and budget in a number of significant ways. There is a strong possibility that we will see a significant increase in prisoner bookings and operating costs to house prisoners. Based on the number of citations in lieu of detention we have done in the past and the current number of bookings we will now do instead, it is estimated that jail costs could increase between five and ten million dollars annually.

Finally, another concern is that the number of officers currently answering calls for service in the field may need to increase significantly. If many of the 300 current officers on the street decide to engage in routine civil immigration enforcement, we will not be able to meet our primary mission which is answering calls for service. Unfortunately, I cannot hire more officers to assist with this problem due to budget constraints. Thus, we will have to move officers from

other details in an attempt to accommodate the calls for service. Those details may include motorcycle officers, detectives assigned to work violent crimes, property crime detectives and home invasion/kidnapping enforcement squad to name a few.

5. I am responsible as the Chief for setting my agency's law enforcement priorities. One such priority is investigating, preventing and deterring violent crimes. This law undermines my ability to set law enforcement priorities for my agency, because we will now have to expand substantial and already scarce resources towards civil immigration violations instead of violent crimes and criminal immigration enforcement.

As such, this new law mandates that .."no official or agency of this state or county, city, town or other political subdivision of this state may limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by law... Further, the law provides that,... a person who is a legal resident of this state may bring an action in Superior Court to challenge any official or agency of this State or a County, City, Town or other political subdivision of this state that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws...

Here, management looses control of resources when an officer or many officers choose to only enforce civil immigration violations. In other words, if an officer is on a valid traffic stop and asks the driver if they are an unlawful alien, the officer can spend hours trying to contact ICE. Even if the officer has no other criminal charges, once reasonable suspicion is developed to believe the person is an unlawful alien, the officer must make a "reasonable attempt" to contact ICE. If a supervisor gives the officer on the traffic stop a direct order to make a back-up for another officer who is responding to a priority violent domestic violence call in progress, the officer could bring suit against the department. Currently, we have a policy for priority calls where two officers must respond. The actions of the supervisor were governed by a policy to have two officers respond to this type of call, under this scenario this policy would have interfered with the officer's immigration enforcement. This new immigration law does not provide ... "any immigration policy" ... it states... "any policy. that limits or restricts the enforcement of federal immigration laws" ..the officer has discretion taking away management's ability to prioritize the need for resources.

6. If my Department does not enforce the State's immigration laws without exception, we risk the possibility of a lawsuit by private parties under this new law. Officers may bring suit or an Arizona citizen may bring suit against the city and the city would pay the court costs and attorney fees for the police officer or citizen suing the city for failing to enforce civil immigration violations instead of taking a homicide or armed robbery call. Another financial burden is that the service of process in Arizona is 180 days. In this instance, the city may not know a lawsuit has even been filed for the entire length of the statute and as long as

the policy (that allegedly interferes with immigration enforcement) is still in place, fines of up to \$5000.00 dollars per day may be placed against the agency upon FILING of the lawsuit. This alone could eventually bankrupt a City if multiple lawsuits were filed.

9. Immigration law and immigration status is a very complex area, and local law enforcement cannot possibly be experts in all the different ways a person can be lawfully or unlawfully present. Thus, officers will heavily rely on ICE to provide guidance to verify a person's status. ICE cannot handle the amount of calls it currently receives from local law enforcement. With this new law it will be even more difficult to have ICE assist in investigations. The time we have to prepare for such a complicated law is very difficult. There is already confusion in this country about how the law works and the complexities of this law in its application with federal civil immigration laws. It is my fear that the state training will not equip my officers with the necessary knowledge and expertise we that would allow them to reasonable understand how to enforce the different statutes within the law. In addition, we have a limited time to provide additional training so officers have guidance in understanding the law and explain in detail the operational aspects to the officers in a short amount of time. Another real concern is that ICE may not be available to answer the amount of calls where officers are mandated to verify immigration status. Further, once an officer develops reasonable suspicion that a person is here as an unlawful alien without using race, color, or national origin will need documentation and strict analysis to carefully walk the line between violating a persons civil rights, subjecting the officer to 18 USC § 1983 actions, and articulating factors supported by case law for reasonable suspicion a person is unlawfully present. This will be difficult to train.

