

1 CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW  
 2 Peter A. Schey (58232)  
 3 pshey@centerforhumanrights.org  
 4 Carlos Holguin (90754)  
 5 crholguin@centerforhumanrights.org  
 6 256 S. Occidental Blvd.  
 Los Angeles, CA 90057  
 Telephone: 213.388.8693 ext. 104  
 Facsimile: 213.386.9484

7 H. Michael Clyde (009647)  
 8 MClyde@perkinscoie.com  
 9 Perkins Coie Brown & Bain P.A.  
 10 2901 N. Central Avenue, Suite 2000  
 Phoenix, AZ 85012-2788  
 Telephone: 602.351.8000  
 Facsimile: 602.648.7000

11 Attorneys for Plaintiffs  
 12 (Plaintiffs' Attorneys continued on page 2)

13 UNITED STATES DISTRICT COURT  
 14 DISTRICT OF ARIZONA

<p>16 WE ARE AMERICA/SOMOS AMERICA          17 COALITION OF ARIZONA; ARIZONA          18 HISPANIC COMMUNITY FORUM;          LEAGUE OF UNITED LATIN AMERICAN          19 CITIZENS; FRIENDLY HOUSE; RAUL          VIXTHA BOMAYE; JAVIER ROMERO          ENCINO; ROSA FLOR DIAZ GODINES;          20 ADRIANA RODRIGUEZ ESPIRITU; JUAN          MANUEL CORTEZ CUELLAR; HUGO          21 ENRIQUE SANCHEZ DIEGO; STATE          REPRESENTATIVE KYRSTEN SINEMA;          22 STATE REPRESENTATIVE STEVE          GALLARDO; STATE REPRESENTATIVE,          23 DAVID LUJAN; PROFESSOR CECILIA          24 MENJIVAR; PROFESSOR LADAWN          25 HAGLUND,          Plaintiffs,          26 - vs -          27 MARICOPA COUNTY BOARD OF          28 SUPERVISORS, GOVERNING BODY FOR          MARICOPA COUNTY, A POLITICAL          SUBDIVISION OF THE STATE OF          ARIZONA; FULTON BROCK, DON</p>	<p>No. CV06-2816-PHX-RCB</p> <p>AMENDED COMPLAINT FOR          DECLARATORY AND INJUNCTIVE          RELIEF</p> <p>[CLASS ACTION]</p> <p>Assigned to Hon. Robert C. Broomfield</p>
---	--

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

STAPLEY, ANDREW KUNASEK, MAX W. WILSON, AND MARY ROSE WILCOX, MEMBERS OF THE MARICOPA COUNTY BOARD OF SUPERVISORS; ANDREW THOMAS, MARICOPA COUNTY ATTORNEY; JOSEPH ARPAIO, MARICOPA COUNTY SHERIFF,  Defendants.	
--	--

Plaintiffs' counsel continued:

Ray Velarde (TX Bar #20539950)  
LULAC National Legal Adviser  
1216 Montana  
El Paso, TX 79902  
Telephone: (915) 373-6003  
Email: rayvelarde2003@yahoo.com

Dan Ballecer (AZ Bar #15616)  
1095 E. Indian School Road  
Phoenix, AZ 85014  
Telephone: (602) 277-0044  
Facsimile: (602) 277-1097  
Email: [dballecer@cox.net](mailto:dballecer@cox.net)

Antonio Bustamante (AZ Bar #7256)  
1001 N. Central Avenue Suite 660  
Phoenix, AZ 85014  
Telephone: (602) 277-0044  
Facsimile: (602) 277-1097  
Email: antonio\_b@quest.net

*Attorneys for Plaintiffs*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiffs allege as follows:

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief to enjoin Maricopa County and its agents, Maricopa County Attorney Andrew Thomas and the Maricopa County Sheriff Joseph Arpaio, from regulating international migration, a matter of exclusive federal prerogative. As more fully alleged below, defendants have embraced a policy and practice to arrest, detain, and punish non-smuggler migrants for conspiring to transport themselves through Maricopa County (“Maricopa Migrant Conspiracy Policy” or “MMCP”). Defendants’ sole legal basis for said policy and practice is an *ultra vires* interpretation of Ariz. Rev. Stat. § 13-2319, a statute enacted to impose criminal penalties on professional smugglers who transport migrants not authorized to be in the United States under federal law. Plaintiffs challenge the Maricopa Migrant Conspiracy Policy on multiple grounds: *inter alia*, (1) that it is preempted pursuant to U.S. Const. Article I, § 8, cl. 4 (the federal power to establish a uniform rule of naturalization) and cl. 3 (the federal power to regulate commerce with foreign nations); (2) that it violates the Due Process Clause of the Fourteenth Amendment by failing to provide reasonable notice of what conduct is proscribed; (3) that it violates the Fourteenth Amendment’s bar against unreasonable searches and seizures inasmuch as defendants arrest persons without probable cause to believe they have committed any cognizable criminal offense; and (4) that it is inconsistent with and violates Ariz. Rev. Stat. § 13-2319 (a pendent state claim).

2. In purpose and effect, the Maricopa Migrant Conspiracy Policy is a scheme to control international borders: specifically, to deter unauthorized migrants from entering, passing through, or remaining in Maricopa County by (1) detecting those persons believed to be not “lawfully in the state” who are being transported for gain; (2) arresting such persons; and (3) incarcerating and punishing them for conspiring to transport themselves. In

1 addition to regulating international migration, defendants THOMAS and ARPAIO adopted  
2 the Maricopa Migrant Conspiracy Policy to garner local and national media attention and  
3 further their political fortunes by impugning federal authorities' ability and resolve to  
4 control international migration.  
5

#### 6 JURISDICTION

7 3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 (federal question  
8 jurisdiction) and 1343(3) and (4) (jurisdiction over actions for violation of civil rights  
9 secured by 42 U.S.C. § 1983). Plaintiffs' action for declaratory relief is authorized by 28  
10 U.S.C. §§ 2201 and 2202. Jurisdiction over plaintiffs' pendent state law claim is proper  
11 under *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S. Ct. 1130, 16 L. Ed. 2d 218  
12 (1966), because plaintiffs' state law and federal claims derive from a common nucleus of  
13 operative fact such that both state law and federal claims would ordinarily be expected to  
14 be tried in one judicial proceeding.  
15

16 4. Venue is properly in this court pursuant to 28 U.S.C. § 1391(b) and (e)(1), (2),  
17 and (4), because the acts complained of occurred in this district, several of the plaintiffs and  
18 defendants reside in this district, and no real property is involved in this action.  
19

