UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF ARIZONA, et al., Defendants.	Civil Action No.

DECLARATION OF DANIEL H. RAGSDALE

Pursuant to 28 U.S.C. § 1746, I, Daniel H. Ragsdale, declare and state as follows:

1. I am the Executive Associate Director for Management and Administration at U.S. Immigration and Customs Enforcement (ICE) within the U.S. Department of Homeland Security (DHS). I have served in this position since January 2010. Before that, I served as a Senior Counselor to ICE's Assistant Secretary from November 2008 until October 2009, and, prior to that, as the Chief of the ICE Enforcement Law Division from October 2006 until November 2008. From September 1999 until September 2006, I served in several positions in ICE's Office of Chief Counsel in Phoenix, Arizona. I also was designated as a Special Assistant U.S. Attorney (SAUSA), which allowed me to prosecute immigration crimes.

2. Under the supervision of ICE's Assistant Secretary, I have direct managerial and supervisory authority over the management and administration of ICE. I am closely involved in the management of ICE's human and financial resources, matters of significance to the agency, and the day-to-day operations of the agency. I make this declaration based on personal

knowledge of the subject matter acquired by me in the course of the performance of my official duties.

Overview of ICE Programs

3. ICE consists of two core operational programs, Enforcement and Removal Operations (ERO), which handles civil immigration enforcement, and Homeland Security Investigations (HSI), which handles criminal investigations. I am generally aware of the operational activities of all offices at ICE, and I am specifically aware of their activities as they affect and interface with the programs I directly supervise.

4. HSI houses the special agents who investigate criminal violations of the federal customs and immigration laws. HSI also primarily handles responses to calls from local and state law enforcement officers requesting assistance, including calls requesting that ICE transfer aliens into detention. However, because of the policy focus on devoting investigative resources towards the apprehension of criminal aliens, the responsibility of responding to state and local law enforcement is shared with, and is increasingly transitioning to, ERO to allow HSI special agents to focus more heavily on criminal investigations. On an average day in FY 2009, HSI special agents nationwide arrested 62 people for administrative immigration violations, 22 people for criminal immigration offenses, and 42 people for criminal customs offenses.

5. ERO is responsible for detaining and removing aliens who lack lawful authority to remain in the United States. On an average day, ERO officers nationwide arrest approximately 816 aliens for administrative immigration violations and remove approximately 912 aliens, including 456 criminal aliens, from the United States to countries around the globe. As of June 2, 2010, ICE had approximately 32,313 aliens in custody pending their removal proceedings or removal from the United States.

6. In addition to HSI and ERO, ICE has the Office of State and Local Coordination (OSLC) which focuses on outreach to state, local, and tribal law enforcement agencies to build positive relationships with ICE. In addition, OSLC administers the 287(g) Program, through which ICE enters into agreements with state, local, and tribal law enforcement agencies for those agencies to perform certain federal immigration enforcement functions under the supervision of federal officials. Each agreement is formalized through a Memorandum of Agreement (MOA) and authorized pursuant to Section 287(g) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1357(g).

7. Consistent with its policy of focusing enforcement efforts on criminal aliens, ICE created the Secure Communities program to improve, modernize, and prioritize ICE's efforts to identify and remove criminal aliens from the United States. Through the program, ICE has leveraged biometric information-sharing to ensure accurate and timely identification of criminal aliens in law enforcement custody. The program office arranges for willing jurisdictions to access the biometric technology so they can simultaneously check a person's criminal and immigration history when the person is booked on criminal charges. When an individual in custody is identified as being an alien, ICE must then determine how to proceed with respect to that alien, including whether to lodge a detainer or otherwise pursue the alien's detention and removal from the United States upon the alien's release from criminal custody. ICE does not lodge detainers or otherwise pursue removal for every alien in custody, and has the discretion to decide whether lodging a detainer and / or pursuing removal reflects ICE's policy priorities.

ICE Initiatives and Activities in Arizona and at the Southwest Border

8. ICE has devoted substantial resources to increasing border security and combating smuggling of contraband and people. Indeed, 25 percent of all ICE special agents are stationed in the five Southwest border offices. Of those, 353 special agents are stationed in Arizona to investigate crimes, primarily cross-border crimes. ERO currently has 361 law enforcement officers in Arizona. Further, the ICE Office of the Principal Legal Advisor (OPLA) has 147 attorneys stationed in the areas of responsibility on the Southwest border, including 37 attorneys in Arizona alone to prosecute removal cases and advise ICE officers and special agents, as well as one attorney detailed to the U.S. Attorney's Office for the District of Arizona to support the prosecution of criminals identified and investigated by ICE agents. Two additional attorneys have been allocated and are expected to enter on duty as SAUSAs in the very near future.

9. ICE's attention to the Southwest Border has included the March 2009 launch of the Southwest Border Initiative to disrupt and dismantle drug trafficking organizations operating along the Southwest border. This initiative was designed to support three goals: guard against the spillover of violent crime into the United States; support Mexico's campaign to crack down on drug cartels in Mexico; and reduce movement of contraband across the border. This initiative called for additional personnel, increased intelligence capability, and better coordination with state, local, tribal, and Mexican law enforcement authorities. This plan also bolstered the law enforcement resources and information-sharing capabilities between and among DHS and the Departments of Justice and Defense. ICE's efforts on the Southwest border between March 2009 and March 2010 have resulted in increased seizures of weapons, money, and narcotics along the Southwest border as compared to the same time period between 2008 and 2009. ICE also

increased administrative arrests of criminal aliens for immigration violations by 11 percent along the Southwest border during this period.

10. ICE has focused even more closely on border security in Arizona. ICE is participating in a multi-agency operation known as the Alliance to Combat Transnational Threats (ACTT) (formerly the Arizona Operational Plan). Other federal agencies, including the Department of Defense, as well as state and local law enforcement agencies also support the ACTT. To a much smaller degree, ACTT receives support from the Government of Mexico through the Merida initiative, a United States funded program designed to support and assist Mexico in its efforts to disrupt and dismantle transnational criminal organizations, build capacity, strengthen its judicial and law enforcement institutions, and build strong and resilient communities.

11. The ACTT began in September 2009 to address concerns about crime along the border between the United States and Mexico in Arizona. The primary focus of ACTT is conducting intelligence-driven border enforcement operations to disrupt and dismantle violent cross-border criminal organizations that have a negative impact on the lives of the people on both sides of the border. The ACTT in particular seeks to reduce serious felonies that negatively affect public safety in Arizona. These include the smuggling of aliens, bulk cash, and drugs; document fraud; the exportation of weapons; street violence; homicide; hostage-taking; money laundering; and human trafficking and prostitution.

12. In addition to the ACTT, the Federal Government is making other significant efforts to secure the border. On May 25, 2010, the President announced that he will be requesting $500 million in supplemental funds for enhanced border protection and law enforcement activities, and that he would be ordering a strategic and requirements-based

deployment of 1,200 National Guard troops to the border. This influx of resources will be utilized to enhance technology at the border; share information and support with state, local, and tribal law enforcement; provide intelligence and intelligence analysis, surveillance, and reconnaissance support; and additional training capacity.

13. ICE also is paying increasing attention to alien smuggling, along with other contraband smuggling, with the goal of dismantling large organizations. Smuggling organizations are an enforcement priority because they tend to create a high risk of danger for the persons being smuggled, and tend to be affiliated with the movement of drugs and weapons. ICE has had success of late in large operations to prosecute and deter alien smugglers and those who transport smuggled aliens. During recent operations in Arizona and Texas, ICE agents made a combined total of 85 arrests, searched 18 companies, and seized more than 100 vehicles and more than 30 firearms.

14. This summer, ICE launched a surge in its efforts near the Mexican border. This surge was a component of a strategy to identify, disrupt, and dismantle cartel operations. The focus on cartel operations is a policy priority because such cartels are responsible for high degrees of violence in Mexico and the United States—the cartels destabilize Mexico and threaten regional security. For 120 days, ICE will add 186 agents and officers to its five Southwest border offices to attack cartel capabilities to conduct operations; disrupt and dismantle drug trafficking organizations; diminish the illicit flow of money, weapons, narcotics, and people into and out of the U.S.; and enhance border security. The initiative, known as Operation Southern Resolve, is closely coordinated with the Government of Mexico, as well as Mexican and U.S. federal, state and local law enforcement to ensure maximum impact. The initiative also includes

targeting transnational gang activity, targeting electronic and traditional methods of moving illicit proceeds, and identifying, arresting, and removing criminal aliens present in the region.

15. Although ICE continues to devote significant resources to immigration enforcement in Arizona and elsewhere along the Southwest border, ICE recognizes that a full solution to the immigration problem will only be achieved through comprehensive immigration reform (CIR). Thus, ICE, in coordination with DHS and the Department's other operating components, has committed personnel and energy to advancing CIR. For example, ICE's Assistant Secretary and other senior leaders have advocated for comprehensive immigration reform during meetings with, and in written letters and statements to, advocacy groups, non-governmental organizations, members of the media, and members of Congress. Other ICE personnel have participated in working groups to develop immigration reform proposals to include in CIR and to prepare budget assessments and projections in support of those proposals.

ICE Enforcement Priorities

16. DHS is the federal department with primary responsibility for the enforcement of federal immigration law. Within DHS, ICE plays a key role in this enforcement by, among other functions, serving as the agency responsible for the investigation of immigration-related crimes, the apprehension and removal of individuals from the interior United States, and the representation of the United States in removal proceedings before the Executive Office for Immigration Review within the Department of Justice. As the department charged with enforcement of federal immigration laws, DHS exercises a large degree of discretion in determining how best to carry out its enforcement responsibilities. This discretion also allows ICE to forego criminal prosecutions or removal proceedings in individual cases, where such forbearance will further federal immigration priorities.

17. ICE's priorities at a national level have been refined to reflect Secretary Napolitano's commitment to the "smart and tough enforcement of immigration laws." Currently, ICE's highest enforcement priorities—meaning, the most important targets for apprehension and removal efforts—are aliens who pose a danger to national security or a risk to public safety, including: aliens engaged in or suspected of terrorism or espionage; aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders; certain gang members; and aliens subject to outstanding criminal warrants.

18. Other high priorities include aliens who are recent illegal entrants and "fugitive aliens" (*i.e.*, aliens who have failed to comply with final orders of removal). The attention to fugitive aliens, especially those with criminal records, recognizes that the government expends significant resources providing procedural due process in immigration proceedings, and that the efficacy of removal proceedings is undermined if final orders of removal are not enforced. Finally, the attention to aliens who are recent illegal entrants is intended to help maintain control at the border. Aliens who have been present in the U.S. without authorization for a prolonged period of time and who have not engaged in criminal conduct present a significantly lower enforcement priority. And aliens who meet certain humanitarian criteria may not be an "enforcement" priority at all—in such humanitarian cases, federal immigration priorities may recommend forbearance in pursuing removal.

19. ICE bases its current priorities on a number of different factors. One factor is the differential between the number of people present in the United States illegally—approximately 10.8 million aliens, including 460,000 in Arizona—and the number of people ICE is resourced to remove each year—approximately 400,000. This differential necessitates prioritization to ensure that ICE expends resources most efficiently to advance the goals of protecting national security,

protecting public safety, and securing the border. Another factor is ICE's consideration of humanitarian interests in enforcing federal immigration laws, and its desire to ensure aliens in the system are treated fairly and with appropriate respect given their individual circumstances. Humanitarian interests may, in appropriate cases, support a conclusion that an alien should not be removed or detained at all. And yet another factor is ICE's recognition that immigration detainees are held for a civil purpose—namely, removal—and not for punishment. Put another way, although entering the United States illegally or failing to cooperate with ICE during the removal process is a crime, being in the United States without authorization is not itself a crime. ICE prioritizes enforcement to distinguish between aliens who commit civil immigration violations from those commit or who have been convicted of a crime.

20. Consequently, ICE is revising policies and practices regarding civil immigration enforcement and the immigration detention system to ensure the use of its enforcement personnel, detention space, and removal resources are focused on advancing these priorities. For example, ICE has two programs within ERO designed to arrest convicted criminal aliens and alien fugitives. These are the Criminal Alien Program (CAP) and the National Fugitive Operations Program (fugitive operations). ICE officers assigned to CAP identify criminal aliens who are incarcerated within federal, state, and local prisons and jails, as well as aliens who have been charged or arrested and remain in the custody of the law enforcement agency. ICE officers assigned to fugitive operations seek to locate and arrest aliens with final orders of removal. These officers also seek to locate, arrest, and remove convicted criminal aliens living at large in communities and aliens who previously have been deported but have returned unlawfully to the United States. They also present illegal reentry cases for prosecution in federal courts to deter such recidivist conduct.

21. Likewise, in keeping with the Secretary's policy determination that immigration enforcement should be "smart and tough" by focusing on specific priorities, ICE issued a new strategy regarding worksite enforcement. This strategy shift prioritized the criminal investigation and prosecution of employers and de-emphasized the apprehension and removal of illegal aliens working in the United States without authorization. Although Federal law does not make it a distinct civil or criminal offense for unauthorized aliens merely to seek employment in the U.S., such aliens may be removed for being in the U.S. illegally. ICE's new strategy acknowledges that many enter the United States illegally because of the opportunity to work. Thus, the strategy seeks to address the root causes of illegal immigration and to do the following: (i) penalize employers who knowingly hire illegal workers; (ii) deter employers who are tempted to hire illegal workers; and (iii) encourage all employers to take advantage of well-crafted compliance tools. At the same time, the policy recognizes that humanitarian concerns counsel against focusing enforcement efforts on unauthorized workers. The strategy permits agents to exercise discretion and work with the prosecuting attorney to assess how to best proceed with respect to illegal alien witnesses. One of the problems with Arizona Senate Bill 1070 (SB 1070) is that it will divert focus from this "smart and tough" focus on employers to responses to requests from local law enforcement to apprehend aliens not within ICE's priorities.

22. In addition to refocusing ICE's civil enforcement priorities, ICE has also refocused the 287(g) program so that state and local jurisdictions with which ICE has entered into agreements to exercise federal immigration authority do so in a manner consistent with ICE's priorities. The mechanism for this refocusing has been a new MOA with revised terms and conditions. Jurisdictions that already had agreements were required to enter into this revised MOA in October of 2009. Also, ICE opted not to renew 287(g) agreements with task force

officers with the Maricopa County Sheriff's Office and officers stationed within the Los Angeles County Sheriff's Office's jail. These decisions were based on inconsistency between the expectations of the local jurisdiction and the priorities of ICE.

23. ICE communicates its enforcement priorities to state and local law enforcement officials in a number of ways. With respect to the 287(g) program, the standard MOA describes the focus on criminals, with the highest priority on the most serious offenders. In addition, when deploying interoperability technology through the Secure Communities program, local jurisdictions are advised of ICE's priorities in the MOA and in outreach materials.

24. In addition to the dissemination of national civil enforcement priorities to the field, the refocusing of existing ICE programs, and other efforts to prioritize immigration enforcement to most efficiently protect the border and public safety, the Assistant Secretary and his senior staff routinely inform field locations that they have the authority and should exercise discretion in individual cases. This includes when deciding whether to issue charging documents, institute removal proceedings, release or detain aliens, place aliens on alternatives to detention (*e.g.,* electronic monitoring), concede an alien's eligibility for relief from removal, move to terminate cases where the alien may have some other avenue for relief, stay deportations, or defer an alien's departure.

25. The Assistant Secretary has communicated to ICE personnel that discretion is particularly important when dealing with long-time lawful permanent residents, juveniles, the immediate family members of U.S. citizens, veterans, members of the armed forces and their families, and others with illnesses or special circumstances.

26. ICE exercises prosecutorial discretion throughout all the stages of the removal process—investigations, initiating and pursuing proceedings, which charges to lodge, seeking

termination of proceedings, administrative closure of cases, release from detention, not taking an appeal, and declining to execute a removal order. The decision on whether and how to exercise prosecutorial discretion in a given case is largely informed by ICE's enforcement priorities. During my tenure at ICE as an attorney litigating administrative immigration cases, as well as my role as a SAUSA prosecuting criminal offenses and in my legal and management roles at ICE headquarters, I am aware of many cases where ICE has exercised prosecutorial discretion to benefit an alien who was not within the stated priorities of the agency or because of humanitarian factors. For example, ICE has released an individual with medical issues from detention, terminated removal proceedings to allow an alien to regularize her immigration status, declined to assert the one year filing deadline in order to allow an individual to apply for asylum before the immigration judge, and terminated proceedings for a long-term legal permanent resident who served in the military, among numerous other examples.

27. ICE's exercise of discretion in enforcement decisions has been the subject of several internal agency communications. For example, Attachment A is a true and accurate copy of a November 7, 2007 memorandum from ICE Assistant Secretary Julie Myers to ICE Field Office Directors and ICE Special Agents in Charge. Pursuant to this memorandum, ICE agents and officers should exercise prosecutorial discretion when making administrative arrests and custody determinations for aliens who are nursing mothers absent any statutory detention requirement or concerns such as national security or threats to public safety. Attachment B is a true and accurate copy, omitting attachments thereto, of an October 24, 2005 memorandum from ICE Principal Legal Advisor William J. Howard to OPLA Chief Counsel as to the manner in which prosecutorial discretion is exercised in removal proceedings. Attachment C is a true and accurate copy of a November 17, 2000 memorandum from Immigration and Naturalization

Service (INS) Commissioner Doris Meissner to various INS personnel concerning the exercise of prosecutorial discretion. The Assistant Secretary also outlined in a recent memorandum to all ICE employees the agency's civil immigration enforcement priorities relating to the apprehension, detention, and removal of aliens (available at http://www.ice.gov/doclib/civil_enforcement_priorities.pdf).

