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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Puente Arizona and Susan E. Frederick-
Gray, on behalf of themselves and all
others similarly situated; Sara Cervantes
Arreola; and Guadalupe Arredondo,

Plaintiffs,

v.

Joseph M. Arpaio, Sheriff of Maricopa
County, Arizona, in his official capacity;
Bill Montgomery, Maricopa County
Attorney, in his official capacity;
Maricopa County, Arizona; and Robert
Halliday, Director of the Arizona
Department of Public Safety, in his
official capacity,

Defendants.

No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

CLASS ACTION

INTRODUCTION

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2 1. This action challenges two state laws, Arizona House Bill 2779 (“H.B.
3 2779”), passed in 2007, and Arizona House Bill 2745 (“H.B. 2745”), passed in 2008,
4 which sought, in relevant part, to criminally punish individuals who do not have federal
5 authorization to work in the United States for the act of securing employment. Both
6 measures were promulgated as part of a broader platform favored by Arizona nationalists to
7 make life so difficult for immigrants coming from Mexico and Latin America that they
8 would “self-deport.”

9 2. The effect of these measures has been to turn individuals such as Plaintiff
10 Sara Cervantes Arreola—who worked for years at a grocery store on Phoenix’s west
11 side to support her young son—into convicted felons. Ms. Cervantes Arreola was
12 arrested at work in January 2013 for using identifying information of a fictitious person,
13 something she needed to do in order to get the job.

14 3. Arizona entered uncharted territory as a state when it revised its identity
15 theft laws to achieve this aim. Specifically, H.B. 2779, also called the “Legal Arizona
16 Workers Act,” created a new offense of aggravated identity theft to use the information
17 of “another person, including a real or fictitious person, with the intent to obtain
18 employment.” A.R.S. § 13-2009(A)(3). H.B. 2745 supplemented the Legal Arizona
19 Workers Act by defining the offense of identity theft to include use of another’s
20 information, real or fictitious, “with the intent to obtain or continue employment.” § 13-
21 2008(A).

22 4. For the past six years, the Maricopa County Sheriff’s Office (the
23 “MCSO”) and the Maricopa County Attorney’s Office (the “MCAO”) have used the
24 above-described provisions in A.R.S. §§ 13-2008(A) and 13-2009(A)(3) (collectively
25 referred to as the “worker identity provisions”) to carry out a campaign of workplace
26 raids targeting undocumented immigrants. Their enforcement campaign has separated
27 breadwinners from their families, suppressed workers’ rights, eroded the social fabric of
28 the community, and ultimately harmed many U.S. citizens as well as immigrants.

1 Taxpayer funds have been improperly diverted from essential public services to jail and
2 prosecute workers. And organizations such as Plaintiff Puente Arizona have had to
3 respond to the fallout of the raids by providing humanitarian and advocacy assistance to
4 affected families.

5 5. Arizona’s effort to single out employment by undocumented workers
6 intrudes upon an area of exclusive federal control. The worker identity provisions
7 interfere and conflict with federal laws established by Congress and implemented by the
8 executive branch regulating immigration and employment, and thus violate the
9 Supremacy Clause. They also discriminate on the basis of alienage in violation of the
10 Fourteenth Amendment of the U.S. Constitution.

11 6. Plaintiffs bring this action seeking declaratory and injunctive relief to
12 prevent further arrests and prosecutions under the worker identity provisions and an
13 expungement of records for the two Plaintiffs who have been improperly convicted.

14 **JURISDICTION AND VENUE**

15 7. This action arises under 42 U.S.C. § 1983 and the laws and Constitution of
16 the United States. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331
17 and 1343. The Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201
18 and 2202.

19 8. Venue is proper under 28 U.S.C. § 1391(b). All Defendants are sued in
20 their official capacity and their official places of business are located within this District.
21 A substantial part of the events or omissions giving rise to the claims occurred in this
22 District.
23

24 **PARTIES**

25 **Plaintiffs**

26 9. Plaintiff Puente Arizona (“Puente”) is a grassroots membership
27 organization based in Phoenix. Its mission is to promote justice, human dignity, non-
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1 violence and interdependence. It aims to develop, educate, and empower migrant
2 communities, and to enhance the quality of life of migrants. Puente provides free
3 English classes, media trainings, know-your-rights workshops, health and wellness
4 training, educational programs for children, and other services to the community. The
5 arrests and prosecutions of workers under A.R.S. §§ 13-2008(A) and 13-2009(A)(3)
6 have frustrated Puente's mission by creating a climate of fear and separating parents,
7 community leaders, and students from those who depend on them. Puente has been
8 forced to cut back on its services and divert scarce resources in order to assist affected
9 workers and their families. In addition, some members of Puente are currently at risk of
10 being investigated, arrested, detained and/or prosecuted under the worker identity
11 provisions.

12 10. Plaintiff Sara Cervantes Arreola is a resident of Glendale, Arizona and
13 mother of a 5-year-old son. From 2007 to 2013, Ms. Cervantes worked up to 14 hours a
14 day, five days a week in the produce department at Lam's Supermarket to provide for
15 her family. On January 17, 2013, she was arrested at work by the MSCO during a
16 workplace raid for using the identity of a fictitious person to obtain employment. On
17 March 18, 2013, she pled guilty to aggravated identity theft, a Class 3 felony, under
18 A.R.S. § 13-2009.

19 11. Plaintiff Guadalupe Arredondo is a resident of Phoenix, Arizona and the
20 mother of two daughters, ages 5 and 11. From 2007 until 2013, Ms. Arredondo
21 supported her family by working at the Bazzill Basics Paper factory, where she prepared
22 paper for shipping. On February 14, 2013, she was arrested at work by MCSO deputies
23 for using a false identity to obtain employment. On or around May 3, 2013, she pled
24 guilty to identity theft, a Class 4 felony, under A.R.S. § 13-2008.

25 12. Plaintiff Reverend Susan E. Frederick-Gray is the Lead Minister of the
26 Unitarian Universalist Congregation of Phoenix, Arizona. She works in, resides in,
27 owns property in and pays taxes to Defendant Maricopa County. Upon information and
28 belief, Defendants are using county taxes paid by Plaintiff Frederick-Gray to enforce

1 A.R.S. §§ 13-2008(A) and 13-2009(A)(3) against undocumented workers. Plaintiff
2 Frederick-Gray is challenging the enforcement of these statutes as an illegal expenditure
3 of county taxpayer funds.

4 **Defendants**

5 13. Defendant Joseph M. Arpaio (“Arpaio”) is the elected Sheriff of Maricopa
6 County, Arizona. He is the final policymaker for Maricopa County in the area of law
7 enforcement, and is responsible for setting the policies, practices and customs of the
8 MCSO, including those pertaining to the agency’s enforcement of A.R.S. §§ 13-2008(A)
9 and 13-2009(A)(3). Defendant Arpaio is sued in his official capacity.

10 14. Defendant Bill Montgomery (“Montgomery”) is the elected County
11 Attorney for Maricopa County, Arizona. Defendant Montgomery is the chief official
12 responsible for the enforcement and prosecution of felonies within Maricopa County,
13 including A.R.S. §§ 13-2008(A) and 13-2009(A)(3), as well as misdemeanors that occur
14 in unincorporated areas. Defendant Montgomery is the final policymaker for Maricopa
15 County on matters of prosecution. He is sued in his official capacity.

16 15. Defendant Maricopa County, Arizona, is a political subdivision formed and
17 designated as such pursuant to Title 11 of the Arizona Revised Statutes. Maricopa County
18 is liable for the practices and policies of Defendants Arpaio and Montgomery. The County
19 has and continues to acquiesce in and, through local tax revenues, finance the enforcement
20 of A.R.S. § 13-2008(A) and 13-2009(A)(3) as described in this Complaint.