#### 20 PARTIES

##### 21 PLAINTIFFS

22 5. Plaintiff WE ARE AMERICA/SOMOS AMERICA COALITION OF ARIZONA  
23 ("WAA/SAC") is a coalition of community-based organizations in Maricopa County,  
24 Arizona. The purposes of WAA/SAC include protecting and promoting fair and lawful  
25 public policies toward migrants, preserving the lawful roles of state and federal  
26 governments with respect to regulation of international migration, ensuring compliance  
27 with federal laws and the United States Constitution by local government agencies in the  
28 Amended Complaint

1 treatment of migrants, and delivering social services and humanitarian assistance to  
2 migrants. The Maricopa Migrant Conspiracy Policy is diverting the limited resources of  
3 WAA/SAC and its members, thus making their work and achievement of their goals more  
4 difficult and costly. WAA/SAC members are expending time and resources delivering  
5 services to migrants detained in Maricopa County jail facilities pursuant to the Maricopa  
6 Migrant Conspiracy Policy. WAA/SAC's delivering services to migrants incarcerated  
7 under the unlawful Maricopa County Conspiracy Policy is more difficult, time-consuming,  
8 and expensive than is its delivering like services to undetained and uncharged migrants. In  
9 addition, WAA/SAC is providing services to migrants detained under the Maricopa  
10 Migrant Conspiracy Policy that it does not normally provide undetained migrants, including  
11 cash assistance to ameliorate the hardships of confinement.  
12

14 6. Plaintiff ARIZONA HISPANIC COMMUNITY FORUM (AHCF) is a community-  
15 based membership organization located in Maricopa County, Arizona. The mission of the  
16 AHCF is to empower Hispanic communities, to advocate for Hispanic communities before  
17 public and private policy-making bodies, to promote and preserve Hispanic history,  
18 language, cultures, customs, and contributions, to increase opportunities and improve the  
19 quality of life for Hispanics, to defend, preserve and protect rights of Hispanics under the  
20 law, to promote equal access and fair treatment for Hispanics, and to provide needy  
21 Hispanics charitable assistance. The Maricopa Migrant Conspiracy Policy is diverting the  
22 limited resources of AHCF and its members, thus making their work and achievement of  
23 their goals more difficult and costly. AHCF members are expending time and resources  
24 delivering services to migrants detained in Maricopa County jail facilities pursuant to the  
25 Maricopa Migrant Conspiracy Policy. AHCF's delivering services to incarcerated migrants  
26 is difficult, costly and time-consuming. In addition, AHCF is providing services to migrants  
27  
28

1 detained under the Maricopa Migrant Conspiracy Policy that it does not normally provide,  
2 including cash assistance to ameliorate the hardships of their illegal confinement and to  
3 permit them to communicate telephonically with their family members.

4  
5 7. Plaintiff LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) is a  
6 community-based membership organization with a local chapter located in Phoenix,  
7 Arizona. LULAC is the largest and oldest Hispanic organization in the United States. Its  
8 primary goals include promoting and protecting the legal, political, social, and cultural  
9 interests of Latinos in the United States. The unlawful Maricopa Migrant Conspiracy Policy  
10 is diverting the limited resources of LULAC and its members, thus making their work and  
11 achievement of their goals more difficult and costly. LULAC is expending time and  
12 resources delivering services to migrants detained in Maricopa County jail facilities  
13 pursuant to the Maricopa Migrant Conspiracy Policy. LULAC members have visited  
14 migrants detained under the Maricopa County Conspiracy Policy to offer them  
15 encouragement and moral support, and have deposited money into migrants' jail accounts  
16 to help them communicate with their families while they are incarcerated.

17  
18  
19 8. Plaintiff FRIENDLY HOUSE is a non-profit organization located in Phoenix,  
20 Arizona. FRIENDLY HOUSE's purposes include providing social and legal services to  
21 immigrants, including counseling and therapy for immigrants who have suffered traumatic  
22 experiences or abuse, and legal assistance to immigrants applying for lawful immigration  
23 status. The Maricopa Migrant Conspiracy Policy is diverting the limited resources of  
24 FRIENDLY HOUSE, thus making its work and achievement of its goals more difficult and  
25 costly. FRIENDLY HOUSE is expending time and resources delivering services to migrants  
26 incarcerated pursuant to the unlawful Maricopa Migrant Conspiracy Policy. FRIENDLY  
27 HOUSE has provided services to plaintiffs JUAN MANUEL CORTEZ CUELLAR and  
28

Amended Complaint

1 HUGO ENRIQUE SANCHEZ DIEGO, each of whom is suffering direct and personal injury  
2 as a result of the Maricopa Migrant Conspiracy Policy in that they were arrested,  
3 incarcerated, and punished pursuant to and in furtherance of said Policy, as alleged herein.  
4

5 9. Plaintiffs RAUL VIXTHA-BOMAYE, JAVIER ENCINO-ROMERO, ROSA FLOR  
6 DIAZ-GODINES and ADRIANA RODRIGUEZ-ESPIRITU are citizens and nationals of  
7 Mexico. Pursuant to the Maricopa Migrant Conspiracy Policy, in mid-August 2006,  
8 defendants arrested, detained, and charged each of them with conspiracy to violate Ariz.  
9 Rev. Stat. § 13-2319. Defendants detained them—Mr. VIXTHA-BOMAYE and Mr.  
10 ENCINO-ROMERO in Durango Jail, and Ms. DIAZ-GODINES and Ms. RODRIGUEZ-  
11 ESPIRITU in Estrella Jail—pending resolution of conspiracy charges against them. None of  
12 these individuals has ever before been charged or convicted of any criminal offense. On  
13 information and belief, defendants turned plaintiffs VIXTHA-BOMAYE and ENCINO-  
14 ROMERO over to officers of the United States Immigration and Customs Enforcement  
15 (“ICE”) who then removed them from the country while defendants’ criminal charges  
16 remained pending against them. Plaintiffs DIAZ-GODINES and RODRIGUES-ESPIRITU  
17 were incarcerated by defendants for approximately three months pursuant to the Maricopa  
18 Migrant Conspiracy Policy.  
19  
20

21 10. Plaintiffs JUAN MANUEL CORTEZ-CUELLAR and HUGO ENRIQUE  
22 SANCHEZ-DIEGO are citizens and nationals of Mexico; each of them has resided in the  
23 United States for approximately 17 years. Pursuant to the Maricopa Migrant Conspiracy  
24 Policy, in late May 2006, defendants arrested, detained, and charged each of them with  
25 conspiracy to violate Ariz. Rev. Stat. § 13-2319. None of these individuals has ever before  
26 been arrested for or charged with any criminal offense. Defendants released plaintiffs  
27  
28 CORTEZ-CUELLAR and SANCHEZ DIEGO on bail in early August 2006; they currently  
Amended Complaint

1 reside in Mesa, Arizona.