28. In sum, ICE does not seek to arrest, detain, remove, or refer for prosecution, all aliens who may be present in the United States illegally. ICE focuses its enforcement efforts in a manner that is intended to most effectively further national security, public safety, and security of the border, and has affirmative reasons not to seek removal or prosecution of certain aliens.

International Cooperation with ICE Enforcement

29. ICE cooperates with foreign governments to advance our criminal investigations of transnational criminal organizations (such as drug cartels, major gangs, and organized alien smugglers) and to repatriate their citizens and nationals who are facing deportation. With respect to our criminal investigations, ICE's Office of International Affairs has 63 offices in 44 countries staffed with special agents who, among other things, investigate crime. In Mexico alone, ICE has five offices consisting of a total of 38 personnel. Investigators in ICE attaché offices investigate cross-border crime, including crime that affects Arizona and the rest of the Southwest. In addition, they work with foreign governments to secure travel documents and clearance for ICE to remove aliens from the United States. ICE negotiates with foreign governments to expedite the removal process, including negotiating electronic travel document arrangements. International cooperation for ICE is critical.

30. International cooperation advances ICE's goal of making the borders more secure. To address cross-border crime at the Southwest border, ICE is cooperating very closely with the

Government of Mexico in particular. Two prime examples of ICE and Mexican cooperation include Operation Armas Cruzadas, designed to improve information sharing and to identify, disrupt, and dismantle criminal networks engaged in weapons smuggling, and Operation Firewall, as part of which Mexican customs and ICE-trained Mexican Money Laundering-Vetted Units target the illicit flow of money out of Mexico on commercial flights and in container shipments.

31. Also to improve border security and combat cross-border crime, ICE is engaged in other initiatives with the Government of Mexico. For instance, ICE is training Mexican customs investigators. ICE also provides Mexican law enforcement officers and prosecutors training in human trafficking, child sexual exploitation, gang investigations, specialized investigative techniques, and financial crimes. ICE has recruited Mexican federal police officers to participate in five of the ICE-led Border Enforcement Security Task Forces (BESTs). The BEST platform brings together multiple law enforcement agencies at every level to combat cross-border crime, including crime touching Arizona. Sharing information and agents is promoting more efficient and effective investigations. ICE has benefited from the Government of Mexico's increased cooperation, including in recent alien smuggling investigations that resulted in arrests in Mexico and Arizona.

32. In addition to the importance of cooperation from foreign governments in criminal investigations, ICE also benefits from good relationships with foreign governments in effecting removals of foreign nationals. Negotiating removals, including country clearance, to approvals and securing travel documents, is a federal matter and often one that requires the cooperation of the country that is accepting the removed alien. ICE removes more nationals of Mexico than of any other country. In FY 2009, ICE removed or returned approximately 275,000

Mexican nationals, which constitutes more than 70 percent of all removals and returns. Not all countries are equally willing to repatriate their nationals. Delays in repatriating nationals of foreign countries causes ICE financial and operational challenges, particularly when the aliens are detained pending removal. Federal law limits how long ICE can detain an alien once the alien is subject to a final order of removal. Therefore, difficulties in persuading a foreign country to accept a removed alien runs the risk of extending the length of time that a potentially dangerous or criminal alien remains in the United States. Thus, the efficient operation of the immigration system relies on cooperation from foreign governments.

Reliance on Illegal Aliens in Enforcement and Prosecution

33. ICE agents routinely rely on foreign nationals, including aliens unlawfully in the United States, to build criminal cases, including cases against other aliens in the United States illegally. Aliens who are unlawfully in the United States, like any other persons, may have important information about criminals they encounter—from narcotics smugglers to alien smugglers and beyond—and routinely support ICE's enforcement activities by serving as confidential informants or witnesses. When ICE's witnesses or informants are illegal aliens who are subject to removal, ICE can exercise discretion and ensure the alien is able to remain in the country to assist in an investigation, prosecution, or both. The blanket removal or incarceration of all aliens unlawfully present in Arizona or in certain other individual states would interfere with ICE's ability to pursue the prosecution or removal of aliens who pose particularly significant threats to public safety or national security. Likewise, ICE can provide temporary and long-term benefits to ensure victims of illegal activity are able to remain in the United States.

34. Tools relied upon by ICE to ensure the cooperation of informants and witnesses include deferred action, stays of removal, U visas for crime victims, T visas for victims of human

trafficking, and S visas for significant cooperators against other criminals and to support investigations. These tools allow aliens who otherwise would face removal to remain in the United States either temporarily or permanently, and to work in the United States in order to support themselves while here. Many of these tools are employed in situations where federal immigration policy suggests an affirmative benefit that can only be obtained by not pursuing an alien's removal or prosecution. Notably, utilization of these tools is a dynamic process between ICE and the alien, which may play out over time. An alien who ultimately may receive a particular benefit—for example, an S visa—may not immediately receive that visa upon initially coming forward to ICE or other authorities, and thus at a given time may not have documentation or evidence of the fact that ICE is permitting that alien to remain in the United States.

35. Although ICE may rely on an illegal alien as an informant in any type of immigration or custom violation it investigates, this is particularly likely in alien smuggling and illegal employment cases. Aliens who lack lawful status in the United States are routinely witnesses in criminal cases against alien smugglers. For example, in an alien smuggling case, the smuggled aliens are in a position to provide important information about their journey to the United States, including how they entered, who provided them assistance, and who they may have paid. If these aliens were not available to ICE, special agents would not be positioned to build criminal cases against the smuggler. ICE may use a case against the smuggler to then build a larger case against others in the smuggling organization that assisted the aliens across the border.

36. ICE also relies heavily on alien informants and witnesses in illegal employment cases. In worksite cases, the unauthorized alien workers likewise have important insight and

information about the persons involved in the hiring and employment process, including who may be amenable to a criminal charge.

37. ICE also relies heavily on alien informants and cooperators in investigations of transnational gangs, including violent street gangs with membership and leadership in the United States and abroad. Informants and cooperating witnesses help ICE identify gang members in the United States and provide information to support investigations into crimes the gang may be committing. In some cases, this includes violent crime in aid of racketeering, narcotics trafficking, or other crimes.

38. During my years at ICE, I have heard many state and local law enforcement and immigration advocacy groups suggest that victims and witnesses of crime may hesitate to come forward to speak to law enforcement officials if they lack lawful status. The concern cited is that, rather than finding redress for crime, victims and witnesses will face detention and removal from the United States. To ensure that illegal aliens who are the victims of crimes or have witnessed crimes come forward to law enforcement, ICE has a robust outreach program, particularly in the context of human trafficking, to assure victims and witnesses that they can safely come forward against traffickers without fearing immediate immigration custody, extended detention, or removal. If this concern manifested itself—and if crime victims became reluctant to come forward—ICE would have a more difficult time apprehending, prosecuting, and removing particularly dangerous aliens.

Potential Adverse Impact of SB 1070 on ICE's Priorities and Enforcement Activities

39. I am aware that the State of Arizona has enacted new immigration legislation, known as SB 1070. I have read SB 1070, and I am generally familiar with the purpose and

provisions of that legislation. SB 1070 will adversely impact ICE's operational activities with respect to federal immigration enforcement.

40. I understand that section two of SB 1070 generally requires Arizona law enforcement personnel to inquire as to the immigration status of any individual encountered during "any lawful stop, detention or arrest" where there is a reasonable suspicion to believe that the individual is unlawfully present in the United States. I also understand that section two contemplates referral to DHS of those aliens confirmed to be in the United States illegally.

41. As a federal agency with national responsibilities, the burdens placed by SB 1070 on the Federal Government will impair ICE's ability to pursue its enforcement priorities. For example, referrals by Arizona under this section likely would be handled by either the Special Agent in Charge (SAC) Phoenix (the local HSI office), or the Field Office Director (FOD) Phoenix (the local ERO office). Both offices currently have broad portfolios of responsibility. Notably, SAC Phoenix is responsible for investigating crimes at eight ports of entry and two international airports. FOD Phoenix is responsible for two significant detention centers located in Florence and Eloy, Arizona, and a large number of immigration detainees housed at a local county jail in Pinal County, Arizona. FOD Phoenix also has a fugitive operations team, a robust criminal alien program, and it manages the 287(g) programs in the counties of Maricopa, Yavapai, and Pinal, as well as at the Arizona Department of Corrections.

42. Neither the SAC nor the FOD offices in Phoenix are staffed to assume additional duties. Inquiries from state and local law enforcement officers about a subject's immigration status could be routed to the Law Enforcement Support Center in Vermont or to agents and officers stationed at SAC or FOD Phoenix. ICE resources are currently engaged in investigating criminal violations and managing the enforcement priorities and existing enforcement efforts,

and neither the SAC nor FOD Phoenix are scheduled for a significant increase in resources to accommodate additional calls from state and local law enforcement. Similarly, the FOD and SAC offices in Arizona are not equipped to respond to any appreciable increase in requests from Arizona to take custody of aliens apprehended by the state.

43. Moreover, ICE's detention capacity is limited. In FY 2009, FOD Phoenix was provided with funds to detain no more than approximately 2,900 detention beds on an average day. FOD Phoenix uses that detention budget and available bed space not only for aliens arrested in Arizona, but also aliens transferred from Los Angeles, San Francisco, and San Diego. Notably, the President's budget for FY 2011 does not request an increase in money to purchase detention space. And with increasing proportions of criminal aliens in ICE custody and static bed space, the detention resources will be directed to those aliens who present a danger to the community and the greatest risk of flight.

44. Thus, to respond to the number of referrals likely to be generated by enforcement of SB 1070 would require ICE to divert existing resources from other duties, resulting in fewer resources being available to dedicate to cases and aliens within ICE's priorities. This outcome is especially problematic because ICE's current priorities are focused on national security, public safety, and security of the border. Diverting resources to cover the influx of referrals from Arizona (and other states, to the extent similar laws are adopted) could, therefore, mean decreasing ICE's ability to focus on priorities such as protecting national security or public safety in order to pursue aliens who are in the United States illegally but pose no immediate or known danger or threat to the safety and security of the public.

45. An alternative to responding to the referrals from Arizona, and thus diverting resources, is to largely disregard referrals from Arizona. But this too would have adverse

consequences in that it could jeopardize ICE's relationships with state and local law enforcement agencies (LEAs). For example, LEAs often request ICE assistance when individuals are encountered who are believed to be in the United States illegally. Since ICE is not always available to immediately respond to LEA calls, potentially removable aliens are often released back into the community. Historically, this caused some LEAs to complain that ICE was unresponsive. In September 2006, to address this enforcement gap, the FOD office in Phoenix created the Law Enforcement Agency Response (LEAR) Unit, a unit of officers specifically dedicated to provide 24-hour response, 365 days per year. ICE's efforts with this project to ensure better response to LEAs would be undermined if ICE is forced to largely disregard referrals from Arizona, and consequently may result in LEAs being less willing to cooperate with ICE on various enforcement matters, including those high-priority targets on which ICE enforcement is currently focused.

46. In addition to section two of SB 1070, I understand that the stated purpose of the act is to "make attrition through enforcement the public policy of all state and local government agencies in Arizona," and that the "provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States." To this end, I understand that section three of SB 1070 authorizes Arizona to impose criminal penalties for failing to carry a registration document, that sections four and five, along with existing provisions of Arizona law, prohibit certain alien smuggling activity, as well as the transporting, concealing, and harboring of illegal aliens, and that section six authorizes the warrantless arrest of certain aliens believed to be removable from the United States.

47. The Arizona statute does not appear to make any distinctions based on the circumstances of the individual aliens or to take account of the Executive Branch's determination with respect to individual aliens, such as to not pursue removal proceedings or grant some form of relief from removal. Thus, an alien for whom ICE deliberately decided for humanitarian reasons not to pursue removal proceedings or not to refer for criminal prosecution, despite the fact that the alien may be in the United States illegally, may still be prosecuted under the provisions of the Arizona law. DHS maintains the primary interest in the humane treatment of aliens and the fair administration of federal immigration laws. The absence of a federal prosecution does not necessarily indicate a lack of federal resources; rather, the Federal Government often has affirmative reasons for not prosecuting an alien. For example, ICE may exercise its discretionary authority to grant deferred action to an alien in order to care for a sick child. ICE's humanitarian interests would be undermined if that alien was then detained or arrested by Arizona authorities for being illegally present in the United States.

48. Similarly, certain aliens who meet statutory requirements may seek to apply for asylum in the United States, pursuant to 8 U.S.C. § 1158, based on their having been persecuted in the past or because of a threat of future persecution. The asylum statute recognizes a policy in favor of hospitality to persecuted aliens. In many cases, these aliens are not detained while they pursue protection, and they do not have the requisite immigration documents that would provide them lawful status within the United States during that period. Under SB 1070, these aliens could be subjected to detention or arrest based on the state's priorities, despite the fact that affirmative federal policy supports not detaining or prosecuting the alien.

49. Additionally, some aliens who do not qualify for asylum may qualify instead for withholding of removal under 8 U.S.C. § 1231(b)(3). Similar to asylum, withholding of removal

provides protection in the United States for aliens who seek to escape persecution. Arizona's detention or arrest of these aliens would not be consistent with the Government's desire to ensure their humanitarian treatment.

50. Further, there are many aliens in the United States who seek protection from removal under the federal regulatory provisions at 8 C.F.R. § 208.18 implementing the Government's non-*refoulement* obligations under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In many cases, these aliens are not detained while they pursue CAT protection. Under SB 1070, these aliens could be subjected to detention or arrest based on the state's priorities. The detention or arrest of such aliens would be inconsistent with the Government's interest in ensuring their humane treatment, especially where such aliens may have been subject to torture before they came to the U.S.

51. Application of SB 1070 also could undermine ICE's efforts to secure the cooperation of confidential informants, witnesses, and victims who are present in the United States without legal status. The stated purpose of SB 1070, coupled with the extensive publicity surrounding this law, may lead illegal aliens to believe, rightly or wrongly, that they will be subject to immigration detention and removal if they cooperate with authorities, not to mention the possibility that they may expose themselves to sanctions under Arizona law if they choose to cooperate with authorities. Consequently, SB 1070 very likely will chill the willingness of certain aliens to cooperate with ICE. Although ICE has tools to address those concerns, SB 1070 would undercut those efforts, and thus risks ICE's investigation and prosecution of criminal activity, such as that related to illegal employment, the smuggling of contraband or people, or human trafficking.

52. Moreover, just as the ICE offices in Arizona are not staffed to respond to additional inquiries about the immigration status of individuals encountered by Arizona, or to and arrest or detain appreciably more aliens not within ICE's current priorities, the offices are not staffed to provide personnel to testify in Arizona state criminal proceedings related to a defendant's immigration status, such as a "Simpson Hearing" where there is indication that a person may be in the United States illegally and the prosecutor invokes Arizona Revised Statute § 13-3961(A)(a)(ii) (relating to determination of immigration status for purposes of bail). In some federal criminal immigration cases, Assistant United States Attorneys call ICE special agents to testify to provide such information as a person's immigration history or status. If ICE agents are asked to testify in a significant number of state criminal proceedings, as contemplated under SB 1070, they will be forced either to divert resources from federal priorities, or to refuse to testify in those proceedings, thus damaging their relationships with the state and local officials whose cooperation is often of critical importance in carrying out federal enforcement priorities.

53. Enforcement of SB 1070 also threatens ICE's cooperation from foreign governments. For example, the Government of Mexico, a partner to ICE in many law enforcement efforts and in repatriation of Mexican nationals, has expressed strong concern about Arizona's law. On May 19, 2010, President Barack Obama and Mexican President Felipe Calderón held a joint news conference, during which President Calderón criticized the Arizona immigration law, saying it criminalized immigrants. President Calderón reiterated these concerns to a joint session of the United States Congress on May 20, 2010. Any decrease in participation and support from the Government of Mexico will hinder ICE efforts to prioritize and combat cross-border crime.

54. The Government of Mexico is not the only foreign nation that has expressed concern about SB 1070. Should there be any decreased cooperation from foreign governments in response to Arizona's enforcement of SB 1070, the predictable result of such decreased cooperation would be an adverse impact on the effectiveness and efficiency of ICE's enforcement activities, which I have detailed above.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed the 1st day of July 2010 in Washington, D.C.

Daniel H. Ragsdale
Executive Associate Director
Management and Administration
U.S. Immigration and Customs Enforcement

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF ARIZONA, et al., Defendants.	Civil Action No.

DECLARATION OF DAVID V. AGUILAR

Pursuant to 28 U.S.C. § 1746, I, David V. Aguilar, declare and state as follows:

1. I am employed by U.S. Customs and Border Protection (CBP), within the U.S. Department of Homeland Security, in the position of Deputy Commissioner. I have held this position since April 11, 2010. Prior to holding the position of Deputy Commissioner, I served as Acting Deputy Commissioner beginning on January 2, 2010, previously as the Chief of the Border Patrol for just short of six years and, prior to that, as the Chief Patrol Agent of the Tucson Sector. I began my service with the U.S. Border Patrol in 1978. I make this declaration based on personal knowledge of the subject matter acquired by me in the course of the performance of my official duties. I am aware that the State of Arizona has enacted new immigration legislation, known as Senate Bill 1070 (SB 1070).

2. In deploying resources between the ports of entry, CBP seeks to incorporate the appropriate mix of personnel, infrastructure, and technology that will allow us to best advance our objectives: specifically, preventing the commission of crimes, apprehending those who have endangered or will endanger public safety, and securing the border. As explained below, our assets at

and between the ports of entry in Arizona are deployed to establish and maintain operational control of the border in the state of Arizona.