Another point of contention is consensual/voluntary contacts with people which may also subject officers to civil lawsuits. This law does not affect an officer's ability to have consensual/voluntary contacts with people. Essentially, an officer could ask the person if they are here unlawfully and as long as the contact remains consensual, it would be lawful as long as the officer was not racially profiling. The officer cannot ask these questions if the only purpose for the consensual contact and question was based upon the person's race or color and the officer only focuses on a specific race when asking about the person's immigration status instead of asking every person he/she contacts the same question.

11. Under 13-1509, Willful failure to complete or carry an alien registration document, the law provides that in addition to any violations of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violations of 8 USC § 1304(e) or 1306(a).

This section does not apply to a person who maintains authorization from the federal government to remain in the United States. The title to this statute is

misleading and will cause confusion with officers. Most officers never deal with Federal Statutes. There are age restrictions under each Federal statute listed here, and limitations on how many days a person can be in this country without registering. There are numerous questions an officer must ask in order to determine whether there is a federal immigration violation and determine whether there may still be other lawful reasons that the person may be present lawfully or did register at one time, but the registration expired. This is a very time consuming process and it requires cooperation from ICE in order to charge under this statute. In the meantime, we could be holding lawfully present aliens or citizens without legal justification.

In essence, this section makes civil federal immigration violations a criminal state violation. Under *Gonzales v. Peoria*, (9<sup>th</sup> Circuit Court of Appeals case) the court provided that officers may enforce criminal portions of federal immigration law but have no authority to enforce civil immigration law. A person who is unlawfully present in this country without anything further (such as a state criminal charge) is a civil or administrative violation in nature. The new Arizona law makes the administrative or civil portion of federal law criminal under this state statute.

The quandary is that my officers will be subjected to law suits if they enforce federal law appropriately and do not enforce 13-1509 because it potentially violates the federal law. Portions of this new immigration law could place officers in direct violation with the findings in this case.

Likewise, school resource officers are Phoenix Police Officers assigned to local schools. School officials are not allowed to ask children about their immigration status based on a Supreme Court decision. Our new state law mandates that officers make a reasonable attempt to contact ICE if an officer develops reasonable suspicion a student is here unlawfully. For example, if the officer is investigating the student for allegations of criminal activity at school (i.e. assaulting another student, theft), and the officer develops reasonable suspicion the student is an unlawful alien, the officer must make a "reasonable attempt" to contact ICE and verify the student's immigration status, unless the officer applies one of the limited discretionary exceptions. More troubling is when a student is the victim of violent school bullying and is scared to come forward for fear the officer will take immigration enforcement action or inquire further about the student's family status. Once again, my officers are placed in a losing situation.

**DRAFT DECLARATION OF PHOENIX POLICE CHIEF JACK HARRIS**

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I have been employed with the Phoenix Police Department for 38 years and I have served as the Chief since 2004.

As the Chief, I am responsible for protecting and ensuring the public safety of all people living and traveling in my jurisdiction. Currently, the City of Phoenix is the 6<sup>th</sup> largest City in the United States. Phoenix is the largest City in the State of Arizona and the state is located on the US-Mexican border. Phoenix has a population of approximately 1.6 million people and covers 510 square miles. It is estimated that nearly 500,000 immigrants live in the state of Arizona and nearly 150,000 to 250,000 live in Phoenix alone. The surrounding valley population is close to three million people.

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**Community Policing Ethic**

I believe SB1070 will have a negative effect on our community policing efforts. I am very concerned that victims and witnesses will be afraid to call police for fear of deportation. A woman who is unlawfully present in the United States and a victim of domestic violence may very well suffer injury rather than take a chance on deportation. Recently, we had a witness physically detain a suspected child molester until officers arrived to apprehend the suspect. The witness was an undocumented member of our community. Had this new law been in effect, the witness may have been reluctant to take action and call the police.