2 11. Plaintiff KYRSTEN SINEMA is an elected member of the Arizona State House of  
3 Representatives, representing District 15, west of Phoenix, Arizona. She resides in and  
4 pays taxes to defendant MARICOPA COUNTY and to the State of Arizona. Defendants are  
5 using state and county taxes paid by plaintiff SINEMA to arrest, detain and imprison  
6 migrants pursuant to the illegal Maricopa Migrant Conspiracy Policy. Plaintiff SINEMA  
7 challenges the Maricopa Migrant Conspiracy Policy as an illegal diversion of taxpayer  
8 funds.  
9

10 12. Plaintiff STEVE GALLARDO is an elected member of the Arizona State House  
11 of Representatives, representing District 13, north of Tucson, Arizona. He resides in and  
12 pays taxes to the State of Arizona. Defendants are using state taxes paid by plaintiff  
13 GALLARDO to arrest, detain and incarcerate migrants pursuant to the Maricopa Migrant  
14 Conspiracy Policy. Plaintiff GALLARDO challenges the Maricopa Migrant Conspiracy  
15 Policy as an illegal diversion of taxpayer funds.  
16  
17

18 13. Plaintiff STEVE LUJAN is an elected member of the Arizona State House of  
19 Representatives, representing District 15, west of Phoenix, Arizona. He resides in and pays  
20 taxes to defendant MARICOPA COUNTY and to the State of Arizona. On information and  
21 belief, defendants are using state and county taxes paid by plaintiff LUJAN to arrest, detain  
22 and imprison migrants pursuant to the illegal Maricopa Migrant Conspiracy Policy.  
23 Plaintiff LUJAN challenges the Maricopa Migrant Conspiracy Policy as an illegal diversion  
24 of taxpayer funds.  
25

26 14. Plaintiff CECILIA MENJIVAR is an Associate Professor in the Department of  
27 Sociology and the School of Justice and Social Inquiry at Arizona State University. She  
28 resides in and pays taxes to defendant MARICOPA COUNTY and to the State of Arizona.

1 Defendants are using state and county taxes paid by plaintiff MENJIVAR to arrest, detain  
2 and incarcerate migrants pursuant to the Maricopa Migrant Conspiracy Policy. Plaintiff  
3 MENJIVAR challenges the Maricopa Migrant Conspiracy Policy as an illegal expenditure  
4 of taxpayer funds.  
5

6 15. Plaintiff LADAWN HAGLUND is an Assistant Professor in the School of Justice  
7 and Social Inquiry at Arizona State University. She resides in and pays taxes to defendant  
8 MARICOPA COUNTY and to the State of Arizona. Defendants are using state and county  
9 taxes paid by plaintiff HAGLUND to arrest, detain and incarcerate migrants pursuant to the  
10 Maricopa Migrant Conspiracy Policy. Plaintiff HAGLUND challenges the Maricopa  
11 Migrant Conspiracy Policy as an illegal expenditure of taxpayer funds.  
12

13 DEFENDANTS

14 16. Defendant MARICOPA COUNTY BOARD OF SUPERVISORS (“MARICOPA  
15 COUNTY”) is the governing body for Maricopa County, a political subdivision of the State  
16 of Arizona. Both the Maricopa County Attorney and Maricopa County Sheriff are  
17 subordinate officials of defendant MARICOPA COUNTY. Defendant MARICOPA COUNTY  
18 employs defendants THOMAS and ARPAIO. Defendant MARICOPA COUNTY has  
19 acquiesced in, condoned, and through local tax revenues financed the adoption and  
20 implementation of the Maricopa Migrant Conspiracy Policy.  
21

22 17. Defendants FULTON BROCK, DON STAPLEY, ANDREW KUNASEK, MAX W.  
23 WILSON, MARY ROSE WILCOX are members of the Maricopa County Board of  
24 Supervisors. Said defendants are sued in their official capacities.  
25

26 18. Defendant ANDREW THOMAS is the Maricopa County Attorney. As such he is  
27 responsible for the enforcement of the Arizona Criminal Code, including prosecuting  
28 violations of Ariz. Rev. Stat. § 13-2319. On information and belief, defendant THOMAS  
Amended Complaint

1 devised the Maricopa Migrant Conspiracy Policy and persuaded defendant ARPAIO to  
2 implement the detention and arrest aspects of said policy. He is sued in his official capacity.

3  
4 19. Defendant JOSEPH ARPAIO is the Maricopa County Sheriff and as such is  
5 vested with the legal authority and duty to enforce the Arizona Criminal Code, including  
6 Ariz. Rev. Stat. § 13-2319. He is sued in his official capacity.

7 20. Plaintiffs are informed and believe, and on such basis allege, that defendants,  
8 their agents, and their employees customarily and as a matter of practice or usage, engage  
9 in the acts here complained of. Plaintiffs are further informed and believe, and on such  
10 basis allege, that defendants, and each of them, are aware of and acquiesce in or encourage  
11 their agents and employees in doing the acts here complained of. In doing the acts alleged  
12 herein, defendants, and each of them, have acted and will continue to act, under color of  
13 state law.

14  
15 CLASS ACTION ALLEGATIONS

16 21. Plaintiffs bring this action as a class action pursuant to Rules 23(a)(1)-(4) and  
17 (b)(2) of the Federal Rules of Civil Procedure on behalf of the following class of similarly  
18 situated individuals:

19  
20 All individuals stopped, detained, or arrested for conspiring to transport themselves,  
21 and themselves only, in violation of Ariz. Rev. Stat. § 13-2319.

22  
23 22. The proposed class members will be identifiable from defendants' records and  
24 as of the filing of this Complaint are known to number in the hundreds. The class is so  
25 numerous that joinder of all members is impracticable. The claims of plaintiffs and those of  
26 the proposed class members raise common questions of law and fact concerning, *inter alia*,  
27 whether the challenged Maricopa Migrant Conspiracy Policy is an unconstitutional attempt  
28 to regulate international borders. These questions are common to the named parties and to

1 the members of the proposed class because defendants have acted and will continue to act  
2 on grounds generally applicable to both the named parties and proposed class members.  
3 Plaintiffs' claims are typical of the class claims.