3. CBP currently maintains six land ports of entry within the State of Arizona, found in the following locations: Douglas, Lukeville, Naco, Nogales, San Luis, and Sasabe. These ports of entry accommodate private and commercial vehicles, as well as pedestrians seeking entry or admission into the United States. The Nogales Port of Entry also accommodates rail traffic. CBP's port operations include seven air ports of entry in Douglas, Nogales, Phoenix, Scottsdale Air Force Base, Williams Gateway Air Force Base (Mesa), San Luis, and Tucson. CBP's Office of Field Operations (OFO) currently has 780 CBP Officers stationed in Arizona, both at these ports of entry and in the Arizona operational offices, as well as ninety-four agriculture specialists and fourteen import specialists.

4. As of June 2, 2010, CBP has processed over 4,562,900 pedestrians, 3,918,000 personal vehicles, 246,600 commercial vehicles (for purposes of this declaration this number does not include rail), 10,745 private aircraft passengers and crew, and 456,459 commercial aircraft passengers and crew in Arizona this fiscal year alone.[1] This traffic is processed through seventy-five lanes of traffic as well as those entering at the airports — thirty-one for personal vehicles inbound into the United States, ten for personal vehicles outbound from the United States, seventeen for pedestrians inbound to the United States, thirteen for commercial vehicles inbound to the United States, and four for commercial vehicles outbound from the United States. The volume for fiscal year 2010 is in keeping with the high volume that CBP has consistently processed in Arizona since 2005:

[1] These numbers and those in the subsequent bullets represent the number of crossings and may not be unique persons or vehicles, as individuals or vehicles may make repeated crossings.

a. In fiscal year 2009, CBP processed over 8,288,000 pedestrians, 7,416,700 personal vehicles, 341,100 commercial vehicles, 17,474 private aircraft passengers and crew, and 670,821 commercial aircraft passengers and crew.

b. In fiscal year 2008, CBP processed over 11,393,800 pedestrians, 7,938,000 personal vehicles, 381,100 commercial vehicles, 22,662 private aircraft passengers and crew, and 711,553 commercial aircraft passengers and crew.

c. In fiscal year 2007, CBP processed over 11,856,100 pedestrians, 8,282,500 personal vehicles, 368,100 commercial vehicles, 23,091 private aircraft passengers and crew, and 672,593 commercial aircraft passengers and crew.

d. In fiscal year 2006, CBP processed over 10,890,500 pedestrians, 9,117,300 personal vehicles, 367,300 commercial vehicles, 21,711 private aircraft passengers and crew, and 685,043 commercial aircraft passengers and crew.

e. In fiscal year 2005, CBP processed over 9,867,800 pedestrians, 10,025,600 personal vehicles, 341,300 commercial vehicles, 20,722 private aircraft passengers and crew, and 698,277 commercial aircraft passengers and crew.

5. CBP processed 357 trains in Arizona in fiscal year 2009. Moreover, at the rail port in Nogales, CBP implemented 100 percent screening of all outbound rail traffic as of March 16, 2009.

6. As of May 31, 2010, during CBP's processing of individuals at the ports of entry in Arizona, 5,975 were determined to be inadmissible into the United States under the Immigration and Nationality Act during fiscal year 2010, with another 5,358 withdrawing their applications for admission. Since the beginning of fiscal year 2005, 48,549 individuals have been found inadmissible at the Arizona Ports of Entry, with another 42,069 withdrawing their

applications for admission. In addition, from the beginning of fiscal year 2005 through the present the Office of Field Operations has arrested 9,428 individuals in Arizona and referred them for criminal prosecution for a variety of criminal violations.

7. In 2009 CBP deployed additional canine teams to the Southwest Border to augment teams previously in place. Of these, forty-nine teams are permanently assigned to ports of entry within Arizona.

8. In 2009, CBP deployed additional Z-Backscatter Van Units to the Southwest border to augment those previously in place, which help CBP identify anomalies in passenger vehicles—that is, a deviation from the normal reading which may be indicative of the presence of unlawful or undeclared merchandise, as well as potentially smuggled individuals. CBP deployed eight units at ports of entry within Arizona.

9. CBP has also implemented the Western Hemisphere Travel Initiative (WHTI) for land and sea travel to the United States, including upgrades to the physical and technical capabilities at the ports of entry. Under WHTI, radio frequency identification (RFID) technology and next generation license plate readers were deployed, along with coordinate hardware and software updates. The new license plate readers (which provide CBP officers with pre-positioned traveler information) are ten percent more accurate than those they replaced, now reading at or above ninety percent accuracy, saving officers from manually correcting almost 10 million erroneous license plate queries per year. As a result, CBP is able to process travelers more efficiently. The technology deployed as part of WHTI allows law enforcement queries to proceed at a pace 60 percent faster than manual queries. These upgrades were completed at the Arizona land ports of entry, ending with Naco in February 2010 (though due to its size Sasabe has a hybrid solution in place with many, though not all, of these technical capabilities).

10. CBP's Office of Border Patrol (Border Patrol) maintains a presence between the ports of entry in Arizona as well. For operational purposes, the Border Patrol divides the United States into geographical areas known as "sectors." Two of these Border Patrol sectors are located in Arizona. The Tucson sector is located wholly within the State of Arizona. The sector known as the Yuma sector largely covers area found within the State of Arizona, but also includes an unpopulated area of the southeastern portion of California along the border. CBP's activities in the Yuma sector are based on a variety of factors and are not driven by the state—*i.e.*, Arizona versus California—where the activities take place.

11. The Border Patrol nationwide is better staffed today than at any time in its eighty-five year history, having nearly doubled the number of agents from approximately 10,000 in 2004 to more than 20,000 in 2009. As of May 22, 2010, there are over 4,000 agents stationed in Arizona alone. This is an increase from the approximately 3,500 agents stationed during fiscal year 2007 in Arizona and the approximately 2,800 agents stationed in Arizona in fiscal year 2005.

12. The Border Patrol utilizes various technologies to assist in locating, identifying, and apprehending those attempting to cross the border illegally. Nearly every piece of technology utilized between the ports of entry is found in northern, southern, and coastal border operations. Technology deployments are based on operational need and the technology's ability to fit within that area's operating environment. The following technologies, among others, are being used between ports of entry: night vision and thermal imaging equipment; magnetometers; infrared and seismic sensors; mobile x-ray, gamma ray and backscatter nonintrusive inspection systems; and additional remote video and sensing equipment.

13. The Border Patrol participates in a program known as Immigration Quick Court. This is a program in which an Immigration Judge holds hearings at the Border Patrol Tucson Sector Processing Center. The Quick Court is an initiative that works to ease the dockets of the traditional immigration courts. The process expedites the formal removal proceedings of illegal aliens arrested within the Tucson Sector. As of April 2010, the Court has presided over 3,153 cases for fiscal year 2010.

14. The Border Patrol operates check-points at twenty-five locations in Arizona, though given the nature of checkpoints these are not all operational at any one given time.

15. The United States has also erected approximately 305.7 miles of border fence in Arizona. Of that, 123.2 miles is pedestrian fence and 182.5 miles consist of vehicle fence.

16. The work performed by CBP's Office of Air and Marine augments these operations. In addition to the technology described above, the Office of Air and Marine conducts continuous operations along our borders nationally with more than 290 aircraft, including Unmanned Aircraft Systems (UAS), and 253 vessels. As of this date, eight fixed winged aircraft, thirty rotary wing aircraft, three unmanned aerial systems, as well as 125 Air Interdiction Agents are based in Arizona. The Office of Air and Marine is an integral part of the overall efforts of CBP and in fiscal year 2009 participated in over 34,800 apprehensions nationally and flew over 45,679 sorties for a total of 100,639 flight hours.

17. Another CBP effort is the Operation Against Smugglers Initiative on Safety and Security (OASISS), a bi-national initiative designed to increase the ability of the U.S. and Mexican governments to prosecute alien smugglers and human traffickers on both sides of the border. The OASISS program was established because, among other reasons, the prosecution of smugglers and human traffickers is a high immigration priority and because DHS has recognized

the need for international cooperation in pursuit of this goal. Conducted in cooperation with Mexico's Attorney General's Office, under OASISS select alien smuggling cases that are declined by United States Attorney's Offices are subsequently turned over to the Government of Mexico for prosecution under Mexico's judicial system. Since its inception on August 17, 2005, the OASISS program has generated 2,031 cases and led to the prosecution of 2,290 principal defendants in Mexico. During fiscal year 2009, 261 alien smuggling cases originating in Arizona were referred to Mexico.

18. CBP also conducts a program known as Operation Streamline, which is a geographically focused prosecution initiative that targets aliens who illegally enter the U.S. through a designated focus area. Currently, approximately seventy (70) illegal aliens are criminally prosecuted each court day. The illegal aliens are prosecuted for violation of 8 U.S.C. § 1325, 8 U.S.C § 1326, or both. Currently, CBP has two attorneys who are full time Special Assistant United States Attorneys for the District of Arizona dedicated to Operation Streamline prosecutions.

19. As of May 28, 2010, approximately 10,700 prosecutions have been brought under Operation Streamline in the Tucson Sector for fiscal year 2010. In fiscal year 2009 over 15,500 prosecutions were brought, which was an increase from the approximately 9,600 prosecutions which were brought in fiscal year 2008.

20. Consistent with DHS's prioritization of enforcement efforts that focus on the promotion of public safety, CBP initiated the Operation Alliance to Combat Transnational Threats (ACTT) in September 2009. ACTT is a multi-agency operation in the Sonora-Arizona Corridor involving over fifty (50) Federal, tribal, state, and local law enforcement and public safety organizations. The ACTT works collaboratively to deny, degrade, disrupt, and ultimately

dismantle criminal organizations and their ability to operate; engage communities to reduce their tolerance of illegal activity; and establish a secure and safe border environment, which will ultimately improve the quality of life of affected communities. Examples of the coordinated operations taken to date to target aliens affiliated with drug trafficking and prevent the expansion of these criminal organizations include the enhanced targeting associates of drug trafficking organizations and, in conjunction with Immigration and Customs Enforcement, the strategic removal of aliens to locations in the interior of Mexico to minimize the recruitment of inadmissible aliens by criminal organizations operating in the border environment.

21. CBP also participates in Operation Stonegarden. The intent of the operation is to provide funding to designated localities to enhance cooperation and coordination between federal, state, local, and tribal law enforcement agencies to secure the United States Southwest Border. In 2009, DHS provided $90 million in funding for Operation Stonegarden to border law enforcement agencies, a record amount. Eighty-five percent of this funding went to the Southwest border—up from fifty-nine percent in fiscal year 2008. The fiscal year 2011 budget request focuses Stonegarden funding solely on the Southwest border.

22. At times, certain state and local law enforcement entities may contact CBP, either through the Office of Field Operations or the Office of Border Patrol, to verify or ascertain the citizenship or immigration status of an individual within the jurisdiction of that agency. Responding to these inquiries takes the time of officers and agents at our ports of entry, offices, and stations.

23. CBP has seen the overall apprehensions of illegal aliens by Border Patrol decrease from our highest point of over one million apprehensions in FY 2000. These numbers

demonstrate the effectiveness of our layered approach to security, comprised of a balance of tactical infrastructure, technology, and personnel at our borders.

a. Specifically, in the Yuma sector the Border Patrol apprehended 138,419 individuals in fiscal year 2005. In fiscal year 2009, Border Patrol apprehended 6,949 individuals, down ninety-four percent from 2005.

b. In the Tucson Sector 439,005 individuals were arrested in fiscal year 2005. In fiscal year 2009, Border Patrol apprehended 241,558 individuals, down forty-five percent from 2005.

24. As part of CBP's processing of individuals for admissibility, it administers the inspection and admissions process for aliens seeking admission to the United States under the Visa Waiver Program (VWP). The VWP enables eligible nationals from thirty-six (36) designated countries to travel to the United States temporarily for business or pleasure for up to ninety (90) days without obtaining a visa. In fiscal year 2009, more than 14 million aliens were admitted to the United States under the VWP. Historically, upon arrival in the United States and during the inspection and admission process, VWP travelers signed and submitted Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure Form), which was stamped by a CBP Officer to reflect the date of admission and authorized period of stay as a nonimmigrant visitor (as described in 8 U.S.C. § 1101(a)(15)(B)). The lower portion of the Form I-94W was retained by the alien.

25. As of January 12, 2009, VWP travelers must complete an Electronic System for Travel Authorization (ESTA) application prior to initiating travel by air or sea carrier to the United States when they intend to apply for admission under the VWP. The ESTA application contains the questions that appeared on the Form I-94W. Approval of the ESTA application

represents a determination by CBP that an alien may travel (absent a subsequent revocation by CBP) to the United States under the VWP for the duration of the validity of the authorization, which generally is two years. CBP, however, retains authority to make the determination as to the alien's admissibility upon the alien's arrival and inspection at a port of entry, as well as the period of each VWP admission, not to exceed 90 days.

26. On May 25, 2010, the Secretary of Homeland Security began the process of eliminating the paper Form I-94W requirement for VWP travelers whose ESTA applications are approved prior to boarding a carrier to travel by air or sea to the United States. The transition to paperless processing of ESTA-compliant travelers is expected to be completed by the end of June 2010. As a result, the only proof of admission issued to most VWP travelers will be the entry stamp on his or her passport reflecting the date of admission.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief. Executed the 27th day of June, 2010 in Washington, D.C.

David V. Aguilar

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF ARIZONA, et al., Defendants.	Civil Action No.

DECLARATION OF DAVID C. PALMATIER

Pursuant to 28 U.S.C. § 1746, I, David C. Palmatier, declare and state as follows:

1. I am the Unit Chief for the Law Enforcement Support Center (LESC) within U.S. Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). I have served in this position since March 16, 2008. Prior to my current position, I served as the Assistant Special Agent in Charge in Boston, Massachusetts, from December 2005 to March 2008. Prior to that, I served as the Director of the Office of Investigations Training Division from November 2000 to December 2005. I make this declaration based on personal knowledge of the subject matter acquired by me in the course of the performance of my official duties. I am aware that the State of Arizona has enacted new immigration legislation, known as Senate Bill 1070 (SB 1070), and I have read and reviewed SB 1070 as amended.

2. The purpose of my declaration is to describe the adverse effects of Arizona SB 1070 on the LESC's ability to respond, supervise, and monitor requests from law enforcement

partners in an effort to provide accurate and timely alien status determinations for subjects arrested or under investigation.

3. As the LESC Unit Chief, I have direct managerial and supervisory authority over all sections that comprise the LESC, including three Operations Sections, the National Crime Information Center (NCIC) Section, the Communications Center Section, the Tip-line Section, the Training Section, and the Administration Section. The Operations Sections respond to requests for alien status determinations sent to the LESC via computer. The NCIC Section enters and validates all ICE lookout records in the NCIC computer system for immigration absconders (those who have been ordered removed but have absconded), previously deported aggravated felons, and fugitives sought for criminal violations of customs and immigration laws investigated by ICE. The Communications Center Section responds to phone requests for information and assistance by our state, local, and federal law enforcement partners. The Tip-line Section handles phone tips from the public relating to the full range of crimes enforced by DHS. The Training Section provides basic and advanced training to LESC employees. The Administration Section provides personnel, budget, and logistical support for the LESC.

4. The LESC also responds to FBI requests for alien status determinations on non-U.S. citizens seeking to purchase firearms; responds to U.S. Secret Service alien status determinations for aliens seeking access to a protected area (*e.g.*, the White House Complex); and responds to alien status determinations related to employment issues at national security related locations that could be vulnerable to sabotage, attack, or exploitation.

5. Congress established the LESC to provide alien status determination support to federal, state, and local law enforcement on a 24-hours-a-day, seven-days-a-week basis. The enabling legislation is codified in 8 U.S.C. §§ 1226(d)(1)(A) & 1252 Note.

6. The core mission of the LESC is to receive and respond to Immigration Alien Queries (IAQ) from law enforcement partners in an effort to provide accurate and timely alien status determinations for subjects arrested or under investigation. Biographic queries are routed to the LESC via the International Justice and Public Safety Information Sharing Network (NLETS). Biometric queries are routed to the LESC via state information bureaus and the FBI Criminal Justice Information Services (CJIS). Both biographic and biometric queries are sent and received via computer systems. Queries contain basic information such as name, date of birth, place of birth, sex, and other identifying information. LESC Law Enforcement Specialists query as many as ten DHS, FBI, and Interpol databases in order to produce a written alien status determination for the requesting agency.

7. Like other components within DHS, the LESC prioritizes its efforts in order to focus on criminal aliens and those most likely to pose a potential threat to their communities. For example, criminal violations of the Immigration and Nationality Act (INA) are given priority over administrative violations. The goal is to invest our finite resources on the criminals who pose the largest threat to public safety or national security risks. In addition, LESC supervisors monitor incoming requests for information and prioritize those that are time sensitive, such as roadside traffic stops and subjects that are about to be released from police custody. The LESC also conducts "enhanced responses" for IAQs that are associated with crimes such as murder, sexual assault, terrorism, gang-related crimes, and other serious crimes. As a general practice, IAQs are processed in the order they are received at the LESC. Older queries are generally completed before work is completed on new queries. However, there are exceptions made in an effort to respond to time-sensitive queries and those queries that involve serious offenders; one example, listed above, would be traffic stops, where a highway patrolman has a limited amount

of time to detain a suspected illegal alien. Likewise, illegal aliens arrested for serious crimes such as homicide are made a priority in the queue if the subject will be released on bail or bond. This prioritization ensures that aliens arrested for particularly serious or violent crimes are not released into the general public if LESC's verification allows for the further detention of the alien. But the two priorities (responding on illegal aliens arrested for particularly serious crimes and responding to time sensitive inquiries, such as traffic stops) compete with each other, meaning that a surge in time-sensitive inquiries from the enforcement of the Arizona law will adversely affect responses regarding aliens arrested for particularly serious crimes. Additionally, the LESC has several queues that allow for the prioritization of queries based upon originating agency. Examples of unique queues include interoperability queries based upon fingerprints, biographical queries sent via NLETS, and Brady Act queries for firearms purchasers. The LESC does not currently have the ability to separate queries from Arizona as they arrive. Furthermore, creating an Arizona queue would not prioritize queries based upon the risk posed by the violator or the seriousness of the charge. Separating data in that manner is not currently possible using the data fields provided in the current IAQ formatted messages

8. Currently, the average query waits for approximately 70 minutes before a Law Enforcement Specialist is available to work on the request. On average, it takes an additional 11 minutes per query to research DHS data systems and to provide the written alien status determination.