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Deterring, investigating and solving serious and violent crimes are the department's top priorities, and it would be impossible for us to do our job without the collaboration and support of community members, including those who may be in the country unlawfully.

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On many occasions, HIKE investigators, and other investigative bureaus rely heavily on information received from victims and witnesses who are unlawfully present but otherwise compliant with the laws of this state. In fact, the Phoenix Police Department's Drug Enforcement Bureau consisting of undercover narcotics and conspiracy detectives receive valuable information from persons who may be unlawfully present but who provide a wealth of information concerning major players in the illegal drug trade. It takes cooperation and collaboration from all persons living in Arizona and elsewhere to defeat large illegal drug operations. Most investigations involving illegal drug trafficking are very large and complicated investigations.

The new SB1070 may also adversely impact the department's ability to fulfill its investigative priorities because its implementation will require the department to reassign officers from critical areas. If many of our current officers decide to engage in routine civil immigration enforcement, which SB1070 clearly we cannot limit or restrict by policy, it will severely impact our primary mission which is answering calls for service. Unfortunately, I cannot hire more officers to assist

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with this problem due to budget constraints. Thus, we will have to move officers from other details in an attempt to accommodate the calls for service. Those details may include motorcycle officers, detectives assigned to work violent crimes, property crime detectives and home invasion/kidnapping enforcement squad to name a few.

Cooperation with those who are unlawfully present and a victim/witness of a crime, allow us to apprehend suspects who would not otherwise have been caught had it not been for the information received that lead us to the ultimate goal; to solve violent crimes, combat the drug activity, and protect the safety of all persons in our community.

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School resource officers are Phoenix Police Officers assigned to local schools. If a school resource officer is investigating the student for allegations of criminal activity at school (i.e. assaulting another student, theft), and the officer develops reasonable suspicion the student is an unlawful alien, pursuant to SB1070 the officer must make a "reasonable attempt" to contact ICE and verify the student's immigration status, unless the officer applies one of the limited discretionary exceptions. More troubling is when a student is the victim of a violent crime and is scared to come forward for fear the officer will take immigration enforcement action or inquire further about the student's family immigration status. Once again, my officers are placed in a losing situation.

**Deleted:** SB1070 mandates that officers make a reasonable attempt to contact ICE if an officer develops reasonable suspicion to believe a person is an unlawfully present alien.

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### **Financial Costs**

SB1070 mandates that each time an officer makes an arrest of any person, regardless of whether there is reasonable suspicion to believe the person is an unlawfully present alien; the officer MUST verify a person's immigration status with the Federal government. Presumptive identification does not alleviate this requirement in arrest situations. Person's committing criminal misdemeanor offenses, to include criminal traffic offenses, who would normally receive a criminal citation, will likely be booked. If a police officer is unable to contact the federal government to verify the arrested persons immigration status, the person must be booked. A criminal citation is a quick process and allows the officer to quickly return to patrolling the city and answers call for service. The booking process at the jail can take an hour to three hours. This mandate applies to juveniles and adults.

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Under these circumstances, this immigration law will impact the departments operations and budget in a number of significant ways. There is a strong possibility that we will see a significant increase in prisoner bookings and operating costs to house prisoners. In 2009 we had nearly 51,479 criminal citations in lieu of detentions. This number includes 37,731 criminal traffic citations, and 13,748 non traffic citations (i.e. shopliftings, theft, and other misdemeanors). The initial cost to book a person into jail, excluding felonies, is \$192.26. After the initial booking, the fee is \$71.66 for each night the person stays in jail. Had the police officers booked all those persons into jail who

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received a criminal citation in lieu of detention, the cities lowest estimated expense for these booking would be approximately ten million dollars. This is solely for the initial booking and does not include any additional nights in jail.