4  
5 23. The prosecution of separate actions by individual members of the class would  
6 create a risk of inconsistent or varying adjudications establishing incompatible standards of  
7 conduct for defendants. Prosecution of separate actions would also create the risk that  
8 individual class members will secure court orders that would as a practical matter be  
9 dispositive of the claims of other class members not named parties to this litigation, thereby  
10 substantially impeding the ability of unrepresented class members to protect their interests.

11  
12 24. Defendants, their agents, employees, and predecessors and successors in office  
13 have acted or refused to act, and will continue to act or refuse to act, on grounds generally  
14 applicable to the class, thereby making appropriate injunctive relief or corresponding  
15 declaratory relief with respect to the class as a whole. Plaintiffs will vigorously represent  
16 the interests of unnamed class members. All members of the proposed class will benefit by  
17 the action brought by plaintiffs. The interests of the named plaintiffs and those of the  
18 proposed class members are identical. Some of plaintiffs' counsel have other clients injured  
19 by defendants' challenged practices and therefore have an independent interest in ensuring  
20 the lawfulness of defendants' conduct. Plaintiffs' counsel include attorneys experienced in  
21 federal class action litigation involving constitutional law and the law respecting the rights  
22 of foreign nationals in the United States.

#### 23 24 25 STATEMENT OF FACTS

26 25. On or about September 18, 2006, plaintiffs VIXTHA-BOMAYE, ENCINO-  
27 ROMERO, DIAZ-GODINEZ and RODRIGUEZ-ESPIRITU were traveling in a van with other  
28 individuals on a public highway in or near Phoenix, Arizona. A Peoria Police Officer  
Amended Complaint

1 working with Maricopa County, Officer Naehrbass #3080, stopped the vehicle, reportedly  
2 because one or more officers observed the vehicle to be traveling at a high rate of speed and  
3 the vehicle had an expired registration tag. On information and belief, the vehicle was  
4 stopped because pursuant to the Maricopa Migrant Conspiracy Policy, defendant Arpaio  
5 had instructed his deputies to stop vehicles that may be carrying undocumented migrants  
6 being transported in Maricopa County.  
7

8         26. The vehicle stopped, and the deputy sheriff asked the driver several questions.  
9 He then ordered all those in the vehicle, including plaintiffs VIXTHA-BOMAYE, ENCINO-  
10 ROMERO, DIAZ-GODINEZ and RODRIGUEZ-ESPIRITU, to exit the vehicle, and he further  
11 ordered them to sit on the ground by the side of the highway. Although the deputy sheriff  
12 had neither probable cause nor reasonable suspicion to believe that any of them had  
13 committed any cognizable crime, plaintiffs VIXTHA-BOMAYE, ENCINO-ROMERO,  
14 DIAZ-GODINEZ and RODRIGUEZ-ESPIRITU were from this time onward not free to leave.  
15 The deputy sheriff called for backup and continued to detain plaintiffs VIXTHA-BOMAYE,  
16 ENCINO-ROMERO, DIAZ-GODINEZ and RODRIGUEZ-ESPIRITU without probable cause  
17 or reasonable suspicion to believe that any of them had committed any cognizable crime,  
18 while he waited for other officers to arrive. Over an hour later and without advising the  
19 detainees of their constitutional rights—including but not limited to their right to counsel  
20 and against self-incrimination—Maricopa County Sheriff’s deputies began interrogating  
21 each detainee individually, including plaintiffs VIXTHA-BOMAYE, ENCINO-ROMERO,  
22 DIAZ-GODINEZ and RODRIGUEZ-ESPIRITU, while continuing to oblige them to sit on the  
23 ground. The Maricopa County Sheriff’s deputies’ questions were intended to ascertain  
24 whether the detainees were migrants who had entered the United States without inspection  
25 and were being transported for gain, and accordingly subject to arrest pursuant to the  
26 Amended Complaint  
27  
28

1 Maricopa County Conspiracy Policy for conspiracy to violation Ariz. Rev. Stat. § 13-2319.

2 27. At no time did Maricopa County Sheriff's deputies attempt to obtain appropriate  
3 confirmation from the United States Department of Homeland Security that plaintiffs  
4 VIXTHA-BOMAYE, ENCINO-ROMERO, DIAZ-GODINEZ or RODRIGUEZ-ESPIRITU had  
5 previously been convicted of a felony in the United States and deported or left the United  
6 States after such conviction. At no time did Maricopa County Sheriff's deputies develop  
7 any reason whatsoever to believe that plaintiffs VIXTHA-BOMAYE, ENCINO-ROMERO,  
8 DIAZ-GODINEZ or RODRIGUEZ-ESPIRITU were themselves alien smugglers, or that any  
9 of them were transporting or had conspired to transport others for gain. At no time did  
10 Maricopa County Sheriff's deputies have probable cause to believe that plaintiffs VIXTHA-  
11 BOMAYE, ENCINO-ROMERO, DIAZ-GODINEZ or RODRIGUEZ-ESPIRITU had  
12 committed any cognizable criminal offense.  
13

14  
15 28. Nevertheless, acting pursuant defendants' Maricopa County Conspiracy Policy,  
16 the Maricopa County Sheriff's deputies arrested plaintiffs VIXTHA-BOMAYE, ENCINO-  
17 ROMERO, DIAZ-GODINEZ and RODRIGUEZ-ESPIRITU and transported them to a  
18 Maricopa County Sheriff's station house. At the station house, Maricopa County Sheriff's  
19 deputies again interrogated plaintiffs VIXTHA-BOMAYE, ENCINO-ROMERO, DIAZ-  
20 GODINEZ and RODRIGUEZ-ESPIRITU, again without advising any of them of their  
21 constitutional rights, including those to counsel and against self-incrimination, and again  
22 without attempting to obtain appropriate confirmation from the United States Department  
23 of Homeland Security that plaintiffs VIXTHA-BOMAYE, ENCINO-ROMERO, DIAZ-  
24 GODINEZ or RODRIGUEZ-ESPIRITU had previously been convicted of a felony in the  
25 United States and deported or left the United States after such conviction. Maricopa County  
26 Sheriff's deputies eventually booked plaintiffs VIXTHA-BOMAYE, ENCINO-ROMERO,  
27  
28