9. Over the years, the LESC has experienced continuous and dramatic increases in alien status determination queries. IAQs from fiscal year (FY) 2007 to date were:

FY 2007	727,903
FY 2008	807,106
FY 2009	1,064,261
FY 2010	726,275 (through May 31, 2010)

10. From FY 08 to FY 09, the LESC had a 20% increase in the number of IAQs. Although FY 10 is not over yet, LESC personnel project there will be at least a 10% increase in IAQs from FY 09 to FY 10.

11. The internal LESC computer system (ACRIMe) is dynamically updated as records are added or deleted. ACRIMe alien status determination records are retained for 75 years. Law Enforcement Specialists also access approximately six to ten other federal databases, depending on the circumstances regarding the subject, in order to determine alien status. The ACRIMe computer system randomly selects approximately 5% of all alien status determination responses for quality assurance. Quality assurance reviews determine if the search protocols were followed and if the correct status determination was made. LESC employees do not typically review alien files in order to provide alien status determinations. If an alien file review is required, that review will have to be completed by the ICE field office, and depending on the physical location of the alien file, the review may take two days or more.

12. Many U.S. citizens, if queried through the LESC, result in a "no match" response to the requesting agency, meaning that the Law Enforcement Specialist was unable to locate any records or prior encounters in the DHS databases queried. However, to arrive at the no match response for U.S. citizens requires the same level of investment in staffing resources to determine the subject is a no match. And, notably, a "no match" response would not guarantee that the subject of the search was an American citizen—it would simply reflect an absence of records in the LESC system.

13. The LESC has 153 Law Enforcement Specialists (LES) assigned to respond to IAQs from all partner agencies. If queries come to the LESC in a consistent and steady manner,

a fully trained and experienced LES can process approximately 10,000 IAQs per year. Based on current LES staffing, the LESC theoretically has the capacity to handle approximately 1.5 million IAQs per year. However, the number of queries that come to the LESC at any given time is not consistent. This makes it difficult to predict and staff in a manner that accounts for temporary spikes in activity. On a weekly basis, the LESC experiences activity spikes that require the use of overtime in order to handle the incoming IAQs from LESC partners. In addition, personnel from other LESC sections are routinely diverted from other critical missions to deal with IAQ activity spikes.

14. The LESC also performs a significant role in supporting the ICE Secure Communities Program by producing alien status determinations based on biometric (fingerprint) booking information. Secure Communities was created to improve, modernize, and prioritize ICE's efforts to identify and remove criminal aliens from the United States. Secure Communities arranges for willing jurisdictions to access biometric technology so they can simultaneously check a person's criminal and immigration history when the person is charged criminally. Once illegal aliens are identified, ICE must then determine how to proceed and whether to lodge a detainer or otherwise pursue the alien's detention and removal from the United States upon the alien's release from criminal custody. ICE first deployed the technology in October of 2008, and as of June 8, 2010, has deployed it to 281 jurisdictions. ICE plans to deploy the technology nationwide to more than 3,000 jurisdictions by the end of FY 2013. The LESC has already experienced an increase in processing times since the establishment of the Secure Communities Program due to the receipt of extensive criminal records and previous DHS encounters with more serious criminal aliens. As our support for Secure Communities continues to grow, we anticipate an increased workload due to the need for more complex queries that will

further increase LESC response times. Thus, the expansion of the Secure Communities Program alone will likely utilize much of the capacity of the LESC.

15. In my professional judgment, Arizona SB 1070 will inevitably result in a significant increase in the number of IAQs. The LESC processed just over 1,000,000 IAQs in FY 09. According to the FBI Criminal Justice Information Services (CJIS), in FY 09 criminal justice agencies in Arizona submitted 563,474 arrest records to CJIS, but just over 80,000 IAQs originated from all agencies within the state of Arizona in FY 09. Thus, Arizona SB 1070's requirement that "[a]ny person who is arrested shall have the person's immigration status determined before the person is released" could, by itself, dramatically increase the LESC's workload. Moreover, because Arizona's law calls for status verifications for lawful stops—whether or not such stops result in an arrest—the number of IAQ's will increase dramatically. If even a small percentage of these stops, detentions, and arrests lead to new IAQs, the LESC will be forced to process thousands of additional IAQs annually. Moreover, Arizona's new law will result in an increase in the number of U.S. citizens and lawful permanent residents being queried through the LESC, reducing our ability to provide timely responses to law enforcement on serious criminal aliens.

16. This increase in queries from Arizona will delay response times for all IAQs and risks exceeding the capacity of the LESC to respond to higher priority requests for criminal alien status determinations from law enforcement partners nationwide. Furthermore, the potential increase in queries by Arizona along with the possibility of other states adopting similar legislation could overwhelm the system.

17. If the LESC's capacity to respond to requests for assistance is exceeded, the initial impact would be delays in responding to time-sensitive inquiries from state, local, and federal

law enforcement, meaning that very serious violators may well escape scrutiny and be released before the LESC can respond to police and inform them of the serious nature of the illegal alien they have encountered. If delays continue to increase at the LESC, ICE might have to divert personnel from other critical missions to serve the needs of our law enforcement partners. The LESC directly supports both the public safety and national security missions of DHS. These are critical missions which cannot be allowed to fail.

18. I expect no increase in LESC resources in terms of personnel. As such, I anticipate an increase in inquiries will slow response times for inquiries without respect to the priority level of the subject in question. Based on my professional experience, slower response times result in an increased likelihood that the subject of an inquiry, including subjects who are high-priority, will be released, potentially resulting in the commission of additional violent crimes, greater difficulty in locating the alien to initiate removal proceedings, and further impediments to ICE's ability to efficiently obtain removal orders and remove criminal aliens from the United States.

19. It is important to note that LESC's responses to IAQs do not always provide a definitive answer as to an alien's immigration status. Indeed, almost 10,000 of the 80,000 IAQs the LESC processed from Arizona in FY 2009 resulted in an indeterminate answer (for comparison, just over 15,000 of the IAQs from Arizona in FY 2009 resulted in a response of lawful presence). Moreover, a U.S. citizen, when queried through the LESC, would likely be returned with a "no match" response. Many—if not most—U.S. citizens have no records contained in the databases available to the LESC. Experience has demonstrated that some police officers are confused in these types of situations and sometimes want to detain the suspected

illegal alien (actually a U.S. citizen) until they can call the LESC or their local ICE field office to confirm the subject's immigration status.

20. This declaration has focused on the impact of SB 1070 on the LESC system. If other populous states adopted similar laws, the LESC would be unable to respond to inquiries in a time frame which would be useful to law enforcement needs.

21. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed the 28th day of June, 2010 in Williston, Vermont.

David C. Palmatier
Unit Chief
Law Enforcement Support Center

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF ARIZONA, et al., Defendants.	Civil Action No.

DECLARATION OF DOMINICK GENTILE

Pursuant to 28 U.S.C. § 1746, I, Dominick Gentile, declare and state as follows:

1. I am employed by U.S. Citizenship and Immigration Services (USCIS) as Chief, Records Division. I have been employed in this position since October 2000. As Chief, Records Division, I am responsible for USCIS' records policy and systems, which include, but are not limited to, Alien Files (A-File) and USCIS' Central Index System (CIS). I make this declaration based on personal knowledge of the subject matter acquired by me in the course of the performance of my official duties. The purpose of my declaration is to describe the burden that would be placed upon USCIS if the State of Arizona were to request records for criminal prosecutions under Arizona Statute SB1070-HB2162.

2. The A-File is primarily a paper based system that contains records of an individual's transactions as he or she passes through the U.S. immigration and inspection process. CIS is an electronic database that contains personal identification data such as A-File number, date and place of birth, date and port of entry, as well as the location of

each official hard copy paper A-File. There are also other database systems controlled by USCIS that may reflect an individual's transactions with USCIS, such as naturalization applications, asylum applications, fingerprints and photographs, eligibility for work authorization, and other various types of benefit applications for which an individual may apply.

3. The Department of Homeland Security's (DHS) System of Records Notice for the A-File and the Central Index System provide that USCIS is the custodian of the A-File within the Department of Homeland Security. See 72 Fed. Reg. 1755 (January 16, 2007). The A-File is jointly owned by USCIS, U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). Physical custody of the files is also shared between USCIS, CBP, and ICE. USCIS supports other components within DHS and other government agencies responding to lawful requests for information relating to A-Files. Both CBP and ICE maintain their own systems of records. Depending upon the type of encounter between an individual who comes into contact with CBP or ICE officers, the data evidencing that encounter may or may not be transferred to a USCIS systems of records by CBP or ICE.

4. USCIS typically does not receive direct requests from state or local law enforcement agencies for records. Instead, these requests usually are routed through ICE or CBP. If a request for a record is made through ICE or CBP by a law enforcement organization, including a state or local law enforcement agency, USCIS does not require the requesting organization to submit a Freedom of Information Act request. Instead, USCIS typically treats such request as falling under DHS' *Touhy* regulations. DHS' *Touhy* regulations are set forth at 6 C.F.R. §§ 5.41–.49, and provide DHS and its

components with a process for disclosing information that is the subject of a subpoena or other demand or request for information. USCIS' practice is to provide immediate assistance to any request for information submitted by a law enforcement organization. USCIS normally provides information back to the state or local enforcement organization via ICE, CBP or USCIS counsel.

5. Upon receiving a request for information from a law enforcement organization via ICE or CBP, USCIS will first determine if any A-File exists. An A-File may be stored at any USCIS, CBP or ICE facility. If an A-File is stored at a CBP or ICE facility, those components typically will transfer the file to the closest USCIS facility. In addition, depending upon the age of the A-File, it may be retired. USCIS stores the retired files at the Federal Records Center (FRC), National Archives and Records Administration (NARA). If the A-File is located at the FRC, USCIS must pay a fee to NARA to locate the file and send it to USCIS.

6. Once the A-File is located, a USCIS employee will review it to determine whether it relates to the subject of the request. If USCIS determines that it has located the correct A-File, a USCIS employee will conduct an initial review of the A-File to determine whether any information is not releasable, for example, because it belongs to an agency outside of DHS or it is privileged. Currently, the typical request requires only an oral response from USCIS. USCIS can provide this oral response within two to seven workdays once the file is located and received.

7. If a law enforcement organization requests copies of documents from an A-File, then USCIS is required to perform additional work. It must remove and annotate any information provided by agencies outside of USCIS. The A-File will then be

transferred to a USCIS attorney who will review the file to determine if any of the material is privileged or otherwise is protected from disclosure and therefore should not be disclosed. In either case, USCIS must then decide the appropriate response to the request, and whether the information should be redacted or withheld in the case of non-releasable information. Depending on the size of the file and number of pending requests, USCIS requires an additional time frame of between two to fourteen work days to process the file for redactions and copying.

8. If the law enforcement agency requires a certified copy then USCIS is required to certify the existence of these records. *See* 8 C.F.R. § 103.7(d)(1). Depending upon the amount of documents contained within the A-File, the USCIS employee may be required to manually certify hundreds of pages of material. The process of certifying records may add an additional two to seven work days to the process, depending upon the size of the file.

9. If there is no responsive information, USCIS has the authority within DHS to provide a certificate of non-existence. 8 C.F.R. § 103.7(d)(4). Currently, the only requests that USCIS receives for the issuance of certificates of non-existence is with regard to cases in which there is a prosecution for illegal re-entry after deportation. Based upon location of the file, number of requests and check of electronic systems such as CIS, Claims, Enforce Alien Removal Module, among others, the timeframe for issuing a certificate of non-existence may be between one and ten days once USCIS obtains the file.

10. In my capacity as Chief, Records Division, I am aware of *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009). In that case, the Supreme Court decided that a

criminal defendant has the constitutional right to confront an affiant whose affidavit reported the results of a drug test. As a result of this decision, USCIS has been producing witnesses and incurring travel expenses in cases in which it would previously have produced affidavits to authenticate records or certificates of the non-existence of records. Since the A-File may be located at any USCIS facility, witnesses have been called from offices throughout the United States in order to testify at criminal proceedings. This typically requires a witness to be away from the office for at least one day, given travel and the logistics of testifying.

11. Other than amounts appropriated for activities not relevant here, USCIS does not receive appropriated funds from Congress for the work it performs. Instead, it relies upon the fees submitted by applicants who are applying for various immigration benefits. *See* 8 U.S.C. § 1356(m). Therefore, if the recently enacted Arizona immigration act requires USCIS to expend time and money processing requests for records and presenting witnesses to verify such records for purposes of prosecution under the Arizona statute, the costs would ultimately be born by applicants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed the 11 day of June, 2010 in Washington, D.C.

Dominick Gentile

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF ARIZONA, et al., Defendants.	)	Civil Action No.

DECLARATION OF PHOENIX POLICE CHIEF JACK HARRIS

Pursuant to 28 U.S.C. 1746, I, Jack Harris, declare and state as follows:

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 5th 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 519 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, Home Invasion Kidnapping Enforcement (H.I.K.E) Squad 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, receives 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 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 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 crimes and home invasion/kidnapping enforcement squads 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.

School resource officers are Phoenix Police officers assigned to local schools. If a school resource officer is investigating a 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's 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 in arrest situations. Persons 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, that 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 one hour to three hours. This mandate applies to juveniles and adults.

Under these circumstances, this immigration law will impact the department's 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 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.

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, and other officers' 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 nearly 400 vacant sworn positions. The operations budget for the department is over $500 million dollars each year. Ninety-two percent of our current operating budget is for personnel.

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.

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.

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 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 lawsuits by anyone who perceives a limitation or restriction.

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.

Serious Crimes

SB1070 does nothing to support law enforcement's efforts to combat serious violent crimes associated with federal criminal immigration violations. This law's failure to distinguish between civil and criminal violations, and prohibition on management's 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 H.I.K.E squad 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.

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 300 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, they will need documentation and clear guidance 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 that a person is unlawfully present.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Chief Jack Harris

Executed the 25th day of June, 2010 in Phoenix, Arizona.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF ARIZONA, et al., Defendants.	Civil Action No.

DECLARATION OF JAMES B. STEINBERG

Pursuant to 28 U.S.C. 1746, I, James B. Steinberg, declare and state as follows:

1. I am Deputy Secretary of State. I make this declaration based on my personal knowledge and on information I have received in my official capacity.

2. I have served as Deputy Secretary of State since January 28, 2009. Immediately prior to joining the Department of State, I served as Dean of the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin. From 1993 to 1994, I served as Deputy Assistant Secretary of State for analysis in the Bureau of Intelligence and Research, and from 1994 to 1996 as Director of the Department of State's Policy Planning Staff. From December 1996 to August 2000, I served as Deputy National Security Adviser on the staff of the National Security Council. From 2001-2005, I was the President and Director of Foreign Policy Studies at the Brookings Institution in Washington, D.C.

3. In my capacity as Deputy Secretary of State, I assist the Secretary of State in

the formulation and conduct of U.S. foreign policy and in giving general supervision and direction to all elements of the Department. I have delegated authority to act on behalf of the Secretary of State, and assist the Secretary in representing the United States at international meetings and performing other representational assignments with senior foreign government officials.

4. I have read and am familiar with Arizona law S.B. 1070. I am also familiar with the reactions of foreign governments to the law.

5. As I explain further below, U.S. federal immigration law incorporates foreign relations concerns by providing a comprehensive range of tools for regulating entry and enforcement. These may be employed with sensitivity to the spectrum of foreign relations interests and priorities of the national government. By contrast, Arizona law S.B. 1070 establishes a single, inflexible, state-specific immigration policy based narrowly on criminal sanctions that is not responsive to these concerns, and will unnecessarily antagonize foreign governments. If allowed to enter into force, S.B. 1070 would result in significant and ongoing consequences for U.S. foreign relations.

6. Through the Immigration and Nationality Act ("INA") and other federal laws, the national government has developed a comprehensive regime of immigration regulation, administration, and enforcement, in which the Department of State participates. This regime is designed to accommodate complex and important U.S. foreign relations priorities that are implicated by immigration policy -- including humanitarian and refugee protection, access for diplomats and official foreign visitors, national security and counterterrorism, criminal law enforcement, and the promotion of

U.S. human rights policies abroad. To allow the national government flexibility in addressing these concerns, the INA provides the Executive Branch with a range of regulatory options governing the entry, treatment and departure of aliens. Moreover, foreign governments' reactions to immigration policies and the treatment of their nationals in the U.S. impacts not only immigration matters, but also any other issue in which we seek cooperation with foreign states, including international trade, tourism, and security cooperation. These foreign relations priorities and policy impacts are ones to which the national government is sensitive in ways that individual states are not.

7. By rigidly imposing a singular, mandatory form of criminal immigration enforcement through mandatory verification of immigration status and criminal enforcement of alien registration, S.B. 1070 deviates from the national government's policy of calibrated immigration enforcement. The Arizona law also uniquely burdens foreign nationals by criminalizing work and travel beyond the restrictions imposed by U.S. law. These multiple, interlinking procedural and criminal provisions, adopted in order to enforce an explicit state policy of "attrition through enforcement," all manifest Arizona's intention to globally influence immigration enforcement. S.B. 1070 thereby undermines the diverse immigration administration and enforcement tools made available to federal authorities, and establishes a distinct state-specific immigration policy, driven by an individual state's own policy choices, which risks significant harassment of foreign nationals, is insensitive to U.S. foreign affairs priorities, and has the potential to harm a wide range of delicate U.S. foreign relations interests.

