



February 3, 2014

Laura Leighton
3332 E. Pima St.
Tucson, AZ 85716

RE: Subpoena Duces Tecum Served in *Valle del Sol v. Whiting*, Case No. CV-10-01061-PHX-SRB (D. Arizona)

Dear Ms. Leighton:

I am in receipt of your letter dated January 15, 2014 regarding the subpoena Plaintiffs served on you in the above-referenced matter. Although the letter was not directed to me, as counsel of record for Plaintiffs, I wanted to discuss the subpoena with you, and so I left you a voicemail on or about January 23, 2014. Since I have not heard back from you, I write to address a few issues you raised in your letter and to express our willingness to work with you to ensure that complying with the subpoena is no more burdensome on you than necessary.

As a threshold matter, you mentioned in your January 15 letter that you contacted your attorney and that she recommended that you write that letter. If you are represented by an attorney for the purposes of responding to our subpoena, please let me know as soon as possible so I can direct my correspondence to her (or, alternatively, please ask her to contact me).

Turning to the specific concerns you raised in your letter, allow me to provide some background. The case to which the subpoena relates, *Valle del Sol et. al v. Whiting et al.*, concerns S.B. 1070, Arizona's comprehensive immigration law passed in 2010. The plaintiffs in the case (whom I and several other lawyers represent) have several claims still pending in the federal district court, including: that § 2(B) of the law (which is commonly known as the "show me your papers" provision) is in conflict with federal immigration law and violates the Fourth Amendment to the U.S. Constitution; that the provisions aimed at curbing day laborer solicitation violates the First Amendment to the U.S. Constitution; and that S.B. 1070 as a whole was motivated by a desire to discriminate against Mexicans and Latinos and therefore violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. All parties in the case are now engaged in discovery to gather information and facts related to these claims.

As part of discovery into these claims, we have attempted to gather communications to and from Arizona legislators concerning, for example, why the Legislature decided to enact immigration-related legislation; what S.B. 1070 was intended to do; and what various ambiguous provisions of the law actually

mean. Communications of this sort are relevant to a number of claims remaining in the case.

We began by sending requests under Arizona's Public Records Act to a number of current and former legislators, as well as the Legislature itself. Unfortunately, we discovered that most of the legislators failed to preserve such communications, despite a state law requiring them to do so.

Because we are unable to get these communications from the legislators themselves, we have had to turn to the second-best option: gathering those communications from individuals with whom legislators regularly corresponded about immigration-related issues. Our research revealed that current and former Arizona legislators frequently corresponded about issues relevant to our lawsuit with a number of organizations and individuals, including yourself. For that reason, we sent you (and a number of other individuals and organizations) subpoenas requesting copies of your communications with current and former Arizona legislators (and their staff and employees) that are relevant to the claims still pending in our case.

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*I don't know
anything about
prior bills
or not a help
to our case
3/11/2014*

In your letter, you expressed concern about the timeframe covered by the subpoena, which asks for records of communications from January 1, 2005. As you may be aware, in 2005 the Arizona Legislature considered and passed several immigration-related bills. Although they were vetoed by then-Governor Napolitano, much of the language in those bills was later made a part of S.B. 1070. For that reason, we chose 2005 as a starting date for the subpoena, as we believe communications about prior bills will shed light on S.B. 1070.

You also mentioned in your letter that the subpoena asks you to produce the requested records in Atlanta, Georgia. To clarify, Atlanta is just where my office is located; the case to which the records relate is in the district court in Phoenix. Although I was contemplating that you would provide records by mail—and that, therefore, sending them to Atlanta would not pose a burden—you can also send them to the following address in Tucson: ACLU of Arizona, PO Box 1529, Tucson, AZ 85702. We would also accept electronic production, such as via email, cloud service (e.g., Dropbox, Hightail, etc.), or any other form that is convenient for you.

Additionally, your letter expresses concern for the burden it would impose on you to search through your communications to find records responsive to the subpoena. Please know that we are willing to work with you to minimize the burden to you as much as possible. For example, I would be happy to talk to you on the phone about how to conduct the search for records, or even to conduct the search for you (either remotely or in person, as I am frequently in Arizona, including during the week of February 14, 2014). Alternatively, we may be able

to pay for a third party to conduct the search for you.

Finally, I want to assure you that there is absolutely no retaliatory intent behind the subpoena served on you, and that no third party told us to send it. As mentioned, we sent identical subpoenas to a number of individuals and organizations that we believe have evidence relevant to the claims in our case. We are not aware of any "threat" that anyone sent you or any police report about it, and we can assure you that there is no ulterior motive behind the subpoena and that we mean you absolutely no harm.

In sum, and to reiterate, we are very willing to work with you to minimize any burden on you that complying with the subpoena would otherwise cause. Please contact me at your earliest convenience to discuss how to move forward. You can reach me via telephone at (404) 221-5854; via email at jcox@aclu.org; or at 233 Peachtree Street NE, Suite 2150, Atlanta GA 30303.

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Regards,



Justin Cox