Amended Complaint

1 DIAZ-GODINEZ and RODRIGUEZ-ESPIRITU into Maricopa County Jail.

2 29. On September 21, 2006, the Maricopa County Attorney's Office filed a  
3 complaint charging plaintiffs VIXTHA-BOMAYE, ENCINO-ROMERO, DIAZ-GODINEZ  
4 and RODRIGUEZ-ESPIRITU, and each of them, with "conspiracy to commit human  
5 smuggling": *i.e.*, conspiring to transport themselves, and only themselves, in violation of  
6 Ariz. Rev. Stat. § 13-2319. Defendants thereafter continued to detain plaintiffs VIXTHA-  
7 BOMAYE, ENCINO-ROMERO, DIAZ-GODINEZ and RODRIGUEZ-ESPIRITU pending trial  
8 or other disposition of the charge against them. Defendants turned plaintiffs VIXTHA-  
9 BOMAYE and ENCINO-ROMERO over to the U.S. Immigration and Customs Enforcement  
10 and they were removed from the country while defendants' criminal charges against them  
11 were still pending. Those charges remain pending and a bench warrant has been or is likely  
12 to be issued in the near future to compel their attendance at hearings they are unable to  
13 attend unless federal authorities authorize their admission to the United States to appear in  
14 the proceedings held pursuant to the challenged Maricopa County Conspiracy Policy. On or  
15 about March 26, 2007, an immigration judge granted plaintiff DIAZ lawful permanent  
16 residence in the United States.

20 30. On or about May 22, 2006, plaintiffs CORTEZ-CUELLAR and SANCHEZ-  
21 DIEGO were traveling in a vehicle on or near Old U.S. Highway 80 in Maricopa County,  
22 Arizona. Maricopa County Sheriff's Deputy F. Castorena stopped the vehicle, ostensibly  
23 because it carried an expired license plate, but in truth and fact because he suspected that  
24 migrants who had entered the United States without inspection were being transported  
25 therein, and pursuant to the Maricopa County Conspiracy Policy, defendant ARPAIO had  
26 instructed him to detain and arrest such individuals.

28 31. Deputy Castorena ordered plaintiffs CORTEZ-CUELLAR and SANCHEZ-DIEGO  
Amended Complaint

1 and all other passengers in the vehicle to exit and to sit on the ground. Although the deputy  
2 sheriff had neither probable cause nor reasonable suspicion to believe that any of them had  
3 committed any cognizable crime, plaintiffs CORTEZ-CUELLAR and SANCHEZ-DIEGO  
4 were not free to leave from this time onward. Following this detention and without advising  
5 the detainees of their constitutional rights—including but not limited to their right to  
6 counsel and against self-incrimination—Maricopa County Sheriff’s deputies began  
7 interrogating each detainee individually, including plaintiffs CORTEZ-CUELLAR and  
8 SANCHEZ-DIEGO, while continuing to oblige them to sit on the ground. The Maricopa  
9 County Sheriff’s deputies’ questions were intended to ascertain whether the detainees were  
10 migrants who had entered the United States without inspection and were being transported  
11 for gain, and accordingly subject to arrest pursuant to the Maricopa County Conspiracy  
12 Policy for conspiracy to violation Ariz. Rev. Stat. § 13-2319.  
13

14  
15 32. At no time did Maricopa County Sheriff’s deputies attempt to obtain appropriate  
16 confirmation from the United States Department of Homeland Security that plaintiffs  
17 CORTEZ-CUELLAR or SANCHEZ-DIEGO had previously been convicted of a felony in the  
18 United States and deported or left the United States after such conviction. At no time did  
19 Maricopa County Sheriff’s deputies develop any reason whatsoever to believe that  
20 plaintiffs CORTEZ-CUELLAR or SANCHEZ-DIEGO were themselves alien smugglers, or  
21 that either of them was transporting or had conspired to transport others for gain. At no  
22 time did Maricopa County Sheriff’s deputies have probable cause to believe that plaintiffs  
23 CORTEZ-CUELLAR or SANCHEZ-DIEGO had committed any cognizable criminal offense.  
24

25  
26 33. Approximately one hour later, Maricopa County Sheriff’s deputies arrested  
27 plaintiffs CORTEZ-CUELLAR and SANCHEZ-DIEGO and transported them to a station  
28 house in or near Gila Bend, Arizona. At the station house, Maricopa County Sheriff’s  
Amended Complaint

1 deputies further detained and questioned plaintiffs CORTEZ-CUELLAR and SANCHEZ-  
2 DIEGO without attempting to obtain appropriate confirmation from the United States  
3 Department of Homeland Security that plaintiffs CORTEZ-CUELLAR or SANCHEZ-DIEGO  
4 had previously been convicted of a felony in the United States and deported or left the  
5 United States after such conviction. Following interrogation, Maricopa County Sheriff's  
6 deputies booked plaintiffs CORTEZ-CUELLAR or SANCHEZ-DIEGO into a Maricopa  
7 County jail.

9 34. On May 24, 2006, the Maricopa County Attorney's Office filed a complaint  
10 charging plaintiffs CORTEZ-CUELLAR and SANCHEZ-DIEGO, and each of them, with  
11 "conspiracy to commit human smuggling": *i.e.*, conspiring to transport themselves, and  
12 only themselves, in violation of Ariz. Rev. Stat. § 13-2319. On June 1, 2006, Maricopa  
13 County grand jury issued an indictment against plaintiffs CORTEZ-CUELLAR and  
14 SANCHEZ-DIEGO similarly charging them. In early August 2006, after incarcerating them  
15 for over two months, defendants released plaintiffs CORTEZ-CUELLAR and SANCHEZ-  
16 DIEGO on bail pending trial or other disposition of the charge against them.

19 35. Ariz. Rev. Stat. § 13-2319, provides in relevant part as follows:

20 A. It is unlawful for a person to intentionally engage in the smuggling of human  
21 beings for profit or commercial purpose. . . . .

22 C. For the purposes of this section "smuggling of human beings" means the  
23 transportation or procurement of transportation by a person or an entity that knows  
24 or has reason to know that the person or persons transported or to be transported are  
25 not United States citizens, permanent resident aliens or persons otherwise lawfully in  
26 this state.  
27

28 36. On or about September 29, 2005, defendant THOMAS issued a statement

1 declaring that, in his view, § 13-2319 proscribes not only smugglers' transporting persons  
2 for profit and procuring such transportation for others, but also non-smuggler migrants'  
3 agreeing to pay for transport or on whose behalf others had agreed to pay for transport.  
4 According to defendant THOMAS, "If [law enforcement has] probable cause to believe that  
5 illegal immigrants have intentionally allowed themselves to be smuggled by a paid human  
6 smuggler . . . [law enforcement] may arrest the illegal immigrants as well as the coyote."  
7 Maricopa County Attorney Opinion 2005-002, Sept. 29, 2005. Defendant THOMAS  
8 asserted that he would thenceforth prosecute persons who agree to pay for transport for  
9 conspiring to violate § 13-2319: "When there is probable cause to believe illegal  
10 immigrants have violated [§ 13-2319] by committing a preparatory offense to that law  
11 under the state's criminal code, the illegal immigrants may be arrested and charged with  
12 these crimes . . ." *Id.* This position commenced the challenged Maricopa Migrant  
13 Conspiracy Policy.  
14