21 16. Defendant Robert Halliday is the Director of the Arizona Department of
22 Public Safety (“DPS”). DPS is responsible for collecting, storing and disseminating
23 criminal history records and related criminal justice information for the state of Arizona.
24 Defendant Halliday is sued in his official capacity.

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28 **FACTUAL ALLEGATIONS**

Exclusive Federal Control over Immigration and Employment Verification

1
2 17. More than 30 years before Arizona sought to regulate the employment of
3 unauthorized immigrants through H.B. 2779 and H.B. 2745, Congress enacted the
4 Immigration Reform and Control Act of 1986 (“IRCA”), Pub. L. 99-603, “a
5 comprehensive framework for combatting the employment of illegal aliens.” *Arizona v.*
6 *United States*, 132 S. Ct. 2492, 2504 (2012) (internal quotation omitted).

7 18. IRCA added to an already extensive system of federal laws addressing the
8 entry, expulsion and treatment of immigrants in the Immigration and Nationality Act
9 (“INA”). *See* 8 U.S.C. § 1101 *et seq.*

10 19. The Constitution grants the federal government exclusive, plenary power
11 over immigration matters, stating that the federal government may “establish a uniform
12 Rule of Naturalization,” U.S. Const. art. 1, § 8, cl. 4, and “regulate Commerce with
13 foreign Nations,” U.S. Const. art. I, § 8, cl. 3.

14 20. Congress’s comprehensive system of federal laws governing immigration
15 generally leaves no room for supplemental or parallel state laws.

16 21. In passing IRCA, Congress balanced numerous factors in settling on a
17 scheme for the regulation of immigration and employment that imposed a graduated
18 series of civil and criminal sanctions on employers for the knowing employment of
19 unauthorized workers. Congress located this new scheme in the immigration statutes.
20 *See* 8 U.S.C. § 1324a *et seq.*

21 22. The comprehensive framework created by Congress does not impose
22 criminal sanctions on the employee side for unauthorized work. Proposals to make
23 seeking or engaging in unauthorized work a criminal offense were introduced and
24 debated. However, Congress decided not to adopt them.

25 23. As the Supreme Court recently recognized, “IRCA’s framework reflects a
26 considered judgment that making criminals out of aliens engaged in unauthorized
27 work—aliens who already face the possibility of employer exploitation because of their
28

1 removable status—would be inconsistent with federal policy and objectives.” *Arizona*,
2 132 S. Ct. 2492 at 2504.

3 24. Committee reports accompanying IRCA confirmed Congress’s view that
4 unauthorized workers should not be treated as severely as the employers that hire them.
5 They recognized that there are “severe economic ‘push factors’ that lead aliens to enter
6 the country illegally” and that “many who enter illegally do so for the best of motives—
7 to seek a better life for themselves and their families.” H.R. Rep. 99-682, part 1, at 46,
8 63; *see also* S. Rep. No. 99-132, at 3.

9 25. Further, in IRCA, Congress established a detailed procedure by which
10 employers would have to verify prospective employees’ eligibility for employment. 8
11 U.S.C. § 1324a(a)(1)(B). This procedure involves the inspection of certain documents to
12 confirm identity and employment eligibility and completion of a Form I-9, Employment
13 Eligibility Verification Form. *Id.*; *see also* 8 C.F.R. § 274a.2.

14 26. Anticipating that some might respond to the new verification system by
15 relying on false documents or making false statements, Congress also endowed federal
16 authorities with certain tools to combat document fraud.

17 27. Section 103 of IRCA amended 18 U.S.C. § 1546 pertaining to “Fraud and
18 misuse of visas, permits, and other documents” to impose a criminal penalty for the use
19 of a false identification document or making of a false attestation for purposes of
20 satisfying the employment verification requirement. 18 U.S.C. § 1546(b). Section 103
21 also expanded the prohibition on selling, making or using fraudulent immigration
22 documents to include those documents used “as evidence of authorized . . . employment
23 in the United States.” 18 U.S.C. § 1546(a).

24 28. In addition to 18 U.S.C. § 1546, Congress specifically designated several
25 existing federal criminal statutes that could be applied to fraud in the employment
26 verification process. *See* 8 U.S.C. § 1324a(b)(5) (listing applicable statutes, consisting of
27 Title 18, Sections 1001 [false statements], 1028 [fraud in connection with identity
28 documents], 1546 and 1621 [perjury]).

1 29. Congress has also created certain civil penalties for document fraud. 8
2 U.S.C. §1324c allows an administrative law judge to impose a fine, after a hearing, of
3 \$250-\$2,000 on any person or entity who knowingly “forge[s],” “use[s]” or “attempt[s]
4 to use” a document not belonging to the possessor to satisfy the requirements of the
5 INA, including for purposes of obtaining employment. 8 U.S.C. §§1324c(a)(1)-(4),
6 1324c(d).

7 30. Finally, immigration consequences can attach to document fraud in the
8 employment verification process. *See, e.g.*, 8 U.S.C. § 1227(a)(3)(C)(i) (making “an
9 alien who is the subject of a final order for violation of section 1324c of this title []
10 deportable”); 8 U.S.C. § 1182(a)(6)(C) (making those who make false claims to
11 citizenship, including for purposes of 8 U.S.C. § 1324a, inadmissible and thus ineligible
12 for adjustment of status to that of a lawful permanent resident). Conversely, federal
13 authorities may decide to forego sanctions, for example, in cases where a worker is the
14 victim of labor trafficking, other labor violations or could otherwise be helpful to a law
15 enforcement investigation. *See, e.g.*, 8 U.S.C. §§ 1101(a)(15)(T), 1101(a)(15)(U).

16 31. Congress made a point to circumscribe punishment of fraud in the
17 employment verification process to enforcement of the immigration statutes and the
18 several criminal statutes listed in 8 U.S.C. § 1324a. *See* 8 U.S.C. §§ 1324a(b)(5)
19 (limiting use of the “[Form I-9] attestation form . . . and any information contained in or
20 appended to such forms” to “enforcement of this chapter and sections 1001, 1028, 1546,
21 and 1621 of Title 18”) and 1324a(d)(2)(F) (requiring that any changes to the
22 employment verification system continue to meet the requirement that it “not be used for
23 law enforcement purposes, other than for enforcement of this chapter or sections 1001,
24 1028, 1546, and 1621 of Title 18). The limitation on the use of the attestation form
25 extends to “copies or electronic images of documents . . . used to verify an individual’s
26 identity or employment eligibility.” 8 C.F.R. § 274a.2(b)(4).

27 32. Congress also included other language reinforcing the limitations on the
28 use of the employment verification system. It included sections titled “Limited use of

1 system,” 8 U.S.C. § 1324a(d)(2)(C), “Restrictions on use of new documents,” 8 U.S.C. §
2 1324a(d)(2)(G), and limited the “Copying of documentation permitted.” 8 U.S.C. §
3 1324a(b)(4).

4 33. In sum, in establishing the new employer sanctions regime in IRCA,
5 Congress “made clear” that the verification process created by the legislation and the
6 “information employees submit to show their work status” was to be used to enforce
7 federal law and not for any other purpose. *Arizona*, 132 S. Ct. 2492 at 2504.

8 34. The federal government’s creation of a pervasive, complex array of civil,
9 criminal and immigration tools to address fraud in the employment verification process
10 further manifests its purpose to preclude any state or local regulation on the same
11 subject. Congress has expressed much more than a “peripheral concern” with the issue,
12 *De Canas v. Bica*, 424 U.S. 351, 360 (1976); indeed, it has fully occupied the field.

13 **Arizona Legislature Accedes to Nativist Agenda, Amends Identity Theft Laws**

14 35. Beginning in 2004, citizen groups in Arizona began to converge around a
15 platform of protecting the interests of “natives” against perceived threats posed by the
16 state’s immigrant population.