8. Indeed, although it was only adopted in April 2010, is the law of only one

state, and has not yet gone into effect, Arizona law S.B. 1070 already has provoked significant criticism in U.S. bilateral relationships with many countries, particularly in the Western Hemisphere, as well as in a variety of regional and multilateral bodies. Foreign governments and international bodies have expressed significant concerns regarding the potential for discriminatory treatment of foreign nationals posed by S.B. 1070, among other issues.

9. By deviating from federal immigration enforcement policies as well as federal rules governing work and travel by foreign nationals, S.B. 1070 threatens at least three different serious harms to U.S. foreign relations. *First*, S.B. 1070 risks reciprocal and retaliatory treatment of U.S. citizens abroad, whom foreign governments may subject to equivalently rigid or otherwise hostile immigration regulations, with significant potential harm to the ability of U.S. citizens to travel, conduct business, and live abroad. Reciprocal treatment is a significant concern in immigration policy, and U.S. immigration laws must always be adopted and administered with sensitivity to the potential for reciprocal or retaliatory treatment of U.S. nationals by foreign governments.

10. Second, S.B. 1070 necessarily antagonizes foreign governments and their populations, both at home and in the U.S., likely making them less willing to negotiate, cooperate with, or support the United States across a broad range of important foreign policy issues. U.S. immigration policy and treatment of foreign nationals can directly affect the United States' ability to negotiate and implement favourable trade and investment agreements, to coordinate disaster response arrangements, to secure cooperation on counterterrorism or drug trafficking operations, and to obtain cooperation

in international bodies on priority U.S. goals such as nuclear non-proliferation, among other important U.S. interests. The law has already complicated our efforts to pursue broader U.S. priorities. S.B. 1070's impact is likely to be most acute, moreover, among our many important democratic allies, as those governments are most likely to be responsive to the concerns of their constituents and the treatment of their own nationals abroad.

11. Third, S.B. 1070 threatens to undermine our standing in regional and multilateral bodies that address migration and human rights matters and to hamper our ability to advocate effectively internationally for the advancement of human rights and other U.S. values. Multilateral, regional and bilateral engagement on human rights issues and the international promotion of the rule of law is a high priority for the United States, and for this Administration. Consistency in U.S. practices at home is critical for us to be able to argue for international law consistency abroad. By deviating from national policy in this area, S.B. 1070 may place the U.S. in tension with our international treaty obligations and commitments and compromise our position in bilateral, regional and multilateral conversations regarding human rights.

12. In all activities relating to U.S foreign relations, including immigration, the United States is constantly engaged in weighing multiple competing considerations and choosing among priorities in order to develop an overall foreign policy strategy that will most effectively advance U.S. interests. The United States likewise is constantly seeking the support of foreign governments through a delicately-navigated balance of interests across the entire range of U.S. national policy goals. Only the national government has

the information available to it to be able to appropriately evaluate these choices on a continuing basis in response to fluctuating events on the international stage. Because of the broad-based and often unintended ways in which U.S. immigration policies can adversely impact our foreign relations, it is critically important that national immigration policy be governed by a uniform legal regime, and that decisions regarding the development and enforcement of immigration policy be made by the national government, so that the United States can speak to the international arena with one voice in this area.

13. While isolated state enactments that incidentally touch on immigration may not implicate foreign policy concerns (or may implicate them only slightly), Arizona's law more directly and severely impacts United States foreign policy interests by establishing an alternative immigration policy of multiple, interlinking procedural and criminal provisions, all of which manifest Arizona's intention to globally influence immigration enforcement. As I understand it, Arizona's effort to set its own immigration policy is markedly different from instances in which states and localities assist and cooperate with the federal government in the enforcement of federal immigration laws. When states and localities work in concert with the federal government, the likelihood for conflicts with U.S. foreign policy interests is greatly diminished. When states and localities assist the federal government, and take measures that are in line with federal priorities, then the United States retains its ability to speak with one voice on matters of immigration policy, which in turn enables it to keep control of the message it sends to

foreign states and to calibrate responses as it deems appropriate, given the ever-changing dynamics of foreign relations.

14. By contrast, by pursuing a singular policy of criminal enforcement-at-all-costs through, among other things, imposing an extraordinary mandatory verification regime coupled with what is effectively state criminalization of unlawful presence, S.B. 1070 is likely to provoke retaliatory treatment of U.S. nationals overseas, weaken public support among key domestic constituencies abroad for cooperating with the U.S, and endanger our ability to negotiate international arrangements and to seek bilateral, regional or multilateral support across a range of economic, human rights, security, and other non-immigration concerns, and be a source of ongoing criticism in international fora. Arizona's unprecedented effort to set its own, contrary immigration policy predictably conflicts with U.S. foreign policy interests and with the United States' ability to speak with one voice.

I. U.S. Immigration Law Incorporates Foreign Relations Concerns

15. The Secretary of State is charged with the day-to-day conduct of U.S. foreign affairs, as directed by the President, and exercises authority derived from the President's powers to represent the United States under Article II of the Constitution and from statute. As part of these responsibilities, the Department of State plays a substantial role in administering U.S. immigration law and policy, as well as in managing and negotiating its foreign relations aspects and impact. Within the Department of State, the Bureau of Consular Affairs has responsibility for the adjudication and issuance of passports, visas, and related services; protection and welfare of U.S. citizens and interests

abroad; third-country representation of interests of foreign governments; and the determination of nationality of persons not in the United States. See 1 Foreign Affairs Manual 250.[1] Several other bureaus within the Department of State, including the Bureau of Population, Refugees and Migration; the Bureau of Human Rights, Democracy and Labor; the Bureau of International Organization Affairs; and all regional bureaus are routinely engaged in negotiations and multilateral diplomatic and policy work in global, regional, and bilateral forums on migration issues. Collectively, the Department of State promotes U.S. policies internationally in this area and bears the burden of managing foreign governments' objections to the treatment of their nationals in the United States.

16. U.S. law, and particularly Section 104 of the INA, as amended by the Homeland Security Act, invests the Secretary of State with specific powers and duties relating to immigration and nationality. A 2003 Memorandum of Understanding Between the Secretaries of State and Homeland Security Concerning Implementation of Section 428 of the Homeland Security Act of 2002, ¶ 1(b), provided that the Secretary of Homeland Security would establish visa policy, review implementation of that policy, and provide additional direction as provided in the MOU, while respecting the prerogatives of the Secretary of State to lead and manage the consular corps and its functions, to manage the visa process, and to execute the foreign policy of the United States.

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[1] The Secretary of State's authorities under the INA are found in various provisions, including §§ 104, 105, 349(a)(5), 358, and 359 (8 U.S.C. §§ 1104, 1105, 1481(a)(5), 1501, and 1502) (visa and other immigration-related laws). The Department also exercises passport-related authorities, including those found at 22 U.S.C. §§ 211a, et seq.

17. Our immigration laws, including those administered by the Department of State, are crafted to incorporate and accommodate a wide range of sensitive U.S. foreign relations concerns. Our visa regime, for example, both embodies and permits consideration of U.S. diplomatic, human rights, and other foreign relations interests. To give but a few examples, the INA authorizes the Secretary of State to help determine which diplomats are entitled to diplomatic visas to represent their countries in the United States. INA § 101(a)(15)(A). INA § 243(d) authorizes the Secretary of State to determine the scope of visa sanctions that will be imposed on countries, upon notification from DHS that such countries have denied or unreasonably delayed accepting their nationals back from the United States. The INA also authorizes the Secretary of State to deny visas to aliens whose entry or proposed activity in the United States "would have potentially serious adverse foreign policy consequences." *See* INA § 212(a)(3)(C). During the Honduran constitutional crisis in 2009, the State Department imposed visa restrictions and revoked several visas under this authority to encourage the de facto government to enter into good faith negotiations with deposed President Zelaya. Likewise, under the auspices of INA § 212(f) and Presidential Proclamation 7750, the State Department recently revoked several visas for officials who engaged in or benefited from corruption, in an effort to bring pressure to bear on other countries to investigate and eliminate corruption by their government officials.

18. Further, our law provides for the denial of U.S. visas on security and related grounds to aliens who are anticipated to violate U.S. law following entry into the United States and those with a broad range of ties to terrorism, including those with

certain ties to groups that a consular officer or the Secretary of State reasonably believes has engaged in terrorist activity, as defined in the INA, § 212(a)(3)(B). Our visa laws also deny admission and make subject to removal aliens who participated in human rights violations such as genocide or torture.[2] And even the general authority to issue visas requires Department officials to monitor the political, legal, economic, and cultural developments in foreign countries for matters directly relevant to the full range of visa ineligibilities (e.g., economic, demographic, political, ethnicity, criminal, and security issues).

19. Finally, under section 244 of the INA, 8 U.S.C. § 1254a, U.S. law also provides for temporary protected status ("TPS"), a temporary immigration status which permits eligible foreign nationals who are already present in the United States to remain in the United States and obtain employment authorization. TPS is available to eligible foreign nationals who, due to armed conflict, an environmental disaster, or extraordinary and temporary conditions in their states of nationality, may face risk to personal safety if returned to that state while such conditions persist. Recent examples include the designation this year of Haiti for TPS following the devastating earthquake in that country, and the extension of Sudan's designation as a result of ongoing armed conflict. DHS administers the program and, pursuant to the statute, routinely consults with the State Department for its views on issues relevant to determinations whether to designate or continue to designate a foreign state or part thereof for TPS, including whether the

[2] 8 U.S.C. §§ 1182(a)(2)(G), 1182(a)(3)(E), and 1182(a)(3)(G) (inadmissible); 8 U.S.C. §§ 1227(a)(4)(D)-(4)(F) (removable).

statutory criteria are satisfied in each case. TPS furthers certain U.S. foreign policy interests by facilitating provision of humanitarian protection to eligible persons who might otherwise be subject to removal to their home countries in times of armed conflict, environmental disasters, or other extenuating and temporary conditions. The impact of the program can be significant: DHS estimated that 100,000 to 200,000 individuals were eligible for TPS under the Haiti designation.

II. U.S. Immigration Practices Significantly Impact Our Foreign Relations

20. In addition to incorporating foreign relations concerns, the United States' choices with respect to immigration policies and practices also have a significant impact on our foreign relations. Again using State Department visa processes as an example, the process for visa issuance and denial is of great interest to foreign governments, owing to the direct impact the visa process has on the affairs of their own nationals. Similarly, domestic processes for arrest, detention, and removal of aliens and other aspects of their treatment in the U.S. are of great interest to foreign governments because of the impact these processes have on foreign nationals and their families. Aspects of U.S. immigration laws, such as the prohibitions on removal of an individual to a country where it is more likely than not that he would be tortured, and on removal of a refugee to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group, or political affiliation, implement U.S. treaty obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the 1967 Protocol to the U.N. Convention relating to the Status of Refugees.

21. Given the diplomatic, legal, and policy sensitivities surrounding immigration issues, even small changes in U.S. immigration laws, policies, and practices can provoke a substantial international reaction -- both in the immigration context and across American diplomatic concerns. It is for this reason that, although federal law recognizes that states and localities may play beneficial roles in assisting in the enforcement of federal immigration law, *see* 8 U.S.C. § 1357(g)(10), the authority to directly regulate immigration has been assigned exclusively to the federal government.

22. Indeed, countries routinely raise concerns about such changes in bilateral, regional and multilateral arenas. The exercise of immigration functions can quickly provoke a significant bilateral or multilateral problem that harms U.S. interests if handled without appropriate consideration of relevant foreign policy impacts. The Department of State is often in the position of interacting directly with foreign governments in managing the impact of these bilateral problems. For example, decisions regarding the issuance of individual visas to controversial figures, such as leaders of foreign governments with which the United States experiences significant diplomatic tensions, prominent individuals with checkered pasts, and delegates to international bodies, require a full review of U.S. government equities, including foreign policy interests and consideration of international treaties to which the United States is a party. Requirements that a consular officer adjudicating a visa application obtain a Security Advisory Opinion ("SAO") or Advisory Opinion ("AO") can significantly delay visa processing and create tension, particularly, but not only, when the applicant is a foreign government official or other high profile individual. The broad terrorism-related provisions in the INA have also

been criticized by foreign governments and officials and raised as obstacles to bilateral cooperation.

A. *Reciprocal Harm to U.S. Citizens Abroad*

23. Specifically, U.S. immigration policies and practices can have immediate and substantial impacts on the treatment of U.S. nationals abroad. INA § 221(c), for example, requires the length of validity for visas to be reciprocal as far as practicable. Even relatively non-controversial issues such as the period of validity of a visa and the fees charged are the subject of discussion, negotiation, and agreement among countries and have a direct impact on how other governments treat U.S. citizens who wish to travel abroad. For example, in the recent past, some countries have responded to changes in U.S. visa charges by significantly raising the entry fees charged to U.S. nationals by those countries. The Enhanced Border Security and Visa Entry Reform Act of 2002, which requires the fingerprinting of foreign nationals for the visa application process and in order to enter the United States, was the subject of much criticism by other governments and caused some governments to consider taking reciprocal retaliatory action against U.S. nationals. For example, Brazil reserves the right to require a thumbprint of Americans upon entry into Brazil.

24. In the area of consular services, how we treat foreign nationals who are present in the United States likewise can impact how a foreign government treats U.S. citizens present in its country. For example, the Department of State proactively takes a number of steps to ensure U.S. compliance with our obligation under Article 36 of the Vienna Convention on Consular Relations ("VCCR"), which requires that all foreign

nationals in custody in the United States be informed of their option to request to meet with a consular official. The Department does so in important part in order to increase the likelihood that such notification and consular access are provided to U.S. citizens who are detained abroad.

25. Accordingly, the State Department not only considers carefully the foreign policy goals and consequences of its immigration-related decisions, but also the potential impact of those decisions on the reciprocal treatment of U.S. citizens by the relevant foreign government.

B. *Impact in Regional and Multilateral Fora*

26. The situation of foreign nationals within a country, particularly questions relating to the protection of the human rights of migrants, regardless of their immigration status, is a matter of international concern and is addressed by international treaties. The United Nations and regional bodies such as the Organization of American States ("OAS"), a regional intergovernmental organization comprised of all thirty-five States of the Americas, have established institutions and mechanisms for the discussion, examination, and oversight of international migration policy. As a matter of longstanding human rights and humanitarian policy, the United States government strongly supports international efforts to protect migrants, who are typically especially vulnerable to mistreatment and abuse. Accordingly, the United States as a matter of its foreign policy engages actively in regional and multilateral human rights fora, through which the United States promotes respect for human rights (including the human rights of migrants), the rule of law, and respect for other U.S. values.

27. As part of the international migration framework, the United States has ratified several global human rights treaties which impose obligations on States Parties regarding the rights of persons, including migrants, within their territories, often without regard to the legal status of a non-national within a State's territory. Such treaties include the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention Against Torture. The United States is party to law enforcement conventions that address multilateral cooperation on immigration issues and the rights of certain migrants, including the United Nations Convention Against Transnational Organized Crime and two of its supplementing Protocols: the Protocol Against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. These protocols require States Parties to protect the rights of smuggled aliens. Other relevant conventions include the 1967 Protocol relating to the Status of Refugees, the Vienna Convention on Consular Relations, and various bilateral Friendship, Commerce and Navigation treaties creating reciprocal treatment obligations toward foreign nationals.

28. Many UN human rights conventions, including those referenced above, establish expert treaty bodies which are responsible for monitoring compliance by reviewing and commenting upon reports from States Parties regarding implementation of their treaty obligations. These expert bodies routinely address immigration and migration-related issues, and criticize states, including the United States, for laws and policies which, in their view, raise questions about unfair, arbitrary, or racially

discriminatory treatment of migrants, or other human rights concerns. Such criticisms are public, are often the subject of further discussion in UN bodies, and may be raised directly with the United States in bilateral exchanges with foreign countries.

29. Additionally, the United Nations General Assembly and other UN organs routinely adopt resolutions regarding the human rights and protection of migrants. The UN has also established "special mechanisms" or "independent experts," including special rapporteurs, that investigate and issue reports and make recommendations regarding the human rights of migrants.

30. At the regional level, the OAS has several organs in which issues related to migration policy and the treatment of migrants are raised. Like the UN General Assembly, the OAS General Assembly adopts resolutions on a range of topics including the human rights of migrants. Additionally, within the OAS system, the Inter-American Commission on Human Rights ("IACHR"), which is based in Washington, D.C., promotes respect for human rights, including by issuing statements and reports and holding hearings and adopting findings in response to individual petitions regarding a breach of a Member State's human rights commitments. The IACHR often expresses concern about the treatment of migrants by OAS Member States, including the United States. For example, in addition to recent hearings related to the enforcement of U.S. immigration laws and policies, the IACHR is in the process of preparing a thematic report which we understand will address issues related to enforcement of U.S. immigration laws and policies.

31. Other intergovernmental organizations and international bodies, not

specifically focused on issues related to the human rights of migrants, also provide venues in which States address issues related to migration generally, and which often include issues related to the treatment of migrants within a State's domestic legal and policy framework. These include the International Organization for Migration, the Regional Conference on Migration (Western Hemisphere), the UN High Level Dialogue on International Migration and Development, the Global Forum on Migration and Development, the International Labor Organization, the UN Office for Drug Control and Crime Prevention, and others.

32. As both a matter of international law and practice, the federal government is held accountable internationally for the actions of state and local authorities regarding our treatment of foreign nationals. International bodies and foreign governments do not typically distinguish between the conduct of the national government and the conduct of an individual state within a federal system. This is starkly evidenced by the United States' experience in cases where state and local government authorities have failed to comply with U.S. obligations under the VCCR to provide consular notification to all foreign nationals in U.S. custody. Failure to provide such notice by state officials has led to three suits by Paraguay, Germany and Mexico against the United States in the International Court of Justice, an advisory opinion sought by Mexico in the Inter-American Court of Human Rights, a petition against the United States in the Inter-American Commission on Human Rights, and bilateral complaints by numerous foreign governments.