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The potential for police officers to be out of service for extended periods of time during a work shift for civil immigration violations and nothing more, forces local police to be civil federal immigration enforcement agents. In 2009 our officers answered over 660,000 dispatched calls for service. With this new law, calls for service will be affected if officers divert their attention to civil immigration violations rather than answering calls for service such as domestic violence, burglaries, robberies, criminal immigration enforcement, other officer's back-ups and will also reduce proactive patrolling in neighborhoods.

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The new law subverts the authority of management to direct its sworn resources where it deems appropriate because the law allows police officers complete discretion to enforce civil immigration violations. An officer could spend the entire shift enforcing civil federal violations of immigration

This problem is aggravated by the fact the Phoenix Police Department is carrying more than 400 vacant sworn police officer positions. The operations budget for the department is over 500 million dollars each year. Ninety-five percent of our operating budget is for personnel.

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### Lawsuits

If I exercise the authority of my position to direct the resources of the department to areas I believe are a greater priority than immigration enforcement, we risk the possibility of a lawsuit by private parties. SB1070 provides that any Arizona citizen may bring suit against the city if I exercise my authority or they feel I am limiting or restricting the enforcement of federal immigration law. Further, the city can be ordered to pay the court costs and attorney fees for the police officer or citizen suing the city for failing to enforce civil immigration violations instead of perhaps taking a homicide or armed robbery radio call for service.

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In Arizona, service of process must be done within 120 days of filing the lawsuit. Under SB1070, fines may be placed against an agency upon the filing of a lawsuit, not when the agency is served with a lawsuit. This allows the court to award damages when the city does not know a lawsuit has even been filed. SB1070 provides that the agency may be fined for up to \$5000.00 each day that the suspect policy (i.e. insubordination) remains in affect.

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### Management of Resources/Policies

As the Chief, I am responsible for establishing policies, procedures, and priorities for the department and my officers. I am responsible as the Chief for setting my agency's law enforcement priorities. One such priority is investigating, preventing and deterring violent crimes. This law undermines my ability to set law enforcement priorities for my agency, because I cannot prohibit the use of

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already scarce resources towards civil immigration enforcement instead of violent crimes and criminal immigration enforcement.

SB1070 provides that ... "no official or agency of this state or county, city, town or other political subdivision of this state may limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by law... Further, the law provides that ..... "no official or agency of this state or county, city, town or other political subdivision of this state may have a policy that limits or restricts" ... The law does not limit violations solely to immigration policies, but rather the law provides that ANY policy that limits or restricts immigration enforcement is prohibited. This subjects the department to civil lawsuit by anyone who perceives a limitation or restriction.

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Here, management loses control of managing resources when an officer or many officers choose to only enforce civil immigration violations during the course of a work shift. For example, if an officer is on a valid traffic stop and asks the driver if they are an unlawful alien and the person admits to this, or the officer develops reasonable suspicion to believe the person stopped or detained is an unlawful alien, the officer must make a reasonable attempt to contact ICE. Even if the officer has no other criminal charges, once reasonable suspicion is developed to believe the person is an unlawful alien, the officer shall make a "reasonable attempt" to contact ICE. If a police supervisor gives an order to a police officer to leave his/her traffic stop and answer calls for service, the officer may refuse and continue with the possible federal immigration violations. Currently, the Phoenix Police Department has a "policy" on insubordination. This policy may violate SB1070 because the insubordination policy interfered with the officer's ability to enforce federal immigration law.