17 36. These groups, such as the Minuteman Civil Defense Corps, a vigilante
18 activist organization that patrolled the U.S.-Mexico border with guns, called on
19 policymakers to pass restrictionist immigration policies to address what they portrayed
20 to be a crisis in border enforcement.

21 37. The nativist groups found a sympathetic ear in then-Arizona House
22 Representative Russell Pearce, among other elected officials. Pearce regularly interacted
23 with and praised these groups.

24 38. Pearce authored and championed for the passage of Proposition 200, a
25 ballot initiative that would require proof of citizenship in voter registration and limit
26 immigrant families’ access to public benefits. He would go on to author many more
27 measures dealing with immigration over the following six years, first as a representative
28

1 and then later as a state senator, as part of a comprehensive strategy he called “attrition
2 through enforcement.”

3 39. The goal of “attrition through enforcement” was to make life so difficult
4 for undocumented immigrants and their families that they would “deport themselves.”
5 For example, “attrition through enforcement” was the explicit aim of Pearce’s Senate
6 Bill 1070, an omnibus immigration measure passed in 2010, much of which has since
7 been found to be unconstitutional.

8 40. According to an April 2006 Center for Immigration Studies article that
9 Pearce circulated to supporters, the “attrition through enforcement” strategy had
10 different components, such as the enactment of local regulation to discourage
11 immigrants from settling in a location and the aggressive expansion of the role of state
12 and local law enforcement agencies in the apprehension and detention of immigrants.
13 Another element focused on “*ending misuse of Social Security and IRS identification*
14 *numbers, which illegal immigrants¹ use to secure jobs . . .*” (emphasis added). A copy
15 of the email from Pearce is attached as Exhibit 1 to this Complaint.

16 41. The Arizona Legislature incorporated this latter aspect of the attrition
17 through enforcement strategy in a Pearce-sponsored bill in 2006, House Bill 2577 (“H.B.
18 2577”).

19 42. H.B. 2577, in relevant part, added a provision to the Arizona criminal code
20 that defined the offense of forgery to include the making or alteration of a written
21 instrument “that is used to obtain employment in this state by a person who is not
22 authorized to work in the United States.” The bill specifically made this type of forgery,
23 targeted at undocumented workers, a Class 3 felony, punishable by up to 7 years, A.R.S.

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26 ¹ Though Plaintiffs use the terms “illegal immigrants,” “illegal aliens,” “aliens” and
27 “illegals” to quote statements of proponents of the worker identity theft provisions, as
28 well as some court decisions and statutes, they will otherwise refer to the individuals
targeted by the provisions as “undocumented” or “unauthorized” immigrants or workers.
See generally <http://www.pewresearch.org/fact-tank/2013/06/17/illegal-undocumented-unauthorized-news-media-shift-language-on-immigration/>.

1 §13-702(D), while all other types of forgery would remain Class 4 felonies under the
2 statute.

3 43. To mobilize support for measures like H.B. 2577 in the Legislature, Pearce
4 encouraged and played on the fear and resentment his constituents felt towards
5 immigrants.

6 44. For example, he forwarded a message from two residents of his home
7 district in Mesa advocating for passage of H.B. 2577 that included grievances about “a
8 mass invasion of historic proportions” by “an Hispanic ‘migrant army,’” members of
9 whom were “corrupt[ing] our unifying national language while actively disrespecting
10 our culture, society and country.” A copy of the email from Pearce is attached as Exhibit
11 2 to this Complaint.

12 45. Pearce has himself discussed the “threat” he believes is posed by
13 immigration from Mexico.

14 46. During a February 6, 2006 House Federal Mandates and Property Rights
15 Committee hearing, in which he was advocating for H.B. 2577, Pearce proclaimed,
16 incorrectly, that “[Arizona is] number one in the nation in crime, number one!” He
17 explained, “[T]here’s a clear reason for that, and that’s that connection we have to open
18 borders and our failure to secure that border.” Arizona Legislature recording of February
19 6, 2006 House Federal Mandates and Property Rights Committee hearing, at
20 approximately 8:07 of discussion on H.B. 2577.

21 47. During a Senate Appropriations Committee hearing on April 19, 2006,
22 Pearce remarked that “We have an illegal alien crisis and we all recognize that.” Arizona
23 Legislature recording of April 19, 2006 Senate Appropriations Committee hearing, at
24 approximately 11:15 of discussion on H.B. 2577. He further discussed “the Mexican
25 government in their 12th edition of ‘How to Break into America and Get Free Stuff.’” *Id.*
26 at approximately 14:55.

27 48. Pearce specifically alerted supporters to the phenomenon of individuals
28 using false Social Security numbers to work.

1 49. In 2006, he forwarded an article that presented the issue as one about,
2 among other things, “illegals” who “smuggle [themselves] across the border and take a
3 job that lawfully belongs to an American.” A copy of the email from Pearce is attached
4 as Exhibit 3 to this Complaint.

5 50. In a 2007 email to a constituent who had advocated for classification of
6 certain “illegals” as “domestic terrorists,” Pearce discussed the “rapidly growing crime”
7 of “illegal aliens stealing identities to get American jobs.” A copy of the email from
8 Pearce is attached as Exhibit 4 to this Complaint.

9 51. Although H.B. 2577 passed the Legislature in 2006, it was vetoed by the
10 Governor.

11 52. Pearce made another attempt the next year. In 2007, he introduced H.B.
12 2779, a bill that would eventually come to be known the Legal Arizona Workers Act.

13 53. Section 1 of H.B. 2779 amended Arizona’s aggravated identity theft
14 statute to punish individuals for using the information of “another person, including a
15 real or fictitious person, with the intent to obtain employment.” A.R.S. §13-2009(A)(3).
16 Previously, an individual was only punishable under this statute if he or she had bought,
17 manufactured or used the identity of five or more persons, or caused the loss of \$3,000
18 or more. H.B. 2779 expanded the grounds of this Class 3 felony to also include the use
19 of false information to work, whether or not the employee used the information of
20 additional persons or caused economic loss to any person or entity.

21 54. By contrast, an individual under 21 years of age who uses false
22 identification to illegally obtain liquor was exempt under the statute and guilty only of a
23 Class 1 misdemeanor, punishable by up to 6 months. A.R.S. §§ 13-2009(C); 4-241(L),
24 13-707(A).

25 55. Other aspects of H.B. 2779 required employers to use the basic pilot E-
26 Verify program and imposed sanctions in the form of license suspension on employers
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1 found to have knowingly employed unauthorized immigrants.² The full text of the law,
2 as enacted, is attached as Exhibit 5 to this Complaint and is incorporated by reference.

3 56. Legislators plainly understood that the purpose of H.B. 2779, including the
4 amendments to A.R.S. § 13-2009, was to address the employment of unauthorized
5 immigrants. Their contemporary statements and legislative fact sheets for the bill
6 reflected this purpose. They wanted to do so specifically because they were dissatisfied
7 with the federal government’s handling of the issue.

8 57. During a House Government Committee hearing on February 20, 2007 at
9 which he appeared to discuss H.B. 2779, Pearce urged members to not wait “while we
10 watch the destruction of our country” and “the destruction of neighborhoods” by illegal
11 aliens. Arizona Legislature recording of February 20, 2007 House Government
12 Committee hearing, at approximately 2:55:55. He declared that “the feds have not done
13 their job” to quell what he described as a “national epidemic,” and insisted that
14 “[Arizona] need[s] to step up to the plate” *Id.* at approximately 02:56:47 and
15 02:57:54.

16 58. At a June 20, 2007 Conference Committee hearing, Pearce responded to a
17 proposal that the Legislature delay passage of the bill to resolve some outstanding
18 concerns by stating “It’s about time we do something. The public’s tired of waiting . . .
19 The [corresponding ballot] initiative is out there because of the failure of both the federal
20 government and the state government to do their job . . . and it’s sad that [Congress is]
21 working on [amnesty] This law’s needed whether they do something or not . . . and .
22 . . securing the borders is needed.” Arizona Legislature recording of June 20, 2007
23 Conference Committee hearing at approximately 00:36:38, 00:38:35 and 00:38:55 of.