33. The United States takes seriously allegations that it has failed to adhere to

its international law obligations and foreign policy commitments and engages in these fora to address such claims. Although the government is fully prepared to defend U.S. practices against unjustified claims of human rights shortcomings, criticism from an international body over immigration human rights issues can directly undercut the credibility of U.S. efforts to advance human rights and can lead to significant diplomatic obstacles – both on immigration issues of bilateral concern and on other interests that might be the subject of diplomatic negotiations. As discussed below, in this context, S.B 1070's sweep into subjects left properly to federal direction and control subjects the United States to this criticism while denying the United States the tools to decide for itself whether and how to adjust such policies. The federal government should have to make its defenses or consider appropriate modifications only with regard to policies that are adopted through a considered process that reflects the interests of all the American people, not with regard to the views of one state.

III. Arizona Law S.B. 1070's Harm to U.S. Foreign Relations

34. Given the diplomatic and foreign relations sensitivities surrounding U.S. immigration policy generally, and the significant foreign relations consequences that can result from even small changes in these policies, and given that S.B. 1070 purports to impose Arizona's own immigration policy of "attrition through enforcement" through, among other provisions, mandatory verification of immigration status and state criminal enforcement of alien registration, it is not surprising that S.B. 1070 already has provoked significant international controversy. The law elevates the criminal aspect of federal immigration enforcement above all others, threatening state criminal penalties for

violations of federal immigration law. United States immigration law – and our uniform foreign policy regarding the treatment of foreign nationals – has been that the unlawful presence of a foreign national, without more, ordinarily will not lead to that foreign national's criminal arrest or incarceration, but instead to civil removal proceedings. This is a policy that is understood internationally and one which is both important to and supported by foreign governments. S.B. 1070 violates this aspect of American immigration law and foreign policy by effectively allowing for criminal sanctions based on unlawful presence alone. It deviates from federal law by imposing mandatory verification of immigration status and criminal enforcement of alien registration, and by criminalizing work and travel by foreign nationals beyond the restrictions imposed by U.S. law. In so doing, the law has already provoked significant negative reaction in U.S. bilateral relationships and in regional and multilateral fora.

35. Such criticism is not without costs. To the contrary, the criticism provoked by the Arizona law threatens at least three direct harms to U.S. foreign relations. As noted above, such a change in immigration policy invariably risks the adoption of harmful reciprocal policies toward U.S. nationals by foreign governments. It also undermines the willingness of foreign states to engage bilaterally and multilaterally with the United States to advance U.S. foreign policy goals, and it erodes the credibility of United States efforts in regional and multilateral intergovernmental bodies to advance human rights.

A. *Impact on Bilateral Relationships*

36. S.B. 1070 has unquestionably generated negative reaction that has damaged

the public image of the United States and has thereby undermined the United States' ability to pursue various diplomatic objectives. The law has provoked numerous public criticisms by governments with which the United States maintains important and sensitive diplomatic relations.

37. In Mexico, S.B. 1070 has precipitated a sharply negative public perception of the attitude toward immigrants in Arizona (and potentially by extension elsewhere in the U.S.), which in turn has negatively affected diplomatic processes with Mexican government officials. The Mexican President, Mexican Cabinet Members, the Mexican Congress, and opinion makers in Mexico all have reacted strongly in response to the law. These voices have also expressed concern about the safety of Mexicans in Arizona.

38. During his recent visit to Washington, for example, Mexico's President Calderón pointedly criticized the law, both during his joint press conference with President Obama on May 19 and in his address to the United States Congress on May 20. Speaking to the Congress, he emphasized the need for comprehensive immigration reform and focused attention specifically on the Arizona law:

> I am convinced that comprehensive immigration reform is also crucial to secure our common border. However, I strongly disagree with the recently adopted law in Arizona. It is a law that not only ignores a reality that cannot be erased by decree but also introduces a terrible idea: using racial profiling as a basis for law enforcement. And that is why I agree with President Obama, who said the new law "carries a great amount of risk when core values that we all care about are breached." I want to bridge the gap of feelings and emotions between our countries and our peoples. I believe in this. I believe in communications, I believe in cooperation, and we together must find a better way to face and fix this common problem.

39. President Calderón's criticisms reflect how negatively S.B. 1070 has

affected public attitudes in Mexico toward the United States. A recent poll in Mexico by the Pew Global Attitudes Project, for example, indicates that whereas before the adoption of the Arizona law 62 percent of those polled had a favorable attitude toward the United States and only 27 percent had an unfavorable attitude, following its adoption only 44 percent had a favorable attitude toward the U.S., while 48 had an unfavorable attitude. *See The Arizona Effect on U.S. Favorability in Mexico,* available at www.pewglobal.org. The poll demonstrates that an effort to establish a divergent immigration policy by a single state, which has not yet even gone into effect, nevertheless can significantly harm foreign attitudes toward the United States as a whole. Such effect in turn can seriously undermine support among important Mexican constituencies for Mexico's cooperation with the United States.

40. Bolivia's President Morales, Ecuador's President Correa, El Salvador's President Funes and Guatemala's President Colom have also voiced public criticism of the Arizona law. Other governments, including that of Brazil, Colombia, Honduras, and Nicaragua have issued statements criticizing the law. Additionally, the National Assemblies in Ecuador and Nicaragua, and the Central American Parliament based in Guatemala, have adopted critical resolutions or other statements. S.B. 1070 has also been raised with high level U.S. officials by various foreign states on a number of occasions in nonpublic settings.

41. Concrete steps also have been taken in response to S.B. 1070. For example, Mexico and El Salvador have issued travel warnings or alerts to their citizens traveling in the United States.

42. S.B. 1070 also already has negatively affected other American interests. As a direct result of the Arizona law, at least five of the six Mexican Governors invited to travel to Phoenix to participate in the September 8-10, 2010 U.S.-Mexico Border Governors' Conference have declined the invitation. Although not a formal binational government-to-government meeting, this annual conference is an important venue for improving binational coordination of border issues that inherently involve federal, state, and other levels of government. It is normally attended by most of the 10 U.S. and Mexican state governors, as well as some federal U.S. and Mexican government representatives who serve as technical advisors.

43. The Mexican Senate stated it would postpone review of a U.S.-Mexico agreement on emergency management cooperation to address natural disasters and accidents signed on October 23, 2008 because of the new Arizona law.

44. Negative effects such as these are only likely to intensify if S.B. 1070 goes into effect.

B. *Impact on Regional and Multilateral Relationships*

45. The Arizona legislature's adoption of S.B. 1070 also prompted harsh criticism of the law in human rights forums, demonstrating in practical terms the negative consequences that unilateral action by a single U.S. state can have on U.S. foreign policy interests. The law has diminished our credibility in advocating for human rights compliance abroad by others, and if allowed to go into effect, will continue to do so.

46. A number of U.N. and regional intergovernmental organizations and bodies,

including those whose mandates explicitly include the promotion of human rights, have criticized S.B. 1070. For example, on May 10, 2010, six UN human rights experts (the Special Rapporteur on the Human Rights of Migrants, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, the Independent Expert in the Field of Cultural Rights, the Special Rapporteur on the Right to Education, and the Independent Expert on Minority Issues) issued a joint statement specifically addressing the Arizona law:

> A disturbing pattern of legislative activity hostile to ethnic minorities and immigrants has been established with the adoption of an immigration law [in Arizona] that may allow for police action targeting individuals on the basis of their perceived ethnic origin.... In Arizona, persons who appear to be of Mexican, Latin American, or indigenous origin are especially at risk of being targeted under the law.
>
> The UN independent experts stressed that "legal experts differ on the potential effects of recent amendments to the immigration law that relate to the conditions for the official detention of suspected illegal aliens," and expressed concern about the "vague standards and sweeping language of Arizona's immigration law, which raise serious doubts about the law's compatibility with relevant international human rights treaties to which the United States is a party."

47. Additionally, in June 2010, at the 14th session of the UN Human Rights Council, the membership body within the United Nations system charged with promoting human rights and addressing situations of human rights violations, many countries criticized laws that criminalize irregular migration and discriminatory practices in the enforcement of immigration laws, and several states explicitly singled out S.B. 1070 for criticism in their plenary remarks.

48. Within the Inter-American regional system, on April 28, 2010, OAS Secretary General José Miguel Insulza stated that S.B. 1070 "is an issue of concern to all citizens of the Americas" and warned against the possibility of creating an environment of discrimination in the United States, in light of its significant Hispanic population. He added that "the rich tradition we all admire, of recognizing immigrants in the United States has been harmed, undermined." He recognized the efforts of the U.S. government to legislate on the matter in a constructive way, adding,

> This has been a painful moment, difficult for everyone, and it is why we recognize and salute with energy the way in which the government of President Barack Obama has reacted faced with this fact. For our part, we are going to follow up and always act with greater unity of purpose because I believe that all of us here present share the problems this law creates.

Many permanent representatives of OAS Member States also criticized the law both at the Permanent Council in Washington and at the June 2010 OAS General assembly in Lima, Peru.

49. Separately, on April 28, 2010, the IACHR voiced its concern over the "high risk of racial discrimination in the implementation of the law" and expressed concern "with the criminalization of the presence of undocumented persons." The IACHR exhorted "U.S. authorities to find adequate measures to modify the recently approved law in the State of Arizona in order to bring it into accordance with international human rights standards for the protection of migrants."

50. Finally, on May 4, 2010, heads of government at a summit of the Union of South American Nations ("UNASUR"), which is comprised of Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela,

adopted a statement condemning the law, claiming it could lead to the legitimization of racist attitudes and the latent risk of violence.

51. In short, the passage of Arizona S.B. 1070 has provoked broad-based criticism and concern among U.S. allies in the Western Hemisphere, by human rights experts, and in numerous intergovernmental fora. Nor can such criticism be readily dismissed. Such criticism, particularly when provoked by an independent immigration enforcement policy being pursued by a U.S. state, and which the national government does not control or endorse, affects the United States' standing in bilateral, regional and international relationships, and ultimately the leadership role of the United States as we seek to advance a wide range of policy goals within the international community. It risks retaliatory harms against to the legal rights of U.S. nationals abroad. And it compromises our ability to engage effectively in bilateral, regional and multilateral conversations regarding human rights.

C. *Future Ramifications*

52. If S.B. 1070 were to enter into effect, criticism will likely increase, and the risk of such harms will escalate. The Arizona law could have an increasingly caustic impact on the United States' relations with important regional allies, undermine additional diplomatic arrangements or opportunities for international cooperation, constitute an ongoing irritant in U.S. bilateral, regional and multilateral relationships, and subject the United States to ongoing criticism in international fora.

53. A few such circumstances are readily foreseeable. This fall, for example,

the United States will send a high level U.S. delegation to the UN Human Rights Council's Universal Periodic Review in Geneva, at which the United States will be questioned by other UN Member States regarding our human rights practices. This Universal Periodic Review is conducted once every four years for each UN Member State, and the United States will be presenting for the first time. It is highly likely that the Arizona law will be one of the concerns raised during the questioning by other delegations.

54. Likewise, the United States would undoubtedly be criticized for S.B. 1070 by UN human rights treaty monitoring bodies in the context of U.S. human rights treaty reporting requirements. Within the next two years alone, the United States will be expected to report to both the UN Human Rights Committee and the Committee on the Elimination of Racial Discrimination, and thereafter will be expected to appear before each body to defend the United States' record of human rights compliance. S.B. 1070, if still in effect, would very likely be the subject of criticism before both bodies.

55. If S.B. 1070, Arizona's attempt to set its own immigration policy in pursuit of "attrition through enforcement," were to go into effect, it would directly call into question the ability of the United States to speak with one voice at the international level on issues related to immigration and migration policy. Only the national government is in a position to accurately assess the impact of a policy such as S.B. 1070 on our overall foreign relations agenda and to balance the competing foreign relations considerations involved in the adoption and enforcement of such a law. When the United States incurs criticism of immigration law and policies adopted at the federal level, the United States is

normally in a position to review the criticism and determine whether to defend the practices against attack or else to take appropriate action to modify its practices. The United States is also able to develop and implement immigration policy in anticipation of these and other foreign relations concerns. In this case, however, the policy being pursued has not been developed, nor would it be implemented, with sensitivity to the full range of foreign policy information and considerations available to the national government, and the United States is unable to calibrate its immigration and foreign policies to respond effectively to these claims.

56. If the several states were each allowed to pursue independent immigration enforcement policies such as the Arizona law, these serious concerns would be multiplied significantly, as the United States could be subjected to a cacophony of competing immigration enforcement priorities and agendas, with little regard for the sensitive diplomatic and foreign relations considerations that immigration policy addresses, and with an extreme adverse impact on the United States' ability to speak with one voice.

57. S.B. 1070 – and in particular the mandatory verification regime requirement – thus poses a risk of provoking retaliatory treatment against U.S. nationals by other states, and threatens ongoing adverse consequences for important and sensitive bilateral relationships with U.S. allies such as Mexico, for our regional relations in the western hemisphere, and for our global relations in regional and multilateral institutions. It is likely to hinder our ability to secure the cooperation of other states in efforts to promote U.S. interests internationally across a range of trade, security, tourism, and other interests unrelated to immigration. Finally, it is likely to undermine the United States'

ability to engage effectively with the international community to promote the advancement and protection of human rights. Moreover, repairing such harm to international relations and U.S. stature in bilateral, regional and multilateral relationships after the fact can be extremely difficult.

58. Accordingly, after having analyzed S.B. 1070, considered how it would interact with existing federal immigration policy and practice, and assessed the international reaction to it, I have concluded that S.B. 1070 runs counter to American foreign policy interests, and that its enforcement would further undermine American foreign policy.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief. Executed the 2 day of July, 2010 in Washington, D.C.

James B. Steinberg

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF ARIZONA, et al., Defendants.	Civil Action No.

DECLARATION OF MARIKO SILVER

Pursuant to 28 U.S.C. § 1746, I, Mariko Silver, declare and state as follows:

1. I am the Deputy Assistant Secretary for International Policy and the current Acting Assistant Secretary for International Affairs at the United States Department of Homeland Security (DHS or the Department). I make this declaration based on my personal knowledge and from information provided to me by personnel with relevant knowledge.

2. I have served as the Deputy Assistant Secretary for International Policy for 16 months (February 2009 – June 2010). Prior to joining DHS, I served as Policy Advisor for innovation, higher education, and economic development in the office of Arizona Governor Janet Napolitano. I have also held positions at Arizona State University and Columbia University. In my capacity as the Acting Assistant Secretary for International Affairs I manage a department-wide approach to DHS's international engagement, advising the Office of the Secretary and senior leadership of the department on international policy and programs.

3. I am aware that the State of Arizona has enacted new immigration legislation, known as Senate Bill 1070 (Arizona SB 1070).

4. The Office of International Affairs in the Department of Homeland Security, Office of Policy, plays a central role in developing the Department's strategy for the Homeland Security mission overseas and actively engages foreign counterparts to improve international cooperation on homeland security issues. The very existence of the Office of International Affairs affirms that immigration policy and enforcement demand, in many instances, cooperation with foreign governments and that American immigration policy is a topic of interest in American diplomatic relationships. The Office of International Affairs provides the Secretary and the Department with policy analysis and management of the international affairs and foreign policies that impact the Department. Among other things, the Office of International Affairs builds support among nations and international organizations for actions against global terrorism; manages international activities within the Department in coordination with other federal officials with responsibility for counter-terrorism matters; assists in the promotion of information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security; builds upon and creates new partnerships to enhance DHS's ability through enforcement of the immigration and customs laws, to investigate and interdict transnational criminals and others who threaten public safety and the security of the United States; and coordinates Department international affairs including reviewing departmental positions on international matters, negotiating agreements, developing policy and programs, and interacting with foreign officials.

5. Arizona's new immigration law, Arizona SB 1070, is affecting DHS's ongoing efforts to secure international cooperation in carrying out its mission to safeguard America's people, borders, and infrastructure. DHS depends upon building international partnerships in order to be able to identify vulnerabilities and to understand, investigate, and interdict threats or

hazards at the earliest possible point, ideally before they manifest, reach our shores, or disrupt the critical networks on which the United States depends. Some of these potential threats involve people looking to enter the United States. These international relationships provide critical assistance towards enforcing the immigration laws to help prevent the arrival of individuals who pose national security or public safety concerns.

6. In the weeks following the passage of Arizona law SB 1070, DHS has seen negative effects on our outreach programs and on DHS's interactions with foreign governments. One specific instance where the bill has had a negative impact is on the implementation of provisions of the Rice-Espinosa agreement, which was designed to increase cooperation with Mexico on emergency management issues. On October 23, 2008, the United States and Mexico signed the Agreement between the Government of the United States and the Government of the United Mexican States on Emergency Management Cooperation in Cases of Natural Disasters and Accidents, which provided for increased cooperation in the event of natural disasters and accidents. DHS is of the view that revisions to this dated agreement with Mexico are necessary to reflect the current and emerging emergency management environment. To date, the Mexican Senate has yet to ratify the agreement. The Mexican Senate was scheduled to consider this revised agreement on April 27, 2010. The agreement was removed from the agenda, however, before it could be considered by the Mexican Senate. Mexican senators cited their anger over the passage of SB 1070 as the reason for postponing consideration of the agreement. *See* Ricardo Gomez Y Elena Michel, Senado congeal acuerdo con EU por Ley Arizona, El Universal (Mexico City), April 27, 2010, *available at* http://www.eluniversal.com.mx/notas/676153.html. It is likely that the Senate will not take up consideration of the agreement again until its next

session in September, 2010. Of course, if a natural disaster occurs in the interim, the response will not benefit from the agreement's framework for enhanced cooperation.