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### Serious Crimes

SB1070 does nothing to support law enforcement's efforts to combat serious violent crimes associated with federal criminal immigration violations. This law failure to distinguish between civil and criminal violations, and prohibition on management ability to do so, allows officers to focus their enforcement efforts on civil immigration laws rather than criminal violations, such as kidnappings, human smuggling, extortions, and drop houses where people are holding others for ransom. The Phoenix Police Department has a Home Invasion Kidnapping Enforcement Squad (H.I.K.E) that was designed exclusively for the purpose of investigating, enforcing and supporting patrol with these types of crimes. The state of Arizona already has statutes to address these types of crimes. Unfortunately, this law authorizes officers to divert from focusing on these crimes and instead focus on federal civil violations, such as unlawful aliens who may have expired student or work Visa's or those who present no danger to the public.

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### Relationship with ICE

SB1070 will cause an overwhelming amount of calls to ICE. I believe this will severely limit our ability to continue getting the valuable service we receive from ICE on our criminal investigations and federal criminal immigration violations.

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In Phoenix, we experience approximately 350 kidnapping crimes per year. Many of the victims are unlawfully present and are tortured while family members are told by telephone to bring money to those holding them. Family members currently call police and we have saved many victims from further torture and even murder because the family called police. That may change dramatically if the family loses confidence in the police. My department currently works closely with agents from ICE for enforcement of human smuggling and other related crimes.

Immigration law and immigration status is a very complex area, and local law enforcement cannot possibly be experts in all the different ways a person can be lawfully or unlawfully present. Thus, officers will heavily rely on ICE to provide guidance to verify a person's status. ICE cannot handle the amount of calls it currently receives from local law enforcement. With this new law it will be even more difficult to have ICE assist in investigations. The time we have to prepare for such a complicated law is very difficult. There is already confusion in this country about how the law works and the complexities of this law in its application with federal civil immigration laws. It is my fear that the state training will not equip my officers with the necessary knowledge and expertise that would allow them to reasonably understand how to enforce the new statutes added and referred to in SB1070. Further, once an officer develops reasonable suspicion that a person is here as an unlawful alien without using race, color, or national origin will need documentation and clear guidance to carefully walk the line between violating a person's civil rights, subjecting the officer to 18 USC § 1983 actions, and articulating factors supported by case law for reasonable suspicion that a person is unlawfully present.

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**Community Policing Ethic**

I believe SB1070 will have a negative effect on our community policing efforts. I am very concerned that victims and witnesses will be afraid to call police for fear of deportation. A woman who is unlawfully present in the United States and a victim of domestic violence may very well suffer injury rather than take a chance on deportation. Recently, we had a witness physically detain a suspected child molester until officers arrived to apprehend the suspect. The witness was an undocumented member of our community. Had this new law been in effect, the witness may have been reluctant to take action and call the police.

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School resource officers are Phoenix Police Officers assigned to local schools. If a school resource officer is investigating the student for allegations of criminal activity at school (i.e. assaulting another student, theft), and the officer develops reasonable suspicion the student is an unlawful alien, pursuant to SB1070 the officer must make a "reasonable attempt" to contact ICE and verify the student's immigration status, unless the officer applies one of the limited discretionary exceptions. More troubling is when a student is the victim of a violent crime and is scared to come forward for fear the officer will take immigration enforcement action or inquire further about the student's family immigration status. Once again, my officers are placed in a losing situation.

**Deleted:** SB1070 mandates that officers make a reasonable attempt to contact ICE if an officer develops reasonable suspicion to believe a person is an unlawfully present alien.

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### **Financial Costs**

SB1070 mandates that each time an officer makes an arrest of any person, regardless of whether there is reasonable suspicion to believe the person is an unlawfully present alien; the officer **MUST** verify a person's immigration status with the Federal government. Presumptive identification does not alleviate this requirement in arrest situations. Person's committing criminal misdemeanor offenses, to include criminal traffic offenses, who would normally receive a criminal citation, will likely be booked. If a police officer is unable to contact the federal government to verify the arrested persons immigration status, the person must be booked. A criminal citation is a quick process and allows the officer to quickly return to patrolling the city and answers call for service. The booking process at the jail can take an hour to three hours. This mandate applies to juveniles and adults.