24 59. Just two days before the Conference Committee hearing, Pearce had
25 forwarded the April 2006 Center for Immigration Studies article identifying

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27 ² The sanctions on employers later were found permissible under an express savings
28 clause in 8 U.S.C. § 1324. *See Chamber of Commerce of U.S. v. Whiting*, 131 S. Ct. 1968
(2011) (discussing 8 U.S.C. § 1324(h)(2)). There is no savings clause allowing states to
impose penalties on employees.

1 undocumented workers' use of false Social Security numbers as a target for the "attrition
2 through enforcement" immigration strategy to supporters and, upon information and
3 belief, colleagues in the Legislature. A copy of the email from Pearce is attached as
4 Exhibit 1 to this Complaint.

5 60. Other legislators also voiced their frustration with the perceived failures on
6 immigration at the federal level and the need to take the issue into their own hands.

7 61. During a Senate Committee of the Whole hearing on May 23, 2007 Senator
8 Chuck Gray explained that he was supporting H.B. 2779 because it "advances the cause
9 of protecting our citizens against something that the federal government won't do."
10 Arizona Legislature recording of May 23, 2007 Senate Committee of the Whole hearing,
11 at approximately 01:14:46.

12 62. Proponents of the bill were committed to ensuring that workers under
13 would receive a harsh penalty under the measure, *because of* their undocumented status
14 and *because* the provision had to do with immigration.

15 63. Though being unlawfully present is a civil offense under the immigration
16 laws, some legislators seemed to operate under the assumption that it is a crime. For
17 instance, while addressing a proposed amendment to H.B. 2779 during a House
18 Committee of the Whole hearing on March 15, 2007, Representative Bob Robson
19 emphasized, erroneously, that "being in the country illegally is a criminal violation!"
20 Arizona Legislature recording of March 15, 2007 House Committee of the Whole
21 hearing, at approximately 00:32:05.

22 64. When one Representative, Jorge Luis Garcia, proposed that the bill be
23 amended to make the offense a Class 6 rather than a Class 3 felony during the May 23,
24 2007 Senate Committee of the Whole hearing, noting that "there's a lot of issues out
25 there that certainly are much more serious crimes than working here illegally," co-
26 sponsor Senator Robert Burns, stated "I guess the issue of the penalty, and whether the
27 penalty fits the crime is certainly a worthwhile debate; however, I think the timing on
28 this particular issue is really critical. At this point, we're all aware of the turmoil that has

1 come out of the [immigration reform] proposal at the federal level. I believe this would
2 be viewed as a weakening of our opposition to illegal immigration and so for that reason
3 I would oppose the amendment.” Arizona Legislature recording of May 23, 2007 Senate
4 Committee of the Whole hearing, at approximately 00:30:30 and 00:33:08.

5 65. During the same hearing on May 23, 2007, Senator Tom O’Halloran stated
6 his intent to make sure workers would be charged with a serious enough crime to
7 guarantee they “stay in jail” while the case is pending and then be immediately deported.
8 Arizona Legislature recording of May 23, 2007 Senate Committee of the Whole hearing,
9 at approximately 00:57:50. He erroneously believed they could “be deported by the State
10 of Arizona.” *Id.* at 00:57:20.

11 66. The Legislature did not make any findings or conduct any studies
12 regarding the specific financial or other harm to individuals’ whose identities were used
13 as a result of this activity.

14 67. Unlike other situations commonly understood as “identify theft,”
15 undocumented workers do not take money or make purchases in the name of the person
16 whose information they use. In many cases undocumented workers do not know if the
17 information they are using belongs to a real person, and often, the information *does not*
18 belong to a real person.

19 68. The legislative proceedings demonstrate that the motivation for Section 1
20 in H.B. 2779 was related to legislators’ views regarding illegal immigration and not to
21 address identifiable criminal harms of identity theft.

22 69. In signing H.B. 2779 into law, Governor Napolitano also identified the
23 measure as reflecting state frustration with the federal handling of immigration. She
24 stated, “Immigration is a federal responsibility, but I signed House Bill 2779 because it is
25 abundantly clear that Congress finds itself incapable of coping with the comprehensive
26 immigration reforms our country needs.” Letter from Janet Napolitano to Jim Weiers
27 (July 2, 2007), available at [http://www.azsos.gov/public_services/Chapter_Laws/2007/
28 48th_Legislature_1st_Regular_Session/CH_279.pdf](http://www.azsos.gov/public_services/Chapter_Laws/2007/48th_Legislature_1st_Regular_Session/CH_279.pdf).

1 70. Napolitano was quoted in news sources as saying, about the bill, “We’re
2 dealing somewhat in uncharted territory right now The states will take the lead, and
3 Arizona will take the lead among the states.” Matthew Benson, *Governor OKs toughest*
4 *migrant-hire law in U.S.*, ARIZ. REPUBLIC, July 3, 2007.

5 71. With the adoption of H.B. 2779, Arizona had appeased constituents who
6 had expressed hostility and bias against undocumented workers. Champions of the bill
7 included members of the Minuteman Civil Defense Corps, United for a Sovereign
8 America and Protect Arizona NOW.

9 72. In 2008, backers of H.B. 2779 faced a ballot initiative that they believed
10 would make Arizona’s employer sanctions regime more lenient. In a message opposing
11 the initiative, then-Representative Pearce opened with “#1 LURE IS JOBS AND
12 ILLEGAL EMPLOYERS; VIOLENT CRIME FOLLOWS ILLEGAL ALIEN
13 CROWD.” He continued, “IMMIGRANT GANG MEMBERS RARELY MAKE A
14 LIVING AS GANGSTERS, THEY ARE WORK[sic] CONSTRUCTION, AUTO
15 REPAIR, FARMING, LANDSCAPING, AND LOS[sic] SKILLED JOBS, DRUGS,
16 HOME INVASIONS, FALSE DOCUMENTS.” A copy of the email is attached as
17 Exhibit 6 to this Complaint.

18 73. Pearce also returned to the Legislature that year with another bill to amend
19 and supplement the Legal Arizona Workers Act, H.B. 2745. Section 1 of H.B. 2745
20 expanded the Class 4 identity theft statute to punish individuals for using the information
21 of another person, real or fictitious, “with the intent to obtain or continue employment.”
22 A.R.S. §13-2008. A Class 4 felony is punishable by up to 3 years. A.R.S. §13-702(D).
23 An individual under 21 years of age who uses false identification to illegally obtain
24 liquor was exempt under the statute. A.R.S. §§ 13-2008(E), 4-241(L), 13-707(A).

25 74. H.B. 2745 was passed by the Legislature and signed into law on May 1,
26 2008. The full text of the law, as enacted, is attached as Exhibit 7 to this Complaint and
27 is incorporated by reference.
28

Arizona's Worker Identity Provisions Intrude upon Federal Law

1
2 75. Arizona's passage of laws to penalize undocumented workers' use of false
3 or fictitious identities to "obtain or continue employment" directly intrudes upon the
4 federal government's exclusive authority in the (federally-created) employment
5 verification process.

6 76. The scheme Congress created provides a "full set of standards designed to
7 work as a harmonious whole." *Valle del Sol v. Whiting*, 732 F.3d 1006, 1024-25 (9th
8 Cir. 2013), *cert. denied*, 134 S. Ct. 1876 (2014) (internal quotation omitted).

9 77. Congress's consolidation of authority over fraud in the employment
10 verification process at the federal level allows authorities to select among available
11 enforcement tools to carry out (and balance) federal objectives. This flexibility is an
12 important feature of the federal scheme.