7. Fallout related to the passage of the Arizona bill has also impacted DHS's progress with the Merida initiative. When it was launched in 2007, the Merida Initiative, led by the United States Department of State, was a partnership among the governments of the United States, Mexico, and the countries of Central America to confront the violent transnational gangs and organized crime syndicates that plague the entire region. Based in part on this initiative, the United States has forged strong partnerships to enhance citizen safety in affected areas to fight drug trafficking, organized crime, corruption, illicit arms trafficking, money-laundering, and demand for drugs on both sides of the border. DHS is one of the key agencies involved in executing this initiative. Since the Arizona Bill was enacted, DHS representatives in Mexico working on the Merida initiative have reported complications in their efforts in the area of public diplomacy. DHS representatives in Mexico have had to field a barrage of questions relating to the Arizona bill which has delayed discussions regarding DHS cooperation and progress on this initiative.

8. DHS is also concerned about reports from border state officials that as a direct result of the passage of Arizona SB 1070, 5 of 6 Mexican governors will not participate in the Border Governors Conference, scheduled for September 8th through the 10th, if it is held in Arizona as planned. This year's conference is to be chaired by Arizona Governor Brewer. The conference agenda includes worktables on issues such as border security, science and technology, public health, tourism, emergency and civil protection and logistics and international crossings. The conference is normally attended by most of the ten U.S. and Mexican border state governors. DHS and other federal agencies are invited to the conference to provide technical

advice and ensure close state-federal cooperation. A boycott by Mexican officials in protest to Arizona law SB 1070 could hinder progress on issues that are critical to the DHS mission such as cross-border emergency management, trade facilitation, security cooperation, public health, and border crossing infrastructure.

9. DHS is similarly concerned about the damage this bill has caused in the general public perception abroad. Arizona SB 1070 is damaging the public trust that both the United States and Mexico have sought to build for our collaborative work in the fight against drug trafficking organizations. Much of the rhetoric in the Mexican media surrounding the bill demonstrates that the Mexican public views the bill as confirmation of the U.S. public's negative view of immigrants. This rhetoric also places DHS in a negative light. Such damage to the Department's international image is difficult to repair and could potentially have long term effects on future cooperation.

10. The Regional Conference on Migration (RCM), a migration forum with participants from all the Central and North American Countries, met most recently on May 20th and 21st of this year. Many delegations and multiple NGOs, rather than addressing broader migration issues, used their speaking time to criticize Arizona SB 1070 and express their concern about its potential impact on their citizens. Some Central American delegations even sought to include a condemnation of the Arizona law in the final RCM Declaration. Although the US delegation was able to block the inclusion of this specific reference, the Arizona bill was a constant and regular part of the RCM dialogue. The discussions regarding Arizona SB 1070 took time away from other, more critical, migration issues that could have furthered the Department's objectives, such as building partnerships and information sharing agreements which would enhance our ability to make informed decisions regarding applicants for admission

and to facilitate legitimate immigration and the protection of refugees, trafficking victims, and other vulnerable individuals as well as building partnerships which would further the Department's objective of deterring and interdicting illegal migration efforts and ensuring the safe and timely repatriation of illegal migrants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 24th day of June, 2010, in Washington, D.C.

Mariko Silver

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF ARIZONA, et al., Defendants.	Civil Action No.

DECLARATION OF MICHAEL AYTES

Pursuant to 28 U.S.C. § 1746, I, Michael Aytes, declare and state as follows:

1. I am employed by U.S. Citizenship and Immigration Services (USCIS), an agency of the Department of Homeland Security (DHS), as Senior Advisor to the Director of USCIS. I have been employed in this position since January 2010. My duties as Senior Advisor include, among other things, directing the USCIS planning effort for comprehensive immigration reform legislation and advising the Director about the direction and progress of USCIS efforts to transform its business processes. Prior to my current position, I have held a number of executive level positions since 1989 involving immigration benefit management at USCIS and its predecessor before March 2003, the Immigration and Naturalization Service (INS), including serving as: Acting Deputy Director of USCIS between 2008 and 2010 (the highest ranking official in the agency at that time); Associate Director, USCIS Domestic Operations Directorate (2006-2008); Director, Information and Customer Service (1999-2006); and Assistant Commissioner for Service Center Operations (1989-1997). I began my federal career with the INS in 1977. I make this declaration based on personal knowledge of the subject matter

acquired by me in the course of the performance of my official duties and upon information provided to me by personnel with relevant knowledge.

2. As explained below, there are several situations in which aliens in the United States have been lawfully admitted, or are pursuing a process for obtaining a lawful status under Federal immigration law, but will not have filed an application or other form that has been designated as complying with registration requirements, and will not have been issued a document designated as evidence of registration. Nonetheless, DHS is aware of their presence through the processes provided by federal immigration law and may, in certain cases, have affirmatively decided not to pursue either removal or criminal prosecution.

3. DHS regulations at 8 C.F.R. § 264.1(a) list certain DHS applications and other forms as registration forms for the purpose of complying with the alien registration requirements in 8 U.S.C. § 1302. DHS regulations at 8 C.F.R. § 264.1(b) designate certain DHS-issued cards and other documents (also referred to in the regulations as "forms") as forms constituting evidence of registration for the purpose of complying with 8 U.S.C. § 1304(d). In this Declaration, the DHS regulations at 8 C.F.R. § 264.1(a) and (b) are referred to as the "registration regulations."

4. In many cases, aliens who are eligible to apply for a particular immigration benefit may file with USCIS a designated form that also is designated as a registration form in the registration regulations. Once the application is processed and/or approved, the alien is issued a document designated as evidence of registration in the registration regulations. An example of a designated registration form is the Form I-485, Application to Register Permanent Residence or Adjust Status (commonly known as an "adjustment application"). Approval of an adjustment application will result in issuance of a Form I-551 Permanent Resident Card

(commonly known as a "green card"). Adjustment applicants are also eligible to file a Form I-765, Application for Employment Authorization, which, if approved, results in the issuance of an Employment Authorization Document (EAD). Both the green card and the EAD are designated as evidence of registration in the registration regulations.

5. However, in a number of specific situations involving aliens within the United States who have been lawfully admitted to the United States or have a pending or approved application for a lawful immigration status, the registration regulations do not designate a DHS form currently in use as a lawful application for registration, do not specifically designate a document issued to the alien as evidence of registration, or both. These situations include, but are not limited to: Certain aliens eligible for relief under the Violence Against Women Act; aliens applying for asylum; aliens applying for "T" or "U" nonimmigrant status; aliens applying for Temporary Protected Status (TPS); and aliens applying for and granted nonimmigrant admission to the United States pursuant to the Visa Waiver Program. The registration regulations do not designate any form as a general "catch-all" that aliens present in the United States who have not otherwise submitted a form described in the regulations may submit to register with DHS. Accordingly, under these circumstances, aliens seeking the various humanitarian immigration benefits described below will not be in possession of a registration document, despite the fact that they have an application for such benefit pending with the federal government and that the federal government is aware of their presence in the United States.

6. **Violence Against Women Act.** The Violence Against Women Act (VAWA) enables certain aliens who have been subjected to battery or extreme cruelty by their U.S. citizen or lawful permanent resident spouse, parent, or child to self-petition for immigration benefits (8 U.S.C. § 1101(a)(51) (defining VAWA self-petitioner)). USCIS granted 6,258 VAWA self

petitions in fiscal year 2009. To file a VAWA self-petition, applicants submit a Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant), and written confirmation of receipt of the petition is issued by USCIS. Battered aliens who file a VAWA self-petition also receive a notice of action of a prima facie determination by USCIS, which, if positive, may be used to access certain public benefits available to victims of domestic violence. When a VAWA self-petition is approved, the battered alien receives an approval notice. Upon receipt of the approval notice, the battered alien becomes eligible, but is not required, to apply for employment authorization. When the battered alien is eligible to file for adjustment of status, which requires among other things that an immigrant visa number is immediately available, the alien may file the Form I-485 as described above; otherwise, no form or document used in the VAWA self-petition process, including USCIS confirmation of receipt of the Form I-360, is included in the registration regulations.

7. Under current DHS policy, an approved VAWA self-petitioner is placed in deferred action status by USCIS. Deferred action is a form of prosecutorial discretion by which the agency elects not to assert the full scope of its authority. Generally, a grant of deferred action stays immigration enforcement based on convenience to the government, and provides a basis for the alien to apply for employment authorization. This policy provides battered aliens some protection against immigration enforcement such as removal, and allows opportunities such as seeking protective orders against their abusers and cooperating with law enforcement in criminal cases brought against their abusers.

8. Once a battered alien receives notice of approval of the VAWA self-petition and is placed in deferred action, the battered alien may, but is not required to, file a Form I-765 (Application for Employment Authorization), which will result in issuance of an EAD. Current

processing times for VAWA self-petitions are 6 months, and current general processing times for EADs are 1.5 months. Therefore, on average, a battered alien would not receive a registration document until at least 7.5 months after the initial filing of the Form I-360. With the exception of the EAD, no form or document used in the deferred action process is included in the registration regulations.

9. Accordingly, a battered alien who is in the United States, regardless of immigration status, and who is has filed such a VAWA self petition and is awaiting an adjudication, generally will not -- by virtue of this federal immigration process -- have submitted or obtained a form satisfying the registration regulations.

10. **Asylum.** Subject to certain statutory limitations, an alien who is physically present in the United States, regardless of immigration status, may apply for asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. § 1158). To apply for asylum, applicants submit a Form I-589 (Application for Asylum and Withholding of Removal). The registration regulations do not designate the Form I-589 as a form by which aliens may comply with registration requirements.

11. Under current DHS policy, arriving aliens who have established a credible fear of persecution and who are paroled from the custody of U.S. Immigration and Customs Enforcement (ICE) are provided with an approved Form I-94 (Arrival/Departure Record) reflecting parole status. Although the Form I-94 is designated as evidence of registration, not all asylum applicants are arriving aliens paroled from ICE custody.

12. For aliens affirmatively applying for asylum with USCIS, as opposed to defensively in removal proceedings before the U.S. Department of Justice's Executive Office for Immigration Review (EOIR), the applicant receives written confirmation of USCIS' receipt of

the application as well as directions for providing fingerprints. As a general matter, DHS concludes its asylum adjudication process before undertaking enforcement of immigration consequences against the alien. The applicant will then be interviewed by an asylum officer. Where a USCIS asylum officer, following an interview, determines that an alien is not eligible for asylum and the alien is not currently in a lawful immigration status, the alien is referred, typically through a Form I-862 (Notice to Appear (NTA)), for further consideration of the asylum application in removal proceedings before EOIR. If a USCIS asylum officer determines that an alien is not eligible for asylum and the alien is in a lawful immigration status, the alien is denied asylum. Any alien whose application for asylum has been pending before USCIS or EOIR at least 150 days may file a DHS Form I-765. USCIS may approve the Form I-765 as a matter of discretion if the application for asylum has been pending at least 180 days, which will result in issuance of an EAD. But before the issuance of the EAD, the alien would not necessarily possess evidence of registration. An alien whose application for asylum has been granted is issued a Form I-94, and also may file a Form I-765, which will result in issuance of an EAD. Except for the Form I-94 and EAD, which the registration regulations designate as evidence of registration, none of the forms or documents used in the USCIS asylum process are designated in those registration regulations as an application for, or evidence of, registration. USCIS granted 11,933 individuals asylum in fiscal year 2009.

13. Accordingly, an alien who is in the United States, regardless of immigration status, and who has filed a pending application for asylum with DHS, generally will not -- by virtue of this federal immigration process -- have submitted or obtained a federal form satisfying the registration regulations, except as stated above with respect to the EAD for certain applicants whose applications have been pending more than 180 days..

14. **T and U nonimmigrant status.** Federal law provides for the grant of "T" nonimmigrant status to certain victims of trafficking and their family members in the United States (8 U.S.C. § 1101(a)(15)(T)). In order to establish eligibility for T nonimmigrant status, aliens must establish, in part, that they are or have been a victim of a severe form of trafficking in persons, which means sex trafficking in which a commercial sex act was induced by force, fraud, or coercion, or the obtaining of a person for labor or services through the use of force, fraud, or coercion. Aliens seeking T nonimmigrant status must submit Form I-914 (Application for T Nonimmigrant Status), which generates written confirmation of receipt of the application. Written confirmation of receipt of the application does not, however, constitute evidence of registration under the registration regulations. The applicant must comply with fingerprinting requirements and may be interviewed, and all applications are subject to detailed review to determine eligibility and whether DHS will exercise its discretionary authority to waive applicable grounds of inadmissibility. Approval of an application for T nonimmigrant status automatically generates an EAD and a Form I-94. Except for the EAD and Form I-94, no form or document used in the T nonimmigrant application process is included in the registration regulations. The current processing time for applications for T nonimmigrant status is 6 months. USCIS granted 710 individuals T nonimmigrant status in fiscal year 2009.

15. Federal law provides for the grant of "U" nonimmigrant status to certain crime victims and their family members in the United States (8 U.S.C. § 1101(a)(15)(U)). In order to establish eligibility for U nonimmigrant status, aliens must establish, in part, that they suffered substantial physical or mental abuse as a result of being a victim of certain delineated crimes. Those crimes include rape, torture, trafficking, incest, domestic violence, sexual exploitation, and other similarly serious crimes. Applicants seeking U nonimmigrant status must submit a

Form I-918 (Petition for U Nonimmigrant Status). Submission of the application does not, however, provide an alien with evidence of registration designated under the registration regulations. Although an interview is not required, applicants are subject to fingerprinting and capture of other biometric indices, and applications are subject to detailed review to determine eligibility. Approval of an application for U nonimmigrant status automatically generates an EAD and Form I-94, which, as noted above, satisfy the proof of registration requirement. Except for the EAD and Form I-94, no form or document used in the U nonimmigrant application process is included in the registration regulations. The current average processing time for petitions for U nonimmigrant status is 6.1 months. U nonimmigrant status was granted to 8,663 individuals in fiscal year 2009.

16. DHS may grant an administrative stay of a final order of removal to aliens with pending applications or petitions for T or U nonimmigrant status who have set forth a prima facie case for approval (8 U.S.C. § 1227(d)(1)). Approval of an application for a stay of removal does not automatically generate an EAD and no form or document used in the stay of removal application process is included in the registration regulations. So an alien who received a stay of removal might still not possess evidence of registration, notwithstanding an administrative order authorizing the alien's temporary presence.

17. Accordingly, an alien who is in the United States, regardless of immigration status, and who is in the process of seeking "T" or "U" nonimmigrant status, generally will not -- by virtue of this federal immigration process -- have submitted or obtained a federal form satisfying the registration regulations.

18. **Temporary Protected Status.** Under 8 U.S.C. § 1254a, the Secretary of Homeland Security may designate foreign states whose nationals in the United States may apply

for Temporary Protected Status (TPS) in certain cases where conditions in the foreign state prevent such aliens from being returned. Eligible nationals cannot be detained and removed on the basis of immigration status during the period in which they have TPS. The eligible alien must apply using DHS Form I-821 (Application for Temporary Protected Status) and DHS Form I-765. Pursuant to the statute an alien is entitled to temporary treatment benefits, including an EAD, if the alien is prima facie eligible for TPS pending final adjudication. An alien applying for TPS can request an EAD, which may be granted based either on a prima facie determination of eligibility or upon a final adjudication granting TPS. Except for the EAD, no document used in the TPS application process is included in the registration regulations. As of June 3, 2010, USCIS has approved 23,475 applications for TPS under the designation of Haiti made by the Secretary of Homeland Security on January 15, 2010 in response to the devastating earthquake in that country three days before. The following other countries are currently within a period of designation for TPS: El Salvador; Honduras; Nicaragua; Somalia; and Sudan.

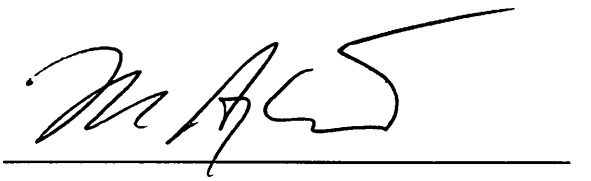
19. Accordingly, an alien who is in the United States, regardless of immigration status, and who is in the process of seeking TPS or has applied for TPS, generally will not -- by virtue of this federal immigration process -- have submitted or obtained a federal form satisfying the registration regulations.

20. **Visa Waiver Program:** The Visa Waiver Program (VWP) is administered by U.S. Customs and Border Protection (CBP), an agency of DHS. The only proof of admission currently issued to VWP travelers is the I-94W, and after implementation of the Electronic System for Travel Authorization (ESTA) is complete, the only proof of admission issued to most VWP travelers will be the entry stamp on his or her passport reflecting the date of admission. Although the registration regulations designate the Form I-94 generally as both the application

for registration and the evidence of registration for nonimmigrant aliens, the registration regulations do not refer specifically to the Form I-94W. Moreover, the ESTA process is not designated in those registration regulations as an application for, or evidence of, registration.

21. Accordingly, an alien who is admitted to the United States through the VWP and who abides by the terms of admission, will be lawfully present but will not -- by virtue of this federal immigration process -- have submitted or obtained a federal form satisfying the registration regulations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed the 22nd day of June, 2010 in Washington, D.C.



Michael Aytes

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF ARIZONA, et al., Defendants.	)	Civil Action No.

DECLARATION OF ROBERTO VILLASEÑOR

Pursuant to 28 U.S.C. 1746, I, ROBERTO VILLASEÑOR declare and state as follows:

1. I have been employed by the Tucson Police Department for almost 30 years and have been the Chief of Police for about 1 year and one month. The operations budget for the Tucson Police Department in fiscal year 2009/2010 was approximately $159 million.