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Under these circumstances, this immigration law will impact the departments operations and budget in a number of significant ways. There is a strong possibility that we will see a significant increase in prisoner bookings and operating costs to house prisoners. In 2009 we had nearly 51,479 criminal citations in lieu of detentions. This number includes 37,731 criminal traffic citations, and 13,748 non traffic citations (i.e. shopliftings, theft, other misdemeanors). The initial cost to book a person into jail, excluding felonies, is \$192.26. After the initial booking, the fee is \$71.66 for each night the person stays in jail. Had the police officers booked all those persons into jail who

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received a criminal citation, in lieu of detention, the cities lowest estimated expense for these booking would be approximately ten million dollars. This is solely for the initial booking and does not include any additional nights in jail.

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The potential for police officers to be out of service for extended periods of time during a work shift for civil immigration violations and nothing more, forces local police to be civil federal immigration enforcement agents. In 2009 our officers answered over 660,000 dispatched calls for service. With this new law, calls for service will be affected if officers divert their attention to civil immigration violations rather than answering calls for service such as domestic violence, burglaries, robberies, criminal immigration enforcement, other officer's back-ups and will also reduce proactive patrolling in neighborhoods.

The new law subverts the authority of management to direct its sworn resources where it deems appropriate because the law allows police officers complete discretion to enforce civil immigration violations. An officer could spend the entire shift enforcing civil federal violations of immigration

This problem is aggravated by the fact the Phoenix Police Department is carrying more than 400 vacant sworn police officer positions. The operations budget for the department is over 500 million dollars each year. Ninety-five percent of our operating budget is for personnel.

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### Lawsuits

If I exercise the authority of my position to direct the resources of the department to areas I believe are a greater priority than immigration enforcement, we risk the possibility of a lawsuit by private parties. SB1070 provides that any Arizona citizen may bring suit against the city if I exercise my authority or they feel I am limiting or restricting the enforcement of federal immigration law. Further, the city can be ordered to pay the court costs and attorney fees for the police officer or citizen suing the city for failing to enforce civil immigration violations instead of perhaps taking a homicide or armed robbery radio call for service.

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### Management of Resources/Policies

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SB1070 provides that ...”no official or agency of this state or county, city, town or other political subdivision of this state may limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by law...Further, the law provides that .....”no official or agency of this state or county, city, town or other political subdivision of this state may have a policy that limits or restricts”...The law does not limit violations solely to immigration policies, but rather the law provides that ANY policy that limits or restricts immigration enforcement is prohibited. This subjects the department to civil lawsuit by anyone who perceives a limitation or restriction.

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Here, management loses control of managing resources when an officer or many officers choose to only enforce civil immigration violations during the course of a work shift. For example, if an officer is on a valid traffic stop and asks the driver if they are an unlawful alien and the person admits to this, or the officer develops reasonable suspicion to believe the person stopped or detained is an unlawful alien, the officer must make a reasonable attempt to contact ICE. Even if the officer has no other criminal charges, once reasonable suspicion is developed to believe the person is an unlawful alien, the officer shall make a “reasonable attempt” to contact ICE. If a police supervisor gives an order to a police officer to leave his/her traffic stop and answer calls for service, the officer may refuse and continue with the possible federal immigration violations. Currently, the Phoenix Police Department has a “policy” on insubordination. This policy may violate SB1070 because the insubordination policy interfered with the officer’s ability to enforce federal immigration law.

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**Serious Crimes**

SB1070 does nothing to support law enforcement’s efforts to combat serious violent crimes associated with federal criminal immigration violations. This law failure to distinguish between civil and criminal violations, and prohibition on management ability to do so, allows officers to focus their enforcement efforts on civil immigration laws rather than criminal violations, such as kidnappings, human smuggling, extortions, and drop houses where people are holding others for ransom. The Phoenix Police Department has a Home Invasion Kidnapping Enforcement Squad (H.I.K.E) that was designed exclusively for the purpose of investigating, enforcing and supporting patrol with these types of crimes. The state of Arizona already has statutes to address these types of crimes. Unfortunately, this law authorizes officers to divert from focusing on these crimes and instead focus on federal civil violations, such as unlawful aliens who may have expired student or work Visa’s or those who present no danger to the public.