15  
16 37. On information and belief, prior to initiating the Maricopa Migrant Conspiracy  
17 Policy, defendants THOMAS did not research or assign anyone to research whether his  
18 policy violated federal law nor did he evaluate in any reasonable way the cost to taxpayers  
19 of the new policy, nor did he evaluate the requirements of 8 U.S.C. § 1357(g), which  
20 establishes a procedure by which state officers may assist federal efforts to regulate  
21 international migration.  
22

23  
24 38. Section 13-2319 was added in 2005 by H.B. 2539. The bill's sponsor, Rep.  
25 Jonathan Paton, was clear about its purpose. The minutes of the House Judiciary  
26 Committee record the following:

27 Mr. Paton advised this legislation is the result of discussions with a number of his  
28 constituents. He said there is a growing human tragedy along Arizona's southern

1 border. This bill attempts to deal with both situations of people coming into this  
2 country looking for work as well as people who are living in the path of  
3 immigration. People who are involved in trafficking, referred to as coyotes, are  
4 operating with impunity in this area and there is a culture of lawlessness growing up  
5 around that. He stated that lawlessness is compromising national security and  
6 exploiting people who are trying to enter into this country. ...

8 Mr. Paton stated that there are no state laws against the actual coyote smuggling  
9 activity. This bill attempts to give local law enforcement the ability to stop this  
10 activity from happening and to prosecute on both the federal and state level. He  
11 reminded Members that the U.S. Attorney's Office in southern Arizona has not been  
12 prosecuting *coyotes*.

14 Minutes of the Committee on Judiciary re: H.B. 2539, Arizona House of Representatives,  
15 47th Legislature, First Regular Session (February 10, 2005) (emphasis added). The purpose  
16 of § 13-2319 is the prosecution of alien smugglers —“actual coyotes”—and not “people  
17 who are coming into this country looking for work.” The legislature conceived of § 13-  
18 2319 as providing a state analogue to federal law against alien smuggling, 8 U.S.C. § 1324.

20 39. On March 6, 2006, the Associated Press reported lawmakers' astonishment at  
21 defendants' adoption of the Maricopa County Conspiracy Policy:

22 [T]wo of the law's authors said Friday that it was never their intent for illegal  
23 immigrants to be prosecuted under the law.

25 “This is something the county attorney came up with himself,” said Rep. Jonathon  
26 Paton, R-Tucson. “I never intended that immigrants would be arrested . . . That's not  
27 what I sold the bill as, and that's not what our attorneys at the time told us. It was  
28 pretty clear.”

1 When Sen. Timothy Bee, R-Tucson, was contacted about the arrests, he hadn't heard  
2 Thomas was seeking to charge the immigrants under the human smuggling law.  
3 "Wow," he said. "That's the first time I've seen that interpretation of the law. The  
4 law was designed to go after those who are involved in drug trafficking and human  
5 trafficking for a profit." ....

6  
7 Other lawmakers questioned the logic of prosecuting illegal immigrants under the  
8 human smuggling law.

9 "I don't think it would be wise public policy to fill up our prisons with people whose  
10 only offense is that they paid someone to get into the country, and otherwise haven't  
11 broken any laws in this state," said Rep. Bill Brotherton, D-Phoenix, who supported  
12 the human smuggling bill last year. "Imagine this being done on a wide scale. You're  
13 talking about putting potentially thousands or tens of thousands of new people into  
14 the prison system."

15  
16 40. Defendants' construing Arizona law as permitting arrest and detention for  
17 conspiracy to transport oneself is arbitrary and unreasonable. On information and belief,  
18 plaintiffs allege that defendants THOMAS and ARPAIO are the only two law enforcement  
19 officers in the nation who have embarked on a policy and practice to arrest and prosecute  
20 alleged undocumented immigrants for "conspiracy" to transport themselves. To the extent  
21 the Maricopa Migrant Conspiracy Policy is consistent with § 13-2319 and related Arizona  
22 statutes, those statutes fail to provide fair warning of the act which they make punishable as  
23 a crime.

24  
25  
26 41. Nevertheless, on March 2, 2006, in furtherance of the Maricopa Migrant  
27 Conspiracy Policy, the Maricopa County Sheriff's deputies stopped, detained, and arrested  
28 54 individuals on suspicion of conspiring to transport themselves in violation of § 13-2319.

1 With the exception of one or two individuals whom defendants reasonably believed to be  
2 alien smugglers, said stops, detentions, and arrests were conducted without probable cause  
3 to believe that any of the persons seized had committed or were committing a cognizable  
4 criminal offense because nowhere does Arizona law make it a crime to conspire to transport  
5 oneself in violation of § 13-2319.  
6

7 42. On or about March 13, 2006, at the behest of defendant THOMAS and agents of  
8 defendant Maricopa County Attorney's Office, a Maricopa County Grand Jury indicted 48  
9 of the individuals arrested on March 2, 2006, for conspiracy to transport themselves in  
10 violation of § 13-2319. None of the individuals thus indicted were charged with actually  
11 violating § 13-2319, nor were any of them accused of transporting others for gain, or of  
12 doing anything beyond agreeing to pay for transport through Maricopa County or being  
13 provided transport after someone else paid for the transport.  
14

15 43. Thereafter, defendant ARPAIO organized and widely publicized a civilian  
16 "posse," whose members assist his deputies ferret out and arrest migrants in Maricopa  
17 County being transported by smugglers. On information and belief, defendants and their  
18 employees and agents have since arrested and incarcerated for conspiracy to smuggle  
19 themselves over 1,000 individuals. Most recently, on or about September 26, 2007,  
20 defendants arrested and detained about twenty-seven (27) individuals pursuant to the  
21 Maricopa Migrant Conspiracy Policy  
22  
23

24 44. Defendants THOMAS and ARPAIO conspired to initiate and implement the  
25 Maricopa Migrant Conspiracy Policy in order to regulate international migration and  
26 because, as defendant THOMAS stated, defendants are "frustrated ... [with the] problem of  
27 illegal immigration that the government [of Mexico] is directly fomenting," and because, as  
28 defendant ARPAIO stated, "[t]here are [too] many illegals trying to make it into [Maricopa]  
Amended Complaint