13 78. If Arizona's worker identity provisions are allowed to stand, every state
14 could "create an independent scheme of prosecution and judicial enforcement outside
15 the control of the federal government" *United States v. S. Carolina*, 840 F. Supp.
16 2d 898, 926-27 (D.S.C. 2011) (invalidating provision making it a state offense to use a
17 fraudulent identification document for the purpose of establishing lawful presence in the
18 United States), *aff'd*, 720 F.3d 518 (4th Cir. 2013). This would "detract[] from the
19 integrated scheme of regulation created by Congress." *Arizona*, 132 S. Ct. at 2502
20 (internal quotation omitted).

21 79. Even complementary state regulation is impermissible. In this case,
22 Arizona's sanctions actually conflict with federal law.

23 80. A.R.S. §§ 13-2008(A) and 13-2009(A)(3) impose different penalties than
24 federal law and, unlike federal law, fail to distinguish between different types of
25 fraudulent conduct in the employment verification process.

26 81. Arizona's statutes therefore further stand as an obstacle to success of
27 Congress's chosen "calibration of force" in accomplishing its purposes and objectives.
28 *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 380 (2000).

1 82. In addition to federal immigration law, A.R.S. §§ 13-2008(A) and 13-
2 2009(A)(3) frustrate the goals of federal labor and employment law, which Congress
3 recognized was critical to the success of the employer sanctions regime.

4 83. During congressional deliberations over IRCA, Congress was acutely
5 aware of the importance of vigorous enforcement of labor protections for workers.
6 Congress explicitly authorized funds for the U.S. Department of Labor's ("DOL's")
7 Wage and Hour Division to strengthen enforcement of employment standards laws for
8 undocumented workers in IRCA, recognizing that doing so would "remove the
9 economic incentive for employers to exploit and use such aliens." IRCA § 111(d).

10 84. Federal labor and employment law protections apply regardless of
11 immigration status.

12 85. The U.S. Department of Homeland Security ("DHS") and the DOL have
13 entered into a Memorandum of Understanding whereby DHS has agreed to refrain from
14 worksite enforcement in cases where employers may be manipulating enforcement
15 activities to gain leverage in a labor dispute. DHS/DOL Revised MOU Between DHS
16 and Labor Concerning Enforcement Activities at Worksites (Mar. 31, 2011).

17 86. In Arizona, however, the threat of a felony arrest under the worker identity
18 provisions gives unscrupulous employers a hammer to hold over the head of workers
19 who would otherwise seek to enforce their labor rights.

20 87. Arizona's worker identity provisions also contravene federal anti-
21 discrimination law.

22 88. For example, the 1870 Civil Rights Act specifically sought to protect
23 foreign nationals from sub-federal discrimination.

24 89. Codified today at 28 U.S.C. § 1981, Section 16 of the 1870 Civil Rights
25 Act emphasized that "all *persons* . . . shall be subject to like punishment, pains, penalties
26" 28 U.S.C. § 1981 (emphasis added). Codified today at 18 U.S.C. § 242, Section 17
27 of the Act prohibited any person "under the color of [] law" from subjecting any person
28

1 within a state to “different punishments, pains or penalties, *on account of such person*
2 *being an alien . . .*” 18 U.S.C. § 242 (emphasis added).

3 90. The Fourteenth Amendment to the U.S. Constitution also guarantees that
4 all persons receive equal protection of the laws.

5 91. In recasting Arizona’s identity theft statutes to target undocumented
6 workers, the Legislature acted in a discriminatory fashion.

7 92. The language and history of Section 1 of H.B. 2779 and Section 1 of H.B.
8 2745 demonstrate the Legislature’s intent to punish on the basis of alienage.

9 93. As candidly acknowledged by their author and primary sponsor, the
10 purpose of these measures was to make conditions so unbearable for undocumented
11 workers that they would voluntarily “self-deport.”

12 94. In passing these measures, the Arizona Legislature acted on a desire to
13 harm a politically unpopular group.

14 95. The Legislature played on and gave effect to private fears and prejudice
15 against undocumented immigrants.

16 96. Further, legislators refused to consider any lighter penalty for
17 undocumented workers because such a move would be “viewed as a weakening of our
18 opposition to illegal immigration.” Perception of Arizona’s position on the federal issue
19 of illegal immigration is not a legitimate state interest that could justify differential
20 treatment on the basis of alienage.

21 97. Arizona’s worker identity provisions violate federal anti-discrimination
22 protections.

23 **Maricopa County Defendants’ Campaign to Criminalize Undocumented Workers**
24 **Based on Arizona’s Worker Identity Provisions**

25 98. In 2008, the MCSO, relying on the worker identity provisions, began
26 conducting worksite enforcement operations.

27 99. The MCSO’s worksite operations were part of a larger campaign by the
28 Sheriff’s Office to “crack down” on illegal immigration. In July 2007, the agency had

1 announced that it had become a “full-fledged anti illegal immigration agency,” with its
2 employees “trained and anxious make a large dent” and “reduce the number of illegal
3 aliens making their way into the United States and Maricopa County.”

4 100. Sheriff Arpaio focused his agency’s illegal immigration program on
5 immigrants from Mexico and Latin America. Anti-Hispanic sentiment had fueled his
6 constituents’ call to channel the agency’s law enforcement resources towards the
7 immigration issue.

8 101. The U.S. District Court for the District of Arizona later found in 2013 in
9 *Ortega Melendres v. Arpaio* that MCSO’s immigration enforcement operations were
10 improperly based on race and that agency was engaged in systematic racial profiling of
11 suspected undocumented immigrants. The U.S. Department of Justice (DOJ) has also
12 sued the MCSO over racial profiling and other civil rights violations.

13 102. One of the more significant changes that the MCSO made to carry out its
14 focus on illegal immigration was the creation of a specialized unit within the agency to
15 find and arrest undocumented immigrants, called the Human Smuggling Unit (“HSU”).
16 Sheriff Arpaio also applied for a 287(g) agreement with DHS to cross-certify 160
17 officers to arrest individuals based on a suspected violation of the federal immigration
18 laws.

19 103. The HSU had three squads. One of the squads was called the Employer
20 Sanctions Unit. Notwithstanding the name of the Employer Sanctions Unit, much of the
21 work of the squad involved investigating undocumented immigrants who used false
22 documents to work.

23 104. The squad worked closely with the MCAO, which was headed initially by
24 former County Attorney Andrew Thomas.

25 105. MCAO likewise had a focus on illegal immigration. While campaigning
26 for his re-election in 2008, speaking about immigration, Thomas assured voters that he
27 would “work tirelessly to protect our neighborhoods from *those who threaten us and*
28 *violate our laws.*” Andrew Thomas, *County Attorney stands up for you*, ARIZ. REPUBLIC,

1 Sept. 26, 2008 (emphasis added). He declared, “I will not treat illegal immigrants as a
2 protected class” *Id.*

3 106. The MCAO assigned cases of employees using false identities to work to a
4 special unit that handled the office’s immigration-related cases rather than to its Fraud
5 and Identity Theft Enforcement (“FITE”) Bureau.

6 107. Investigations would typically begin with a citizen tip to the Sheriff’s
7 Office’s “illegal immigration hotline” that undocumented workers were employed at a
8 particular business. MCSO detectives would conduct an investigation, obtaining copies
9 of wage reports that an employer files with the Arizona Department of Economic
10 Security (“DES”) and comparing those against information found in other databases.

11 108. Workers usually use a Social Security number on the Form I-9 to show
12 eligibility for employment and that same number will then be used on other employment
13 forms for consistency.