2. As Chief of Police, I am responsible for protecting and ensuring the public safety of all people living and traveling in my jurisdiction, regardless of their immigration status. Tucson is the 2nd largest city in the state of Arizona and the 32nd largest city in the United States with a 2008 Census Bureau estimate population of 541,811. Hispanic or Latino population was estimated by the American Community Survey in 2005-7 3 Year Estimates to comprise approximately 39.5% of Tucson' population. Tucson is located some 60 miles from the US-Mexico Border. The surrounding metropolitan population exceeds 1 million persons.

3. As Chief of Police, I am also responsible for establishing policies and priorities for the department and my officers. The department is budgeted for 1113 sworn officers who engage in a broad range of law enforcement activities and actions, including but not limited to investigating and solving serious and violent crimes, responding to domestic violence calls, taking and responding to complaints from the public, and working with the community to encourage reporting of crime and cooperation with police. Deterring, investigating and solving serious and violent crimes are the department's top priorities, and it is absolutely essential to the success of our mission that we have the cooperation and support of all members of our community, whether they are here lawfully or not.

4. Arizona S.B. 1070 as amended by H.B. 2162 ("SB 1070"), which becomes law July 29, 2010, mandates that my officers determine the immigration status of any person they lawfully stop, detain or arrest in every case in which there is reasonable suspicion that the person is in the country unlawfully, regardless of the severity of the suspected or actual offense. The new law remove my ability to provide guidance and direction to officers as to what is practicable during the course of prioritizing investigations involving an immigration component. While I understand the impetus for legislation addressing illegal immigration issues, with Arizona bearing the brunt of the negative impact of illegal immigration that passes into our nation through this state, my concern is that these laws amount to an unfunded mandate that impose a Federal responsibility on local law enforcement. In an era of shrinking governmental budgets, local police authorities will be forced to assume a role not unlike that of at least two major Federal enforcement agencies, and with not an additional cent from the state to do so. The Tucson Police Department already cooperates with Federal immigration authorities when it can, and has actively worked with the Immigration and Customs Enforcement and Customs and

Border Protection when suspects are arrested and booked into jail in order that their immigration status can be verified. The impact of illegal immigration on Arizona's well-being cannot be denied. But to require local police to act as immigration agents when a lack of local resources already makes enforcing criminal laws and ordinances a challenging proposition, is not realistic. Our community will suffer as a result, with a decrease in quality of life, and an increase in local mistrust of police.

5. The new law takes away my discretion as the Chief of Police to administer police resources as I see fit for the protection and betterment of the community, which is my foremost duty. SB 1070 reprioritizes the regulation of immigration above almost every other enforcement effort that my department pursues. Tucson is currently plagued with home invasions, armed robberies, and violent gang activity, and is also subjected to some of the highest burglary and larceny rates in the country. Of the 4 states bordering Mexico, law enforcement agents and officers in Arizona seized almost 44% of all illicit drugs brought over the border from Mexico in 2009. All of these local crimes now get second priority to the state's mandated enforcement of immigration laws. This new law will take many officers from their patrol and enforcement duties while they process and/or transport what will amount to thousands of individuals, at a time when due to budgetary constraints my department is losing both resources and officer positions that I cannot fill.

6. In addition, SB 1070 implements a vague standard from which my officers are expected to enforce this immigration law. While my officers are comfortable establishing the existence or non-existence of reasonable suspicion as to criminal conduct, they are not at all familiar with reasonable suspicion as to immigration status, not being trained in Federal immigration law. Despite the executive order of Arizona Governor Jan Brewer to the contrary, Arizona Peace

Officer Standards and Training board has not been able to clearly define for Arizona's law enforcement officers what is reasonable suspicion regarding immigration status. Each police agency in this state will therefore develop its own definition, no doubt resulting in a patchwork of policies and procedures, with obvious danger to both law enforcement agencies and their communities. The relationship between law enforcement agencies and their communities will be seriously strained. Many community leaders now believe that their constituents will be unfairly targeted in the eyes of law enforcement. The concern is not over persons illegally present, but rather with legal citizens of the United States, who may, they believe, experience unnecessary and prolonged police contact based on their appearance of national origin or ethnicity. They fear the legislation codifies racial profiling, despite its wording, and such fear could destroy the good relationships that currently exist between police and local communities that have taken years to build through our efforts in community policing.

7. The financial cost to our community will also be high when SB 1070 becomes law July 29, 2010. The law mandates that police officers shall verify the immigration status of all arrestees prior to their release. The result will be the detention and incarceration of vast numbers of arrestees that up until now have been simply cited and released for various offenses. In fiscal year 2009/2010, the Tucson Police Department cited and released 36,821 arrestees, which is more than 100 persons a day. If each arrest were followed by only approximately 1 hour of mandated verification of immigration status, that amounts to over 36,000 hours of staff time, the equivalent of approximately 18 full-time officer's yearly work schedules! This mandate will be especially taxing at a time when my department is currently down 119 officer positions from authorized strength (that cannot be filled due to the budget), and is expected to get close to 200 officer positions down by the end of the year. Most taxing, however, is if there are no Customs

and Border Protection agents or Immigration and Customs Enforcement employees available to establish immigration status, these offenders who might otherwise have been cited and released, must be booked in the Pima County Jail. The Sheriff of Pima County charges the City $200.38 for the first day and $82.03 for any subsequent day of jail for misdemeanor and petty offenses. The City of Tucson's budget is already set for next year, and additional monies for these costs simply do not exist. On an individual level, should a lawful resident of Arizona be cited for a misdemeanor criminal offense, they might be incarcerated for who-knows how long in jail until Federal authorities can verify their immigration status. I have a realistic expectation that Customs and Border Protection agents or Immigration and Customs Enforcement employees will not be able to respond in a timely manner, if at all, to the thousands of calls they will be receiving statewide from Arizona's law enforcement agencies after these laws go into effect July 29, 2010. This law is a very expensive law not only in terms of financial costs, but also in human costs.

8. Another extremely expensive and negative result of SB 1070 may be the potential costs due to lawsuits that can arise from another provision of the legislation. The law permits a legal resident of Arizona to sue my department if they feel that I have implemented a policy that limits or restricts the enforcement of Federal immigration law to the less than the full extent permitted by Federal law. These suits may arise even if my policy is to investigate homicides, acts of terrorism, home invasions, armed robberies, sexual assaults and other violent offenses before my officers investigate suspected violations of Federal immigration law! As part of this absurdity, the law provides for court costs and attorneys fees on top of a fine of up to $5,000 per day from the *filing* of the lawsuit. Arizona service of process rules allow a litigant to serve a lawsuit up to 120 days after the filing of the suit. Therefore, a city could tally up $600,000 in fines from the

day of filing if not served until the 120 day period has run, and not even know about it. I hardly need point out that a city racked by such lawsuits could easily be rendered bankrupt.

9. The Constitution of the United States is the supreme law of the land, and as a law enforcement officer and as Tucson's Chief of Police I have sworn to uphold that law. Immigration law is an exclusively Federal jurisdiction and is inherently intertwined with Federal foreign policy concerns. Since SB 1070 states that it is intended to regulate immigration, it is therefore contrary to the United States Constitution. Additionally, there is already a process for federal immigration agencies to contract with local law enforcement to carry out immigration enforcement. This arrangement is a voluntary and cooperative one. The procedure, known as "287(g) agreements," includes extensive training of local officers by federal agencies and continued supervision of immigration enforcement by the Federal government. While S.B. 1070 recognizes the 287(g) program, this law will in fact make local police act as Federal immigration enforcement officers without the extensive training provided to 287(g) officers. The training is an important prerequisite of the 287(g) program that ensures local law enforcement have sufficient knowledge and experience in the complex area of Federal immigration law. The Arizona legislature has placed Arizona law enforcement officers in the awkward position of mandating that they enforce immigration laws that are the sole province of the Federal government without the necessary 287(g) training. This is not consistent with Federal efforts to properly counter illegal immigration. This cannot be.

10. While I agree that something must absolutely be done to tackle the problems associated with illegal immigration into this country, the means of shifting the burden of immigration enforcement and responsibility from Federal to local authorities cannot be justified nor sustained. We cannot bear the burden of the Federal government's financial and legal responsibilities. We

cannot bear the destruction of our relationships with our local community that we so vitally need in order to be successful in our mission to protect the public and make our City a better place to live with an excellent quality of life.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

ROBERTO VILLASEÑOR

Executed the 25th day of June, 2010 in Tucson, Arizona.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF ARIZONA, et al., Defendants.	)	Civil Action No.

DECLARATION OF TONY ESTRADA

Pursuant to 28 U.S.C. 1746, I, Tony Estrada, declare and state as follows:

1. I have been the Sheriff of Santa Cruz County, Arizona for seventeen years, since 1993. I was previously Captain for the City of Nogales, Arizona Police Department. I have more than forty years of law enforcement experience in Santa Cruz County, which is a border county.

2. As the County Sheriff, I am responsible for protecting and ensuring the public safety of all people living and traveling in my jurisdiction, regardless of their immigration status. Santa Cruz County has a population of approximately 50,000 people but more than 40,000 people legally come across its 53-mile border with Mexico every day to shop or visit family or for other activities.

3. As the County Sheriff, I am also responsible for establishing policies and enforcement priorities for the department and my officers. The department has forty officers who engage in a broad range of law enforcement activities and actions, including but not limited to investigating and solving serious and violent crimes, responding to domestic violence calls, taking and responding to complaints from the public, and working with the community to encourage

reporting of crime and cooperation with police. I am bound, however, in many instances to follow the dictates of the state government.

4. Arizona S.B. 1070, which was signed into law on April 23, 2010 and becomes effective July 29, 2010, mandates that my officers determine the immigration status of any person they lawfully stop, detain or arrest in every case in which there is reasonable suspicion that the person is in the country unlawfully, regardless of the severity of the suspected or actual offense at issue. In such cases, my officers will be required to detain the target of the stop pending confirmation of the individual's immigration status. SB 1070 requires us to detain the individual for however long it takes to verify immigration status. If my department does not enforce the State's immigration laws without exception, we risk being sued by private parties under this new law. The threat and real possibility of litigation requires that my officers determine the immigration status of every person they stop, detain or arrest if they have any reason to suspect that the person is in the country unlawfully.

5. S.B 1070 undermines my ability to set law enforcement priorities for my agency. As the Sheriff, I am responsible for setting my agency's law enforcement priorities. My top priority is investigating, preventing and deterring the most violent and serious crimes. This new law requires me to expend substantial and already scarce resources on immigration matters at the expense of combating serious crime. Currently, my department reports to U.S. Customs and Border Protection (CBP) the aliens whom we arrest for non-immigration crimes. The new law will require that we not only verify the immigration status of those whom we stop or arrest, if we have reason to suspect they are in the country unlawfully, but also investigate and arrest those who cannot prove their lawful status and, as a result, whom we will now have reason to suspect, or have probable cause to believe, are in violation of other S.B. 1070 misdemeanor provisions.

6. CBP is an important partner in our law enforcement efforts. I frequently reach out to CBP for information and assistance. Under this new law, my department will be making unlimited number of additional inquiries to CBP every year. If CBP cannot respond to this increased volume with an immediate verification of the immigration status of every person my officers stop, detain or arrest and who they suspect is in the country unlawfully, this law will require my officers to either hold people for prolonged periods of time to verify their status (and face potential liability for unlawful detention) or release people and face liability for not enforcing S.B. 1070 strictly enough.

7. Because of this law, my officers will be required in many cases to determine the immigration status of U.S. citizens and other people who are in the country lawfully but cannot easily produce documentation that proves their status. For example, my officers frequently come into contact with U.S. citizens and non-citizens lawfully living in or visiting Arizona who do not have the type of identification that would prevent my officers from having to validate immigration status under S.B. 1070. Along the border, we also encounter U.S. citizens and non-citizens with lawful status who do not speak English and regularly travel to and from Mexico to visit family or friends in Mexico – factors that we might consider in a "reasonable suspicion" determination with respect to immigration status. Obviously, these same factors are likely to apply to both lawfully present aliens and unlawfully present aliens. We also frequently come into contact with minors who usually do not have any sort of government-issued identification. Under this new law, the lack of such documentation would raise suspicion as to their lawful status and therefore require my officers to conduct immigration-status checks even if the person encountered is in the country lawfully and was stopped for a minor offense. If these minors are not cataloged in the federal immigration authorities' database, there is no limit to how long S.B. 1070 requires my officers to detain these American citizens and lawful aliens.

8. Immigration law and immigration status are complex, and my officers are not experts in immigration matters. There is a real risk that determining a person's immigration status will result in that person's prolonged and unlawful detention, violating that person's constitutional and civil rights and further subjecting the department to liability.

9. No amount of training prescribed by Arizona Governor Brewer will sufficiently prepare my officers to become experts on immigration law and immigration enforcement. The immigration laws are complex, and I am concerned that the state training will not equip my officers with the necessary knowledge and expertise that would allow them to reasonably suspect when someone is in the country unlawfully or has committed a public offense that makes them removable.

10. To enforce all of S.B. 1070's provisions, my department will be forced to divert significant resources and incur additional costs. At a minimum, we will be forced to pay $63 per day for every person we book in the county jail for violating one of S.B. 1070's criminal provisions. If the person we arrest is injured or needs medical treatment—which is common along the border where we encounter migrants who are usually dehydrated or have injuries resulting from having walked through the desert—we cannot book them until we take them to the hospital for medical treatment. The time and resources spent on taking the person to the hospital and paying their hospital costs will not be insignificant. The additional cost of holding them in our jail is particularly significant given my department's already scarce resources and limited bed space. Our county jail is designed to hold only fifty-two inmates. We are averaging seventy-six inmates daily and do not have a classification system designed to deal with inmates we arrest under this new law.

11. S.B. 1070 will also undermine the necessary trust between my department and community members whom we have a duty to protect and serve. Being labeled an "immigration

officer" will have serious consequences for community policing. It will deter immigrants, including those who are here legally, and other individuals, particularly those in the Latino community, from coming forward and interacting with the police, because they will fear being questioned about their status and possibly arrested for violating one of Arizona's new state immigration crimes. This will undoubtedly damage my department's ability to investigate and solve serious and violent crimes.

12. I am concerned that S.B. 1070's new immigration crimes will also lead private citizens to report people they suspect are in the country unlawfully in the same way they might report other crimes. This will drive immigrants in my community further underground.

13. Many families in my community live in "mixed status" households, meaning that some members of the household are either U.S. citizens or otherwise have legal immigration status, while others do not have legal status. This law will make it more difficult to secure cooperation in the investigation of violent crimes from U.S. citizens, because I believe that many of them will not come forward out of concern that police will question and arrest their family members who lack legal status.

14. Immigrant victims and witnesses of crime are made more vulnerable by S.B. 1070. It is standard police practice to identify victims and witnesses of crimes. Many victims or witnesses do not have a valid Arizona driver's license, non-operating identification license, tribal identification, or any other state, federal or local identification that is only issued upon proof of legal presence in the United States. Under this new law, the lack of such identification will raise suspicion that such victims or witnesses are in the country unlawfully and thus possibly in violation of the state alien-registration requirement or another new state immigration crime. My officers will be placed in the precarious position of deciding whether to treat the person as a crime

victim/witness or as a possible immigration violator, effectively undermining our law enforcement priorities and ability to protect people from serious crime.

15. My officers investigate domestic violence cases, in which many victims are undocumented and their assailants take advantage of this fact. Based on my years of law enforcement experience, I know that victims of domestic violence are less likely to come forward and report crimes if they fear that police are there not to protect them but instead to report them to immigration officials. This new law will serve to push these victims further underground and make our job to identify and arrest the perpetrators of such crimes that much more difficult.

16. The combined effect of the provisions of S.B. 1070 will force my officers to devote a substantial amount of their time to arresting aliens based on unlawful status. Section 3 of SB 1070 requires my officers to arrest aliens for registration violations – a new state crime that will allow for the arrest and prosecution of almost every unlawful alien. And Sections 4 and 5 create other state crimes that largely turn on an alien's unlawful presence. In light of S.B. 1070's command that my officers enforce state law to the maximum extent allowed by federal law, these various provisions require my officers to round up for criminal prosecution aliens who my officers believe to be unlawfully present.

17. My officers investigate human trafficking cases, in which most of the victims and witnesses are undocumented and their assailants take advantage of this fact. Based on my years of law enforcement experience, I know that victims and witnesses of human trafficking are less likely to come forward and report crimes if they fear that the police is there not to protect them but instead to report them to immigration officials. This new law will serve to push these victims and witnesses further underground and make our job to identify and arrest the perpetrators of such crimes that much more difficult.

18. My officers investigate alien smuggling cases, in which those being smuggled are undocumented. Under this new law, my officers will be required to determine the immigration status of those persons being smuggled and will be forced to arrest them for failing to carry alien registration documents or violating other state immigration crimes. Without the victims' cooperation, my officers will have difficulty identifying and arresting the smugglers themselves.

19. I am very concerned that S.B. 1070 will also impact my county's relationship with our Mexican neighbors and Mexican law enforcement. Nogales, Arizona, which is in Santa Cruz County, and Nogales, Sonora, Mexico share not only a common name but also a long and intertwined history. Members of the same families have always lived on both sides of the border. Anywhere between 40,000 and 50,000 people travel between the two Nogales ports of entry every day. Mexican nationals with border-crossing cards enter the U.S. daily to shop and visit family. I have been informed by residents and Mexican officials that Mexican nationals are scared to enter Nogales for fear that they will be stopped and arrested, even if they have a valid border-crossing card to enter the United States.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

TONY ESTRADA

Sheriff of Santa Cruz County, Arizona

Executed the 28th day of June, 2010 in Nogales, Arizona.