1 county ...” Gary Grado, *Thomas Rips Mexico in Illegals’ Arrest Case*, EAST VALLEY  
2 TRIBUNE (MESA, AZ), March 25, 2006 (hereinafter “March 25, 2006, Thomas Rips  
3 Mexico”); Maricopa County Sheriff’s Office Press Release, *Sheriff Calls out Posse to Stem*  
4 *Illegal Immigration into Maricopa County*, May 2, 2006 (hereinafter “May 2, 2006 Sheriff  
5 Press Release”). The challenged Maricopa Migrant Conspiracy Policy is an attempt by  
6 defendants to control undocumented migration, a purely federal function, by arresting and  
7 punishing suspected undocumented migrants who enter, pass through, or remain in  
8 Maricopa County.  
9

10  
11 45. The Immigration and Nationality Act includes detailed criminal provisions  
12 regulating the transportation of immigrants not authorized to be present in the United States  
13 and federal law thus fully occupies the field. The Maricopa Migrant Conspiracy Policy is  
14 an attempt to regulate conduct that the federal government has already prohibited as part of  
15 a comprehensive federal scheme: immigrant smuggling and unauthorized entry into the  
16 United States. As a local regulation duplicating (and thus intruding on) a federal scheme,  
17 the Maricopa Migrant Conspiracy Policy is preempted. The Maricopa Migrant Conspiracy  
18 Policy conflicts with and stands as an obstacle to federal regulation of international  
19 migration. Federal immigration laws and policies allow multiple categories of migrants to  
20 remain in the United States while they apply for lawful status despite having entered  
21 without inspection, including, for example, laws permitting migrants to apply for U visas as  
22 victims of violent crimes, T visas as the victims of trafficking, asylum as the victims of  
23 persecution, or adjustment of status based upon their eligibility for certain types of family  
24 or employment-based visas.  
25  
26

27 46. Under the Maricopa Migrant Conspiracy Policy, non-smuggler immigrants with  
28 a legal right to remain in the United States while they seek formal lawful status are as

1 culpable for conspiring to violate Ariz. Rev. Stat. § 13-2319—and as liable to be detained  
2 and incarcerated for so conspiring—as are persons who are ineligible for such benefits. The  
3 Maricopa Migrant Conspiracy Policy actually conflicts with federal law by —

- 4
- 5 (i) directing the detention, arrest, prosecution and imprisonment of individuals  
6 who do not have formal lawful status, but who, like plaintiff DIAZ GODINES,  
7 may be eligible for lawful immigration status and who under federal law are  
8 allowed to remain in the United States while their applications for lawful  
9 status are processed; and
  - 10 (ii) affording no or grossly inadequate procedural safeguards in determining an  
11 arrestee’s federal immigration status and right to be in the United States.

12 47. Federal law establishes a comprehensive procedure that fully occupies the field  
13 by which state officers and employees may assist federal efforts to regulate international  
14 migration. 8 U.S.C. § 1357(g) provides in pertinent part:

15  
16 (1) . . . [T]he Attorney General may enter into a written agreement with a State, or  
17 any political subdivision of a State, pursuant to which an officer or employee of the  
18 State or subdivision, who is determined by the Attorney General to be qualified to  
19 perform a function of an immigration officer in relation to the investigation,  
20 apprehension, or detention of aliens in the United States (including the transportation  
21 of such aliens across State lines to detention centers), may carry out such function at  
22 the expense of the State or political subdivision and to the extent consistent with  
23 State and local law.

24 (2) An agreement under this subsection shall require that an officer or employee of a  
25 State or political subdivision of a State performing a function under the agreement  
26 shall have knowledge of, and adhere to, Federal law relating to the function, and  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

(3) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of the Attorney General. . . .

(5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set forth in a written agreement between the Attorney General and the State or political subdivision.

48. On information and belief, defendants have neither sought nor received adequate training regarding the enforcement of relevant Federal immigration laws or complied with 8 U.S.C. § 1357(g). In carrying out the Maricopa County Conspiracy Policy, defendants are not subject to the direction or supervision of the Attorney General or the Department of Homeland Security, nor is there any written agreement between defendants and the Attorney General or the Department of Homeland Security authorizing the Maricopa County Conspiracy Policy.

49. On information and belief, defendants have also arrested and detained class members for prolonged periods without charge, without bringing them before a neutral and detached magistrate for a determination of probable cause, and without affording them counsel or a speedy trial. Defendants have attempted to justify said unlawful seizures by

1 falsely claiming that the federal Immigration and Customs Enforcement (“ICE”), a bureau  
2 of the Department of Homeland Security (“DHS”), has placed “holds” on such individuals  
3 authorizing their detention under federal authority when in truth and fact ICE has placed no  
4 such “holds” or otherwise authorized defendants to detain class members. By letter dated  
5 July 6, 2006, ICE advised defendant ARPAIO that such pretextual detentions were  
6 unlawful:  
7

8       It has come to the attention of the U.S. Immigration and Customs Enforcement  
9       (ICE) that a significant number of inmates within the Maricopa County jail system  
10       have booking records that reflect they are subject to an “ICE HOLD”, although they  
11       have not been interviewed by an officer who is authorized to determine alienage ...  
12       The only officers authorized to make a determination as to alien status are federal  
13       officers vested with authority under the Immigration and Nationality Act [INA] ... A  
14       federal officer must base the determination of status upon either an interview of the  
15       subject or through fingerprint comparison with existing administrative immigration  
16       records. Furthermore, only federal officers ... can place detainers pursuant to the  
17       INA. Detention and Removal (DRO) transport officers have been advised to pick up  
18       only those inmates that are the subject of a properly placed immigration hold ... The  
19       noting of “ICE HOLD” in the record ... has already created some issues, placing  
20       both the DRO transport staff and your jail staff in difficult positions. Unless  
21       corrected, it can lead to friction between agencies and may manifest itself at a time  
22       when either officer safety or agency professionalism is out at risk ... [and] risk[s] ...  
23       charges of discrimination or unlawful detention being brought by individuals held on  
24       the basis of an “ICE HOLD” inappropriately placed by other than an authorized  
25       federal officer.  
26  
27  
28



1 actors to regulate immigration, and as such unlawfully usurps the federal government's  
 2 exclusive power to regulate immigration in violation of the United States Constitution Art.  
 3 I, § 8, cl. 4 (the federal power to establish a uniform rule of naturalization); the United  
 4 States Constitution Art. I, § 8, cl. 3 (the federal power to regulate commerce with foreign  
 5 nations); and the Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.* (“INA”).