14 109. With the information from the DES reports and database checks, MCSO
15 would then contact the Social Security Administration (“SSA”) and ask that agency to
16 identify which employees’ names matched the Social Security information SSA had on
17 file and which did not. With the information it received back from the SSA, MCSO
18 would obtain a search warrant for a business, alleging violations of A.R.S. §§ 13-
19 2008(A), 13-2009(A)(3) and sometimes the state forgery statute, § 13-2002.

20 110. MCSO executed search warrants with a show of force and regularly sent
21 hundreds of deputies and posse members, including tactical and K-9 units, to descend
22 upon a business. Workers were usually held incommunicado for hours while deputies
23 sorted through employee records and questioned them about their identity and
24 immigration status.

25 111. Until October 2009, those workers who MCSO could not charge
26 criminally were arrested on administrative immigration charges and processed for
27 deportation.³

28 ³ DHS terminated the MCSO’s street-level 287(g) authority on October 16, 2009 after the

1 112. Many workers, however, were arrested on state felony charges of identity
2 theft and forgery and prosecuted under A.R.S. §§ 13-2008(A) and 13-2009(A)(3).

3 113. By charging workers under these statutes, MCSO and MCAO could ensure
4 that they would be categorically disqualified from pretrial bail pursuant to another harsh
5 Pearce immigration measure, Proposition 100.⁴

6 114. Though the MCSO and MCAO have made some adjustments to how they
7 conduct these investigations in the intervening years, the basic goal of the operations
8 remains the same—to go after undocumented workers.

9 115. Since 2008, the MCSO has conducted over 80 worksite operations,
10 arresting nearly 790 workers under A.R.S. § 13-2008(A) and § 13-2009(A)(3).

11 116. In the same period, Maricopa County has brought only four actions against
12 employers. Three of those actions were civil, resulting in business license suspensions of
13 10 days or less, and a fourth action—still pending—is criminal.

14 117. In 2010, there was a change in leadership at the MCAO. The interim
15 County Attorney Rick Romley decided to stop sharing state funds that Arizona had
16 allocated to Maricopa County for enforcement of the Legal Arizona Workers Act with
17 the MCSO because the funds had primarily been used for worksite raids to arrest
18 employees, as opposed to going after employers who knowingly hired undocumented
19 immigrants.

20 118. In response to Romley’s decision, Sheriff Arpaio shifted funds from other
21 parts of his agency’s budget in order to keep the unit going. He was adamant that “There
22 will be no change.” The MCSO abandoned all pretense of focusing on civil employer
23

24
25 _____
26 DOJ found that the agency was engaged in a pattern and practice of discriminatory
27 policing and other civil rights violations.

28 ⁴ Proposition 100 and its implementing statutes prohibit Arizona courts from setting
pretrial bail for persons charged with a Class 1-4 felony who “ha[ve] entered and
remained in the United States illegally.” The measure is being challenged in *Lopez-
Valenzuela v. Maricopa County*, No. 2:08-cv-00060-SRB (D. Ariz.), appeal taken, No.
11-16487 (9th Cir.) (pending before en banc panel).

1 sanctions and changed the name of the unit to the Criminal Employment Squad to
2 explicitly focus on employees.⁵

3 119. MCAO, under the leadership of now County Attorney Bill Montgomery,
4 has resumed prosecution of employees under Arizona's worker identity provisions.

5 120. MCSO and MCAO's method of enforcing A.R.S. §§ 13-2008(A) and 13-
6 2009(A)(3) against undocumented workers has instilled great fear in the immigrant
7 community.

8 121. Rather than being secondary to employer sanctions, Maricopa County's
9 worksite enforcement strategy has been to almost exclusively target workers, detain
10 them without possibility of bail and pressure them into signing felony pleas.

11 122. Maricopa County's practices have given employers unchecked power over
12 workers.

13 123. Sometimes, an employer is aware that a worker has used false or fictitious
14 information to obtain work; an employer may even provide the information or fill it in
15 for workers. Yet employers know it will likely be the worker who is arrested if the
16 discrepancy were to be discovered (or be reported by the employer).

17 124. Volunteers and staff with Puente have observed what seems to be an
18 increase in labor abuse and greater hesitation on the part of workers to report labor
19 violations in Maricopa County.

20 125. Sheriff Arpaio has publicly announced his continuing commitment to
21 vigorous enforcement of A.R.S. § 13-2008(A) and § 13-2009(A)(3) against
22 undocumented workers.

23 126. In February 2014, he told a reporter, in response to speculation that his
24 office's worksite operations might be on the decline, "[W]e're going to continue to
25 enforce the state law of identity theft." Megan Cassidy, *MCSO raids decline over the*
26 *past year*, ARIZ. REPUBLIC, Feb. 3, 2014.

27
28 ⁵ In late 2013, the name of the squad was changed once again, to the Criminal
Employment Unit. Its focus remains the same.

1 127. In March 2014, Arpaio stressed to a group of supporters, “Now, they’re
2 clamping down, all these rulings from judges . . . But I still enforce the illegal
3 immigration laws by virtue of going into businesses and locking up the employees with
4 fake ID.” He continued, confirming his understanding of the identity theft laws as an
5 immigration enforcement tool, “[W]e do know that 99.9 percent are here illegally, we
6 know that, but they are not charged with that, they are stealing your ID.” Statement of
7 Sheriff Joe Arpaio, MN Tea Party Special Event, March 6, 2014, available at
8 <https://www.youtube.com/watch?v=LFd-Xxrl5qw>, at minute 51:04.

9 128. The MCSO, MCAO and Maricopa County (the “Maricopa County
10 Defendants”) continue to enforce A.R.S. § 13-2008(A) and § 13-2009(A)(3) against
11 workers as part of an official policy, pattern and practice. The MCSO arrested nine
12 workers as recently as June 13, 2014.

13 129. Upon information and belief, the Maricopa County Defendants continue to
14 expend local tax revenues on investigating, prosecuting and incarcerating undocumented
15 workers under A.R.S. § 13-2008(A) and § 13-2009(A)(3).

16 **Impact on the Immigrant Community and Puente’s Response**

17 *Plaintiff Puente Arizona*

18 130. Puente is a grassroots organization based in Phoenix, Arizona, with
19 hundreds of members, the vast majority of whom are migrants.

20 131. Migrants, particularly undocumented migrants and migrants in mixed
21 status families, face significant stigma and barriers to social and economic integration.
22 To fulfill its mission of developing, educating and empowering migrants to enhance
23 their quality of life, Puente provides a variety of services to the community, including
24 English classes, media trainings, know-your-rights workshops, health and wellness
25 training, and educational programs for children. Puente also offers cultural events,
26 including concerts, film screenings, and an annual Day of the Dead celebration.

27 132. Puente’s members play a central role in setting the organization’s
28 direction, priorities, and activities. Primary decision-making happens at Puente’s weekly

1 meetings, which are open to all members and program participants. In addition, Puente
2 holds membership retreats twice a year. As an organization, Puente represents its
3 members' collective interests and expresses their collective views.

4 133. The Maricopa County Defendants' enforcement of Arizona's worker
5 identity provisions has heavily impacted Puente's work and frustrated its mission.

6 134. The climate of fear caused by enforcement directly interferes with
7 Puente's efforts to develop and empower the migrant community. For example, many
8 workers who participate in Puente's know-your-rights trainings are reluctant to exercise
9 labor rights for fear of arrest and prosecution under Arizona's laws.

10 135. The climate of fear created by the raids has also led migrants to retreat
11 from public life. Some are even reluctant to leave their homes, including to participate in
12 Puente events and activities.

13 136. The jailing of heads of families—many of whom play important roles in
14 local churches, schools, and community organizations—has also frayed the social fabric
15 and made it difficult for Puente to build a strong community. Families of arrested
16 individuals struggle to get by without their primary breadwinners, which lowers not just
17 their own capacity, but that of other community members to whom they are forced to
18 turn for support. The raids have affected community members of all ages, from all walks
19 of life.