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**Relationship with ICE**

SB1070 will cause an overwhelming amount of calls to ICE. I believe this will severely limit our ability to continue getting the valuable service we receive from ICE on our criminal investigations and federal criminal immigration violations.

In Phoenix, we experience approximately 350 kidnapping crimes per year. Many of the victims are unlawfully present and are tortured while family members are told by telephone to bring money to those holding them. Family members currently call police and we have saved many victims from further torture and even murder because the family called police. That may change dramatically if the family loses confidence in the police. My department currently works closely with agents from ICE for enforcement of human smuggling and other related crimes.

Immigration law and immigration status is a very complex area, and local law enforcement cannot possibly be experts in all the different ways a person can be lawfully or unlawfully present. Thus, officers will heavily rely on ICE to provide guidance to verify a person's status. ICE cannot handle the amount of calls it currently receives from local law enforcement. With this new law it will be even more difficult to have ICE assist in investigations. The time we have to prepare for such a complicated law is very difficult. There is already confusion in this country about how the law works and the complexities of this law in its application with federal civil immigration laws. It is my fear that the state training will not equip my officers with the necessary knowledge and expertise that would allow them to reasonably understand how to enforce the new statutes added and referred to in SB1070. Further, once an officer develops reasonable suspicion that a person is here as an unlawful alien without using race, color, or national origin will need documentation and clear guidance to carefully walk the line between violating a person's civil rights, subjecting the officer to 18 USC § 1983 actions, and articulating factors supported by case law for reasonable suspicion that a person is unlawfully present.

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## **DRAFT DECLARATION OF PHOENIX POLICE CHIEF JACK HARRIS**

I have been employed with the Phoenix Police Department for 38 years and I have served as the Chief since 2004.

As the Chief, I am responsible for protecting and ensuring the public safety of all people living and traveling in my jurisdiction. Currently, the City of Phoenix is the 6<sup>th</sup> largest City in the United States. Phoenix is the largest City in the State of Arizona and the state is located on the US-Mexican border. Phoenix has a population of approximately 1.6 million people and covers 510 square miles. It is estimated that nearly 500,000 immigrants live in the state of Arizona and nearly 150,000 to 250,000 live in Phoenix alone. The surrounding valley population is close to three million people.

### **Community Policing Ethic**

I believe SB1070 will have a negative effect on our community policing efforts. I am very concerned that victims and witnesses will be afraid to call police for fear of deportation. A woman who is unlawfully present in the United States and a victim of domestic violence may very well suffer injury rather than take a chance on deportation. Recently, we had a witness physically detain a suspected child molester until officers arrived to apprehend the suspect. The witness was an undocumented member of our community. Had this new law been in effect, the witness may have been reluctant to take action and call the police.

Deterring, investigating and solving serious and violent crimes are the department's top priorities, and it would be impossible for us to do our job without the collaboration and support of community members, including those who may be in the country unlawfully.

On many occasions, HIKE investigators, and other investigative bureaus rely heavily on information received from victims and witnesses who are unlawfully present but otherwise compliant with the laws of this state. In fact, the Phoenix Police Department's Drug Enforcement Bureau consisting of undercover narcotics and conspiracy detectives receive valuable information from persons who may be unlawfully present but who provide a wealth of information concerning major players in the illegal drug trade. It takes cooperation and collaboration from all persons living in Arizona and elsewhere to defeat large illegal drug operations. Most investigations involving illegal drug trafficking are very large and complicated investigations.