7 54. The Immigration and Nationality Act includes detailed criminal provisions  
 8 regulating the transportation of immigrants not authorized to be present in the United States  
 9 and federal law thus fully occupies the field. *See, e.g.* 8 U.S.C. §§ 1321-28. The Maricopa  
 10 Migrant Conspiracy Policy also actually conflicts and is inconsistent with federal law,  
 11 including 8 U.S.C. §§ 1252c, 1324, and 1357, as well as federal statutes that establish  
 12 multiple categories of immigrants who have not been lawfully admitted to the country, but  
 13 who are nevertheless authorized to remain here while they pursue lawful immigration  
 14 status, including, but not limited to, 8 U.S.C. §§ 1101(a)(42) and 1157 (refugee status);  
 15 1101(a)(42)(A) and 1158 (asylee status); 1231(b)(3) (withholding of removal); § 1229b  
 16 (cancellation of removal); 1101(a)(15)(U) and 1184(p) (victims of violent crimes status);  
 17 1101(a)(15)(T) and 1184(o) (victims of trafficking status); and 1154 and 1229b(b)(2)  
 18 (battered immigrant women and children status).  
 19  
 20

## 21 SECOND CLAIM FOR RELIEF

22 [Unlawful Search and Seizure; violation of 42 U.S.C. § 1983]

23  
 24 55. Plaintiffs reallege and incorporate by reference the allegations set out in  
 25 paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth here.

26 56. The Maricopa Migrant Conspiracy Policy violates the Fourteenth Amendment's  
 27 protection against unreasonable searches and seizures because —  
 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- (a) Arizona law does not criminalize conspiracy to transport oneself, and defendants’ stopping, detaining, and arresting plaintiffs and their class members as alleged herein is therefore without reasonable suspicion or probable cause to believe they have committed any cognizable crime;
- (b) even if Arizona law criminalized conspiracy to transport oneself, defendants unlawfully detain or arrest plaintiffs and class members without probable cause to believe that they have violated Arizona Law and question plaintiffs and class members regarding their alleged violation of Arizona law without providing adequate Miranda warnings before such questioning takes place; and
- (c) defendants, their officers and agents are not trained or qualified to determine whether migrants are “lawfully within the state” for purposes of determining probable cause to arrest them.

THIRD CLAIM FOR RELIEF

[Denial of Due Process; violation of 42 U.S.C. § 1983]

57. Plaintiffs reallege and incorporate by reference the allegations set out in paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth here.

58. To the extent the Maricopa Migrant Conspiracy Policy is consistent with Ariz. Rev. Stat. §§ 13-2319 and 13-1003, said statutes deny plaintiffs and their class members due process of law in violation of the Fourteenth Amendment to the United States Constitution, and to the extent the Maricopa Migrant Conspiracy Policy is inconsistent with Ariz. Rev. Stat. §§ 13-2319 and 13-1003, said Policy denies plaintiffs and their class members due process of law in violation of the Fourteenth Amendment to the United States

Amended Complaint

1 Constitution, by —

- 2 (a) failing to provide fair warning of the act which is made punishable as a crime;
- 3 (b) failing to explain or define when a person is not “lawfully in the state.
- 4 (c) permitting and facilitating plaintiffs’ and class members’ removal from the
- 5 United States before they can defend against defendants’ conspiracy criminal
- 6 charges.
- 7

8 FOURTH CLAIM FOR RELIEF

9 [Pendent State Claim: Violation of Ariz. Rev. Stat. §§ 13-2319 and 13-1003]

10 59. Plaintiffs reallege and incorporate by reference the allegations set out in

11 paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth here.

12 60. The Maricopa Migrant Conspiracy Policy conflicts with and is not authorized by

13 Ariz. Rev. Stat. §§ 13-2319 and 13-1003, which were not intended to and do not impose

14 criminal penalties against migrants transported by smugglers for gain.

15

16 PRAYER FOR RELIEF

17 WHEREFORE, plaintiffs respectfully pray that this Court —

- 18 1. Assume jurisdiction over this action;
- 19 2. Order that plaintiffs may maintain this action as a class action pursuant to Rule
- 20 23, Federal Rules of Civil Procedure;
- 21 3. Only to the extent relief does not interfere with state proceedings that were
- 22 underway before initiation of this case or otherwise require abstention under *Younger v.*
- 23 *Harris*, 401 U.S. 37 (1971), declare that the Maricopa Migrant Conspiracy Policy —
- 24 (a) constitutes an unconstitutional program of state regulation of international
- 25 migration;
- 26
- 27
- 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- (b) actually conflicts with the federal government’s regulation of international migration;
- (c) violates plaintiffs’ rights under the Fourth and Fourteenth Amendments to freedom from unreasonable searches and seizures;
- (d) violates plaintiffs’ rights under the Fifth and Fourteenth Amendments to due process of law; and
- (e) is inconsistent with and violative of Ariz. Rev. Stat. §§ 13-2319 and 13-1003;

4. Issue preliminary and permanent injunctions restraining defendants, their agents, employees, and successors in office from further implementing the Maricopa Migrant Conspiracy Policy, but only to the extent such injunctive relief does not interfere with state proceedings that were underway before initiation of this case or otherwise require abstention under *Younger v. Harris*, 401 U.S. 37 (1971).

5. Award plaintiffs their costs of suit and attorney’s fees pursuant to 42 U.S.C. § 1988(b); and

6. Grant such further relief as the Court deems just.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: October 12, 2007.

CENTER FOR HUMAN RIGHTS AND  
CONSTITUTIONAL LAW  
Peter A. Schey  
Carlos R. Holguin  
256 S. Occidental Blvd.  
Los Angeles, CA 90057

By s/ Peter A. Schey

Perkins Coie Brown & Bain P.A.  
H. Michael Clyde  
2901 N. Central Avenue, Suite 2000  
Phoenix, AZ 85012-2788

LULAC National Legal Adviser  
Ray Velarde  
1216 Montana  
El Paso, TX 79902

Dan Ballecer  
1095 E. Indian School Road  
Phoenix, AZ 85014

Antonio Bustamante  
1001 N. Central Avenue Suite 660  
Phoenix, AZ 85014

Attorneys for Plaintiffs

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2007, I electronically transmitted the attached documents to the Clerk’s Office using the CM/ECF System for filing.:

I hereby certify that on October 12, 2007, I caused a copy of the attached document to be delivered by overnight delivery addressed to Judge Robert C. Broomfield, United States District Court of Arizona, 401 West Washington Street, Phoenix, Arizona 85003-2118.

s/ Christopher Scherer