20 137. For example, in June 2009, then-9-year-old Katherine Figueroa was
21 playing at home when she overheard a TV news anchor announce that the carwash
22 where her parents worked had just been raided. She rushed to the TV and watched in
23 horror as MCSO deputies arrested her mother, Sandra Figueroa, and her father, Carlos
24 Figueroa. The MCSO charged her parents with using false documents to work and
25 incarcerated both of them in the County Jail for the next several months. Without her
26 parents, Katherine was forced to rely on extended family and friends for support.

27 138. More recently, in January 2013, 22-year-old Noemi Romero was arrested
28 by MCSO deputies while working as a cashier at Lam's Supermarket. Noemi, who grew

1 up in the United States, was working in order to raise money to pay the application fee
2 for the federal government's Deferred Action for Childhood Arrivals ("DACA")
3 program, which provides certain undocumented young people with work authorization
4 and a reprieve from deportation. Noemi dreamed of one day working in nursing or
5 cosmetology. Her dreams were shattered when MCSO raided Lam's Supermarket just
6 days after she'd finally managed to save enough money for the application, arrested her
7 and charged her with using a false identity to work. The identity information Noemi
8 used belonged to her mother. Noemi's felony conviction now disqualifies her from the
9 DACA program. Unable to work or go to college, Noemi lives at home with her parents.

10 139. 63-year-old Marta Espinoza Lopez was arrested by MCSO deputies in
11 February 2013 while she was working as a seamstress at Sportex Apparel. Marta had
12 worked at Sportex for 12 years. She had used her earnings to support herself and to put
13 her children through college in Mexico. She was arrested during an MCSO raid on
14 Sportex for using a fictitious identity to work. She spent four months in County Jail and
15 was subsequently transferred to immigration detention. Upon her release, Marta found
16 she had nothing. When she hadn't returned home after the raid, her landlord sold all her
17 possessions and rented the apartment to someone else. Marta was forced to rely on
18 friends and community organizations, including Puente, for support.

19 140. One of Puente's core organizers also had an uncle arrested in the MCSO
20 raid of Sportex.

21 141. Seeing the impact that the Maricopa County Defendants' practices were
22 having on the community with which Puente works, Puente was compelled to respond.

23 142. Puente has provided affected workers and families with childcare,
24 temporary housing, emergency financial assistance, essential information about the
25 criminal process, access to legal services, and critical social and moral support.
26 Additionally, Puente brings family members to visit their loved ones in detention and
27 purchased a van for this purpose. Finally, Puente advocates on behalf of arrested
28 workers in order to try to secure their release and reunite them with their families.

1 143. Because of the resources Puente diverted toward providing this assistance,
2 the organization had to cut back on its free English classes, health and wellness projects,
3 and other core services. Future enforcement actions will again require Puente to divert
4 scarce resources towards assisting affected workers and families.

5 144. Puente's membership continues to include a significant number of
6 migrants who are at risk of being investigated, arrested, detained and/or prosecuted by the
7 Maricopa County Defendants under A.R.S. §§ 13-2008(A) and 13-2009(A)(3). Some
8 undocumented Puente members are working to provide for themselves and their families
9 and have used false identity information in order to obtain or continue employment.

10 145. Puente members who have used false identity information in order to
11 obtain or continue employment live in constant fear that they may be arrested and
12 prosecuted under A.R.S. §§ 13-2008(A) and 13-2009(A)(3) at any time. Many worry
13 every morning when they leave for work that they may not come home that night.

14 146. Puente brings this suit on behalf of itself and on behalf of its members who
15 face a likelihood of future injury due to the Maricopa County Defendants' practices.
16 Because Plaintiffs seek injunctive relief and their claims are not dependent on detailed
17 facts unique to each individual, individual participation by Puente members is not
18 necessary. Given the climate of fear surrounding enforcement of A.R.S. §§ 13-2008(A)
19 and 13-2009(A)(3), it is unlikely any would come forward to assert their rights if their
20 individual participation were required.

21 147. Puente has no relevant conflicts of interest with its individual members.
22 Puente's pursuit of this litigation is pertinent to the organization's mission of
23 developing, educating and empowering the local migrant community.

24 *Plaintiff Sara Cervantes Arreola*

25 148. Sara Cervantes is a 26-year-old resident of Glendale, Arizona. She has one
26 son, who is 5 years old. Until January 2013, she worked in the produce department at
27 Lam's Supermarket to support herself and her young son and had never been charged
28 with or convicted of any crime.

1 149. On January 17, 2013, MCSO deputies conducted a worksite raid on Lam's
2 Supermarket while Ms. Cervantes and others were working. Deputies cleared the store
3 of customers and then blocked the store exits, gathered all the workers together, and
4 demanded they produce identification. Deputies ultimately arrested Ms. Cervantes along
5 with approximately eight other Latino employees.

6 150. Ms. Cervantes was charged with using a false identity to work. She was
7 detained at the County Jail and denied the opportunity for bail pursuant to Proposition
8 100.

9 151. On March 18, 2013, after approximately two months in jail, Ms. Cervantes
10 pled guilty to one count of aggravated taking the identity of another with intent to obtain
11 employment under A.R.S. § 13-2009, a Class 3 felony.

12 152. Ms. Cervantes was sentenced on May 6, 2013. As the Superior Court
13 found, "there [was] no victim in this case" because Ms. Cervantes had used information
14 belonging to a fictitious person. The court sentenced her to 109 days in jail, with credit
15 for time served, and twelve months probation.

16 153. On November 5, 2013, Ms. Cervantes was granted an early termination of
17 probation upon the recommendation of her Probation Officer and released from
18 probation. In total, following her guilty plea on March 18, 2013, Ms. Cervantes spent 59
19 days in jail and six months on probation.

20 154. Ms. Cervantes' length of incarceration and probation rendered federal
21 habeas relief unavailable to her.

22 155. Upon information and belief, it takes the Arizona Court of Appeals,
23 Division One, approximately one year or longer from the date of filing to decide a
24 criminal appeal. It takes the Arizona Supreme Court approximately four to six months to
25 decide whether or not to hear a case following a Court of Appeals decision, and an
26 additional three to six months to decide the appeal.

1 156. Given the length of the Arizona appellate process and the length of her
2 sentence, it was impossible for Plaintiff Cervantes to exhaust state remedies, much less
3 file and prevail on a federal habeas petition while she was in custody.

4 157. Ms. Cervantes feels as if her felony conviction has marked her life forever.
5 She believes that people in her community now look at her differently. She worries that
6 the conviction will negatively impact her in the event she is ever stopped or detained by
7 police in the future, and may impact her chances for future immigration relief.

8 *Plaintiff Guadalupe Arredondo*

9 158. Guadalupe Arredondo is a 26-year-old resident of Phoenix, Arizona. She is
10 the mother of two girls, ages 5 and 11, and a member of Puente. Until February 14,
11 2013, she worked at the Bazzill Basics Paper Factor to support herself and her family
12 and had never been charged with or convicted of any crime.

13 159. On February 14, 2013, MCSO deputies arrested Ms. Arredondo at work.

14 160. Ms. Arredondo was charged with using a false identity to work and
15 detained in the County Jail. She was denied the opportunity for bail pursuant to
16 Proposition 100.

17 161. On or about May 3, 2013, Ms. Arredondo pled guilty to one count of
18 taking the identity of another with the intent to obtain or continue employment under
19 A.R.S. § 13-2008, a Class 4 Felony.

20 162. On June 4, 2013, Ms. Arredondo was sentenced to 110 days in jail, with
21 credit for time served, and twelve months of probation.

22 163. On December 19, 2013, Ms. Arredondo was granted an early release from
23 probation at the recommendation of her Probation Officer and released from probation.
24 In total, following her guilty plea, Ms. Arredondo spent approximately 32 days in jail
25 and six months on probation.