The new SB1070 may also adversely impact the department's ability to fulfill its investigative priorities because it will require the department to reassign officers from critical areas. If many of the 300 current officers on the street decide to engage in routine civil immigration enforcement, we will not be able to meet our primary mission which is answering calls for service. Unfortunately, I cannot hire more officers to assist with this problem due to budget constraints. Thus, we will

have to move officers from other details in an attempt to accommodate the calls for service. Those details may include motorcycle officers, detectives assigned to work violent crimes, property crime detectives and home invasion/kidnapping enforcement squad to name a few.

Cooperation with those who are not only unlawfully present and a victim/witness of a crime, but those suspects who would not otherwise have been caught had it not been for the information received that lead us to the ultimate goal; to solve violent crimes, combat the drug activity, and protect the safety of all persons in our community.

School resource officers are Phoenix Police Officers assigned to local schools. Pursuant to SB1070 a school resource officer is investigating the student for allegations of criminal activity at school (i.e. assaulting another student, theft), and the officer develops reasonable suspicion the student is an unlawful alien, the officer must make a "reasonable attempt" to contact ICE and verify the student's immigration status, unless the officer applies one of the limited discretionary exceptions. More troubling is when a student is the victim of violent school bullying and is scared to come forward for fear the officer will take immigration enforcement action or inquire further about the student's family immigration status. Once again, my officers are placed in a losing situation.

### **Financial Costs**

SB1070 mandates that each time an officer makes an arrest of any person, regardless of whether there is reasonable suspicion to believe the person is an unlawfully present alien; the officer MUST verify a person's immigration status with the Federal government. Presumptive identification does not alleviate this requirement. Person's committing criminal misdemeanor offenses, to include criminal traffic offenses, who would normally receive a criminal citation, will likely be booked. If a police officer is unable to contact the federal government to verify the arrested person's immigration status, the person must be booked. This mandate applies to juveniles and adults.

Under these circumstances, this immigration law will impact the departments operations and budget in a number of significant ways. There is a strong possibility that we will see a significant increase in prisoner bookings and operating costs to house prisoners. In 2009 we had nearly 51,479 criminal citations in lieu of detentions. This number includes 37,731 criminal traffic citations, and 13,748 non traffic citations (i.e. shopliftings, theft, other misdemeanors). The initial cost to book a person into jail, excluding felonies, is \$192.26. After the initial booking, the fee is \$71.66 for each night the person stays in jail. Had the police officers booked all those persons into jail who received a criminal citations in lieu of detention, the cities lowest estimated expense for these booking would have been approximately ten million dollars. This figure is solely for the initial booking and not the additional nights in jail.

The potential for police officers to be out of service for extended periods of time during a work shift for civil immigration violations and nothing more, forces local police to be civil federal immigration enforcement agents. This would be more manageable if we had triple the officer's we currently have now, but the reality is our officers answered over 660,000 dispatched calls for service in 2009. With this new law, calls for service could be affected if officers divert their attention to civil immigration violations rather than answering calls for service such as domestic violence, burglaries, robberies, criminal immigration enforcement, other officer's back-ups and proactive patrolling in neighborhoods.

This is further aggravated by the fact that the Phoenix Police Department is carrying more than 400 vacant sworn police officer positions. The operations budget for the department is over 500 million dollars each year. Ninety-five percent of our operating budget is for personnel.

#### Lawsuits

If my Department does not enforce the State's immigration laws without exception, we risk the possibility of a lawsuit by private parties. SB1070 provides that any Arizona citizen may bring suit against the city for failing to enforce the immigration law and the city would pay the court costs and attorney fees for the police officer or citizen suing the city for failing to enforce civil immigration violations instead of perhaps taking a homicide or armed robbery radio call for service.

In Arizona, service of process must be done within a 120 days of filing the lawsuit. Under SB1070, fines may be placed against an agency upon the filing of a lawsuit, not when the agency is served with a lawsuit. In this instance, this allows the court to fine the city when the city may not know a lawsuit has even been filed. SB1070 provides that the agency may be fined for up to \$5000.00 each day that the suspect policy (i.e. insubordination) remains in affect.

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