26 164. Ms. Arredondo's short period of incarceration and probation rendered
27 federal habeas relief unavailable to her. Given the length of the Arizona appellate
28 process and the length of her sentence, it was impossible for Ms. Arredondo to exhaust

1 state remedies, much less file and prevail on a federal habeas petition while she was in
2 custody.

3 165. Ms. Arredondo worries frequently about her criminal conviction. The
4 mark on her record makes it difficult for her to put her traumatic time in jail behind her.
5 Because of her conviction, she fears any interaction with the police. She is concerned
6 that the conviction will negatively impact her in the event she is ever stopped or detained
7 by police in the future, and may affect her chances for future immigration relief.

8 *Plaintiff Reverend Susan Frederick-Gray*

9 166. Reverend Susan E. Frederick-Gray is a Maricopa County taxpayer.

10 167. Rev. Frederick-Gray objects to the use of county taxpayer funds to enforce
11 A.R.S. §§ 13-2008(A) and 13-2009(A)(3) against undocumented workers.

12 168. She believes that the expenditure of taxpayer funds to punish individuals
13 who are working to provide for their families and not intending to harm other persons
14 does not serve the public good. Those funds could instead be spent on essential public
15 services.

16 169. Rev. Frederick-Gray is challenging the enforcement of A.R.S. §§ 13-
17 2008(A) and 13-2009(A)(3) by Maricopa County Defendants as an illegal expenditure of
18 county taxpayer funds.

19
20 **CLASS ACTION ALLEGATIONS**

21 170. Plaintiffs Puente and Frederick-Gray bring this action as a class action
22 seeking declaratory and injunctive relief under Federal Rule of Civil Procedure 23(b)(2)
23 on behalf of themselves and all others similarly situated.

- 24 a. Plaintiff Puente seeks to represent a subclass of all persons who will
25 be subject to investigation, arrest, detention or prosecution by
26 Defendants under Arizona’s worker identity provisions (the
27 “worker subclass”).
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b. Plaintiff Frederick-Gray seeks to represent a subclass of all persons who pay taxes to Maricopa County and object to the use of county tax funds to investigate, arrest, detain or prosecute individuals under Arizona’s worker identity provisions (the “taxpayer subclass”).

171. The proposed subclasses are so numerous that joinder of all members is impracticable.

172. There are questions of law and fact common to the proposed subclasses, including (1) whether Arizona’s worker identity provisions are preempted by federal law; and (2) whether Arizona’s worker identity provisions deprive members of the worker subclass of the equal protection of the laws within the meaning of the Fourteenth Amendment to the U.S. Constitution.

173. The claims and defenses of the representative Plaintiffs are typical of the claims and defenses of their respective subclasses.

174. The representative Plaintiffs will fairly and adequately protect the interests of the respective subclasses.

175. Defendants in this case have acted and will continue to act in violation of proposed subclass members’ rights, which are grounds generally applicable to the subclasses, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the subclasses as a whole.

176. Plaintiffs’ counsel are competent and experienced in class action litigation of the type brought here. Plaintiffs are represented *pro bono* by the University of California, Irvine School of Law Immigrant Rights Clinic, the ACLU Foundation of Arizona, the National Day Laborer Organizing Network and the Law Office of Ray A. Ybarra Maldonado PLC, who collectively have extensive experience with litigation, including class action litigation, regarding the rights of immigrants and constitutional law.

REQUISITES FOR RELIEF

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2 177. As a result of the conduct of Defendants described above, Plaintiffs have
3 been denied their constitutional rights.

4 178. In violating Plaintiffs' constitutional rights, Defendants have and will
5 continue to act under color of law.

6 179. An actual and substantial controversy exists between Plaintiffs and
7 Defendants as to their respective legal rights and duties. Defendants' policies, practices,
8 conduct and acts alleged herein have resulted and will continue to result in irreparable
9 injury to Plaintiffs, including but not limited to further violations of their constitutional
10 rights.

11 180. Plaintiffs have no plain, speedy or adequate remedy at law to address the
12 wrongs described herein. Plaintiffs therefore seek injunctive relief restraining
13 Defendants from continuing to enforce and engage in the policies, practices and customs
14 described herein.

CLAIMS FOR RELIEF

First Claim For Relief

15
16
17 Supremacy Clause; 42 U.S.C. §1983

18 181. The above paragraphs are hereby incorporated by reference as though fully
19 set forth here.

20 182. The Supremacy Clause, Article VI, Section 2, of the U.S. Constitution
21 provides:

22 This Constitution, and the Laws of the United States which shall be made in
23 Pursuance thereof; and all Treaties made, or which shall be made, under the
24 Authority of the United States, shall be the supreme Law of the Land; and
the Judges in every State shall be bound thereby, any Thing in the
Constitution of Laws of any State to the Contrary notwithstanding.

25 183. The Supremacy Clause mandates that federal law preempts state law in
26 any area over which Congress expressly or impliedly has reserved exclusive authority or
27 which is constitutionally reserved to the federal government, or where state law conflicts
28 or interferes with federal law.

1 184. In enacting Section 1 of H.B. 2779 and Section 1 of H.B. 2745, amending
2 A.R.S. §§ 13-2008(A) and 13-2009(A), Arizona impermissibly intruded on the federal
3 government’s exclusive authority to regulate immigration, legislating in a field occupied
4 by the federal government and imposing burdens and penalties on noncitizens not
5 authorized by and contrary to federal law and policy, all in violation of the Supremacy
6 Clause.

7 185. Defendants may therefore not enforce Arizona’s worker identity provisions
8 or use information or documents employees submit in connection with 8 U.S.C. §
9 1324a’s employment verification process as the basis for any investigation, arrest or
10 prosecution.

11 Second Claim For Relief

12 Equal Protection, U.S. Const., Fourteenth Amendment; 42 U.S.C. §1983

13 186. The above paragraphs are hereby incorporated by reference as though fully
14 set forth here.

15 187. The Fourteenth Amendment to the U.S. Constitution provides that “[n]o
16 State shall . . . deny to any person within its jurisdiction the equal protection of the
17 laws.”

18 188. Section 1 of H.B. 2779 and Section 1 of H.B. 2745, amending A.R.S. §§
19 13-2008(A) and 13-2009(A), constitute impermissible discrimination against noncitizens
20 on the basis of alienage.

21 189. Defendants cannot establish that Sections 1 of H.B. 2779 and H.B. 2745
22 had any valid justification, including a rational basis.

23 190. By enforcing Arizona’s identity theft provisions against undocumented
24 workers, Defendants deprive them of equal protection of the laws within the meaning of
25 the Fourteenth Amendment to the U.S. Constitution.
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PRAYER FOR RELIEF

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191. Plaintiffs respectfully request that the Court grant the following relief:

- a. Enter a judgment declaring that A.R.S. §§ 13-2008(A) and 13-2009(A)(3) violate the Supremacy Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- b. Enter a permanent injunction prohibiting the Maricopa County Defendants from further enforcing A.R.S. §§ 13-2008(A) and 13-2009(A)(3);
- c. Enter a permanent injunction prohibiting the Maricopa County Defendants from using information or documents employees submit in connection with 8 U.S.C. § 1324a’s employment verification process as the basis for any investigation, arrest or prosecution;
- d. Issue an injunction ordering Defendants Arpaio and Halliday to expunge from their records the arrests and convictions of Plaintiffs Arredondo and Cervantes under A.R.S. §§ 13-2008(A) and 13-2009(A)(3), respectively, and to forward a copy of this order to any person or agency that was notified of said arrests or convictions;
- e. Award attorneys’ fees and costs of suit, plus interest, pursuant to 42 U.S.C. § 1988; and
- f. Grant such other relief as the Court deems just and proper.

DATED this 18th day of June, 2014.

By /s/ Anne Lai
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* *Pro hac vice* application pending
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